

(2017) 05 RAJ CK 0161
In the Rajasthan High Court
Case No : 689 of 2008

Narayan Lal & anr.

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
Indian Penal Code, 1860, Section 302,
Section 300, Se

Citation : (2017) 05 RAJ CK 0161

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : J.S. Choudhary, Dharendra Singh, Shambhoo Singh, Nishant Bora, J.P.S. Choudhary

Final Decision : Dismissed

Judgement

1. All these appeals have arisen from a common judgment dated 30.8.2008 passed by the learned Additional Sessions Judge (Fast Track) No.2, Pali in Sessions Case No.45/2007 whereof all the accused have been convicted and sentenced as under:- Under Section 302/120B I.P.C Accused appellants Narayan Lal, Azad Singh, Shankar Lal, Mangla Ram @ Mangi Lal and Suresh Kumar have been convicted and sentenced for life imprisonment and a fine of Rs.5,000/- each and in default to pay fine further to undergo for six months" simple imprisonment.

Under Section 302 I.P.C Accused appellants Narayan Lal, Shankar Lal and Azad Singh have been convicted and sentenced for life imprisonment and a fine of Rs.5,000/- each and in default to pay fine, further to undergo for six months" simple imprisonment.

Under Section 4/25 Arms Act Accused appellants Shankar Lal and Azad Singh have been convicted and sentenced for one year"s rigorous imprisonment and a

fine of Rs.500/- each and in default to pay fine, further to undergo for 15 days" simple imprisonment.

2. The allegations as mentioned in the FIR Ex.P/16 goes to reveal that Varadram S/o Gaina Ji submitted a written report at P.S. Guda Endla, alleging therein that on 31.08.2007, at about 12.00 noon, an information was received in the village that there was a dead-body found near Laal Baori beside Maknaba Piyao, on which, he went to the spot and found, it was a body of his younger brother Manaram, sharp edged weapon deadly injuries were caused to him by unknown persons and murdered him, so legal action be taken, this FIR was lodged under Section 302 I.P.C. by Shri Varda Ram and was registered as FIR No.108/2007 at Police Station Guda Endla, District Pali on 31.08.2007.

3. Heard submission of both the sides, Shri Jagmal Singh Choudhary, learned counsel for the appellants Suresh and Narayan, while relying upon Omshiv Pratap Singh @ Om Singh @ Banna vs. State of Rajasthan, [2013] 0 Supreme (Raj.) 377, Rishipal vs. State of Uttarkhand, [2013] 0 supreme (SC) 26, Tarseem, Kumar Vs. Delhi Administration (1994) 0 SCC (Cri) 1735] has contended that initially the FIR was lodged against unknown persons and no disclosure of anybody's involvement was made at the time of lodging of the FIR, there are vital contradictions in the evidence of the prosecution, motive is also not established, so far as the alleged property of Bombay is concerned, which is allegedly been told to be the reason of alleged assassination, has also not been ascertained and investigated, so it is a hypothesis that there was any property in Bombay, which caused greed animosity and Ex.1 diary is a fake and concocted document and it has been established by evidence of DW-1; generally signatures of the person receiving money are taken, for any such alleged payment acknowledgment but here no such signatures have been taken allegedly of accused Narayan but signatures of Suresh are there, which makes the existence of the diary bogus. Story of last seen is also not confirmed. Evidence of Gulab reveals that Vardha Ram and Mukesh were earlier detained by the police, on suspicion and they could get released, on paying certain fiscal considerations, which goes to show that police has wrongly involved innocent persons and entire recovery is fake, prosecution has failed to establish its case. Learned counsel for the appellants has further contended that trial court has failed to appreciate the evidence and findings of learned trial court are erroneous. Hence, the appeal may be allowed and the accusedappellants may be acquitted. Learned counsels Mr. Dhirender Singh and Mr. Shambhu Singh for the accused-appellants Narayan Lal, Suresh Kumar, Shankar Lal and Azad Singh, while relying upon the judgment in Alagupandi @ Alagupandian Vs. State of Tamil Nadu reported in 2012(2) ACR 1751 (SC) have contended that the recovery is not established and it is fake. PW-13 recovery witness has become hostile and another recovery witness has not been examined, prosecution has wrongly named and challaned the accused persons, without any substance. The findings of the trial court are also not correct. Learned counsel for the appellant have further contended that the findings are liable to be reversed and accused-appellants are liable to be

acquitted. Mr. Nishant Bora, learned counsel for the appellant Mangla Ram @ Mangilal, while relying upon the judgment of Mulakh Raj & etc. Vs. Satish Kumar and others AIR 1992 SC 1175 has contended that there are material contradictions in the evidence of Gulab and prosecution has wrongly invented a bogus theory of enmity, no such property was there in Bombay nor any investigation has been made in this respect, theory of last seen together is also fake, had it been correct, then the FIR would have revealed the names of the accused persons, in order to involve innocent persons and to spare actual culprits, wrong theory has been invented and accused persons have wrongly been involved. The findings of learned trial court is not sustainable, so it be quashed and the accused-appellant be set at liberty. Per contra, learned Public Prosecutor has contended said that the trial court has elaborately dealt with every nicety of evidence, wife of deceased Maana Ram Smt. Gulab has candidly narrated that the accused persons used to visit to their house in order to threaten them, deceased was given ultimatum, on several times that he will be eliminated, if he is not distracted and disassociated from the Bombay property, a day before, accused persons came on the bike and threatened the deceased, deceased was also intermediary in vehicular sale so, on pretext to get a suitable bike bought, he was allured to accompany, which has correctly been narrated by wife of the deceased and deceased was taken on motor-cycle by the accused persons and subsequently soon after departure he was found dead and murdered. Recovery of weapon and apparels have also been made, which has been found tainted with "A" group human blood, which establishes that clothing of the accused persons and that of deceased and blood sample taken from the place of incident and blood stains found on the weapon i.e. on "kooth" and "dagger" have also been found tainted with same "A" group blood, which is established by FSL report, the prosecution has successfully established its case, on the doctrine of last seen together, as well as, well connected with FSL and medical report, there is no flaw in the evidence of the prosecution. The diary was also written, in respect of, payment of killing-money, cruel murder has been committed by the accused persons in a concerted planed manner with manifest conspiracy, so there is no error in the findings of the trial court, it is worthy, hence the appeal/s be dismissed and the findings of learned trial court may be upheld. Learned counsel for the complainant and learned public prosecutor have relied on the following judgments Bijender Singh vs. State, (Criminal Appeal No.752/200, decided by Delhi High Court on 25/04/2016, Alagupandi @ Alagupandian vs. State of Tamil Nadu, (2012)10 SSC 451, Mulakh Raj, etc. vs. Satish Kumar and Others, AIR 1992 SC 1175 and Kishore Bhadke Vs. State of Maharashtra 2017 Cri.L.J. 988.

4. Adverting on the evidence, we find that PW.14 Vardharam brother of deceased Manaram, has said that Manaram was killed on 31/08/2007, he was his real younger brother, at about twelve in the day, he was informed by Villagers that someone was murdered and the body was lying near Piyoo(water-hut) of Maknaba Lal, Baori, hearing it he went to the spot and found that the body was

of his younger brother Manaram, narrating nature of several injuries on the body, he has said that by that time, policemen were there and several villagers were also gathered around, he has further said that on the spot a report was given by him to the police for investigation, which is Ex.P.15, which contains his signatures, he has accepted his signatures on Ex.P.14, 25, 26, 28 and 29 and has further said that on inquiring from wife of Manaram, she informed that Narayan and Azad came on 30th, Manaram asked them don't come frequently, don't have any doubt over him, since he (deceased) was not desirous to possess Bombay shop, he has further said that Gulab wife of Manaram had earlier informed him that Suresh and Narayan had been there on few occasions earlier, in crossexamination, he has said that they are three brothers, family of all the brothers resides separately, he has further said that deceased Lumbaram was residing at Bombay with his family earlier and Manaram was living in the Village, running a shop of STD and cement agency, on demise of his wife, 14 to 15 years ago, he married with Gulab Devi, he has further said that he remained at the spot for about two hours, he has further said that crop was standing there, of three to four feet of height and people near the body were working in their fields, none standing on the spot, informed as to, who killed Manaram, he has further said that he used to visit at the place of Manaram in a month or two and would come after sitting about half an hour. Narayan son of Manaram was serving in Bombay for last three to four years, he has again said that his son was also serving in Bombay for last about four years, he has again said that it is wrong to say that he paid two lakhs to police for releasing him and his son Suresh from the alleged offence and has said that society people and villages had suspected him and his son's involvement in the incident, but there was no dispute between him and Manaram and he was having amicable relations with Manaram, which is known to villagers and to the society people, suspicion was their whim, he has further said that after his arrival on the spot, somebody informed at home that detected body was of Manaram, so on this information, wife of Manaram wept and became unconscious, he has further said that he had met with Manaram, ten days prior to the detection of his body, villagers could not identify his body because the body was lying in "prone position", he has again said that Ex.P.15 was got written by one relative of deceased Manaram and has admitted his signatures over it and he has further said that the report, which he submitted, was torn and Ex.P.15 was submitted after query from his family members and same was given by wife of Manaram and Mukesh and has denied a suggestion that he and his son Suresh would have killed Manaram and framed other persons by paying money.

5. PW.15 Smt. Gulab wife of deceased Manaram is an important witness, who has narrated entire retroevents of visits of accused persons and accused Suresh, on several earlier occasions and giving threats that Manaram would be killed through hired-killers, if he did not desist from having an eye and interest on Bombay-property of his deceased brother Lumbharam and she has said that her husband Manaram has got two sons and three daughters, out of wedlock of his

earlier wife, sons are Narayanlal and Mukesh, he has further said that during the course of delivery, his first wife died, so she had married with Manaram, she has said that Narayan used to earn his livelihood in Bombay, Manaram her husband got a shop in the village of cement and STD and their son Mukesh also runs it. She has further said that Varda Ram is "Jeth" (brother-in-law) and next to him was Lumbaram, Lumbaram was having business in Boriwali, Bombay and his shop was there. She has further said that her brother-in-law Lumbaram has since died and his son Mukesh also died and she has further said that Bombay-shop was a joint shop of her Jeth Lumbaram and her husband Manaram and that Bombay shop is now being managed by Madan and Shesharam, they are our relatives and are sons of sister of Champa wife of Lumbaram and has further said that her Jethani (sister-in-law) Champa was on talking terms earlier but was no more having such talking terms.

6. She has further said that her husband Manaram had informed her that he was having partnership in the Bombay shop and had lent money for it, and after demise of Lumbaram her husband used to go and manage the shop of Bombay, subsequently Champa wife of Lumbaram sat Suresh on that shop, on the say of her parental-family. During the course of testimony, this witness has properly recognized and called the accused-persons by their names, which is also observed in the testimony.

7. She has uttered an important thing that in Bombay, Champa and Suresh started quarrelling with her deceased husband, so he came back to Village Chachondi and started shop there, she has further narrated significant that :- "VERNACULAR MATTER OMITTED"

She has further narrated that:- "VERNACULAR MATTER OMITTED"

In her cross-examination, she has said that she did not convey killing-threats given to her husband and as threatened by Suresh and Narayan, the same were not communicated to anybody, she has also said that the accused persons did not threaten her but her husband had informed him regarding the threats, which were given to him, she has also said that whenever her husband was threatened, its report was not lodged at thana and when the accused persons visited, they stayed there for about half an hour or five minutes, she has further said that she was washing cloths and her husband was taking rest ahead of the shop, when Narayan came and Vardharam did not meet her that day, she has further said that she has got papers pertaining to Bombay shop's partnership, which she did not bring together in the Court that day. She has also said that one day ahead of the incident, her husband had slept after meals at nine to ten in the evening and after taking tea and bathing.

8. She has further said that he was resting and went with Narayan, she has further said that six to seven months later to her marriage with Manaram, she went Bombay and lived there for three months and did not visit Bombay again, but her husband Manaram used to visit there, she has also said that her husband

Manaram stayed in Bombay for three years after one month of her return from Bombay, Suresh started giving threats and her husband was threatened for six to seven months.

9. She has also said that they had come on black coloured motorcycle, she has further said that ten days before the incident Narayan had come, Suresh did not visit, she has further said that her son Mukesh was staying in 10th and used to go School at 7 a.m. and come back at 12, after 12 Mukesh used to sit at the shop, she has further said that "VERNACULAR MATTER OMITTED", she has also said that her husband used to bring motorcycles and tractors, which were further sold by him, slight contradictions have also appeared in her statements vis-avis to Ex.D5 police statements but those are non-significance.

10. PW12 Bhanwar Lal villager, has said that he knows Mana Ram of his village, who has since died ten days back on the date of 30th, Narayan and Azad were asked by Mana Ram that why they were behind him on the say of Suresh, he has got no concern with the shop and this talk was held on STD Shop of Mana Bhai, he has further said that he had gone to STD shop for payment, where Suresh, Narayan and Azad Singh were sitting Azad Singh was having a "kooth" in his hand, he was sitting on the plate-form, Narayan was sitting on chair, wife of Mana Ram had served tea to all. He stayed there for 15 minutes and by that time he left, they people were there at the shop.

11. He has further said that on 21st at about 12:00, few people informed that a body was lying near Lal Baori, beside Maknaba Piyao, so they 20 to 25 villagers went there and saw the body, it was of Mana Ram, the body was having injuries. He has further said that "VERNACULAR MATTER OMITTED". He has further said that Varda, Mukesh and Azad seen the body and stayed there for 5 to 10 minutes and has further said that "VERNACULAR MATTER OMITTED". He has further said that he had come to village from Bombay, where he was a cook, he used to make STDs on debit and after his return from Bombay, Mana Ram had demanded his ten rupees and he had gone to the shop of Mana Ram to pay ten rupees, he has further said that he had seen only two injuries on the body of the deceased, head was not separate from the body, body was lying on the right hand side of the road, which goes to Rani from Chachonri village and has accepted that at the place where the body was lying, bushes were there. There are certain accepted improvements vis-a-vis Ex.D.3 police statements, which are of non-significance.

12. PW 16 Mukesh son of the deceased has said that his father was having STD, cement agency and shop of stones in the house itself. Vardha Ram and Lumba Ram are his elder fathers, Lumba has since died, who was having a business in Bombay. He has further said that his elder father Lumba and his father Mana Ram were having joint business in Bombay and after demise of Lumba Ram, his father had controlled and managed shop of Bombay for a month's time, after that Champa wife of Lumba Ram sat Suresh S/o her sister on her parental-say and he used to take care of the shop. He has further said that subsequently Suresh and Champa wife of deceased Lumba Ram started quarrellings with his

father and sent him back to village and has further said that :- "VERNACULAR MATTER OMITTED"

He has further said that :- "VERNACULAR MATTER OMITTED"

13. PW2 Dr. Shesha Ram Patel has said that he had conducted post mortem on the body of Mana Ram on 31.8.2007 between 4:00 PM to 6:00 PM and following injuries were found on the dead body:- "VERNACULAR MATTER OMITTED"

14. He has further said that body was not having any ligature mark, brain was injured and head membrane was ruptured, heart was empty and has observed that duration of death was 6 to 10 hours before the post mortem. He has further said that Ex.3 contains his signatures, which was written by Dr. Arvind Agarwal before him, in his cross-examination, he has said that all the four injuries were caused by sharp edged weapon regarding semi-digested food. He has said "VERNACULAR MATTER OMITTED" and has said that the cause of death was hemorrhagic shock due to multiple injuries and blood loss.

15. PW13 Mangi Lal S/o Natthaji is a recovery witness, he has said that he knows Narayan Lal, Shankar and Mangla Ram, he has further said that police had recovered "Kooth" and blood stained cloths including "baniyan", yellow t-shirt, on the instance and information of Azad Singh, which were sealed there in the white cloth by the police and its recovery memo is Ex.30 and spot map of recovery is Ex.31, which contains his signatures, likewise, he has also said that Narayan Lal had given a motor cycle and his cloths to the police before him from the back side of the house, number of motor cycle was MH 12-2247, police had sealed the cloths vide Ex.32 and 33 which contains his signatures, he has further said that the recovery memo Ex.34 is of non-numbered motor cycle and its spot map is Ex.35, which contains his signatures, he has further said that accused Shankar Lal got recovered one Sura (dagger) and his cloths, sky colour tshirt and black pant, which were having blood stains were recovered from Shankar Lal, police had sealed the cloths, its recovery memo is Ex.36 and spot of recovery is Ex.37, which contains his signatures, he has further ratified his signatures on Ex.38, 39 and 40, though this witness has been declared, hostile but important facts have been narrated by this witness, in cross-examination he has said that on the information of accused Mangla Ram alias Mangi Lal a black motor cycle vide Ex.34 and 35 was recovered before him. He has further said that on 5.9.2007 at about 12:00 noon, police had come to him and asked to accompany in jeep, accused Azad Singh, Shankar Lal and Narayan Lal were there in a jeep, he has further said that taking Mangla Ram they went to house of Narayan and Shankar, all the four accused were in jeep. He has further said that it is wrong that he signed the memos at police station and has clarified that chipadi seals were heated by stove and those were affixed and has said that handle of dagger was of coffee-colour and there were four holes in the handle, in which fingers could be entered and t-shirt was having 15 to 20 blood spots it has also been observed by this witness that accused persons were feeling difficulty in walking, Shankar Lal was thrashed.

16. Appreciation of entire evidence of this recovery witness, goes to show that this witness has elaborately narrated entire recovery made on the information of all the four accused persons, respectively in a distinct way, which inspires confidence since he has also observed that the accused persons were walking in difficult way, which indicates indifference of this witness.

17. PW5 Achla Ram has said that he knows Mana Ram, he had gone to see his body, when he was murdered, police had prepared panchnama, which is Ex.14 and contains his signatures, body was having injuries from ear to nose, on head temple to ear and in posterior side, the dead body was lying at Lal Baori, near Maknaba Piayo 50 to 60 ft. away from damar road, in his cross-examination, he has said that he used to visit at the STD shop of Mana Ram, he has further said that a phone of Kalaal Thekadar came and they went by jeep, it was 12:00 when they reached at the spot. He has accepted his signatures on Ex.14. PW11 Arjun Singh has said that deceased Mana Ram was known to him, he was of his village, on his death, he had gone to see his body, his dead body was having injuries on head, back and other parts. Ex.14 is Panchanama, bears his signatures. He has accepted his signatures on Ex.25, 26, 27, 28 and 29 and he has accepted that spot was inspected by police before him and blood stained apparels were taken and sample of blood stained soil were also taken before him and dead body was delivered to Varda Ram, in his cross-examination, he has said that news spread at about 11:00 regarding murder of Mana Ram in the village Chachori and nearby area, on hearing, he too had gone to the spot and found Bhanwar Lal Mali brother of the deceased Varda Ram and Mukesh son of deceased there, he has further said that blood was lying at the venue and police had taken samples of soil and blood stained soil. PW3 Mangi Lal is a witness of arrest memo and he has said that accused Suresh was arrested vide Ex.4 on 5.9.2007, Ex.4 contains his signatures. PW6 Raju Ram, Constable has said that S.H.O. had given him FIR for registration at Thana on the venue, its Ex.15, which contains his signatures. PW7 Khiya Ram is ASI, who has said that on 31.8.2007, Raju Ram had given him a written FIR at Thana, which is Ex.16 which contains his signatures, he has further said that Ex.16 is chalk FIR which contains his signatures.

18. PW17 Bharat Singh, S.H.O. of Police Station Guda Endla has narrated entire mode and sequence of investigation and he has accepted his signatures on Exs.15, 26, 28, 27, 25, 14, 29, 4, 21, 22, 23, 24 and has said that during the course of investigation Narayan Lal accused informed vide Ex.41 regarding concealment of motor cycle and blood stained cloths, on that basis information of Azad Singh iron "kooth" having a wooden handle stained with blood and his pant, baniyan, yellow tshirt containing blood spots were recovered, which were sealed vide Ex.30 and 31, which contains his signatures and sample seal and on information of accused Shankar, vide Ex.43 a dagger was also recovered, which was got recovered from his residential house and black pant and sky coloured t-Shirt were also recovered on his information vide Ex.36 and 37. he has further said that after arrest of accused Mangla Ram, a Hero Honda motor cycle was also got recovered from his house, kept concealed vide Ex.44. He has further said

that on the information of Mangla Ram a black colour non-numbered Hero Honda Splendor was recovered vide Ex.34 and 35 and after arrest Narayanlal he informed that he had concealed a motor cycle and cloths in his house, the information is Ex.45 and on this a Yamaha motor cycle and blood stained cloths were recovered on the information of accused Narayan vide Ex.32 and 33, which contains his signatures.

19. He has further said that on the information of accused Suresh, a diary Ex.46 kept concealed, in the residential house was recovered before the witnesses vide Ex.1 and 2 and has further confirmed Ex.47, 49, 48, 40 and has said that the information were recorded in Rojnamcha at serial No.878 Ex.49, its copy is Ex.49A, which contains the signatures and FSL report is Ex.50, he has further said that the recoveries were brought by him in the Court, which were opened and marked as articles, article 1 is diary and has further said that his investigation revealed offence against the accused persons, he has admitted that at the time of arrest Narayan Lal, Mangla Ram, Azad Singh and Shankar Lal were having injuries of bygone time and those were of "neelgu nishan" on the buttock.

20. He has further said that Mana Ram was earlier doing at Bombay-shop and it was informed by wife of the deceased and his son, he has further said that Gulab Devi and Mukesh had informed him that Suresh was there to threaten but at what time he visited prior to the event was not informed by them.

21. Ex.50 FSL report reveals that "A" group human blood was found on Packet B-1, 2, 3, 4 bushat, baniyan, pant and underwear, likewise from packet "C" blood stained soil C-1 control soil, D-7 "Kooth" and D-1-8 pant, 9 t-Shirt, 10-Baniyan, E-11 Bushirt, 12 Pant, F.13 Chura (dagger), F-1, 14 pant and 15 t-Shirt, which fortifies the story of the prosecution since all the recoveries including weapons of assault have been found to be stained with "A" group human blood.

22. Ex.1 diary has also got an address of Bombay, Suresh Choudhary, Shri Shakti Ceramic Shop No.5-6, Maru Niwas 7, Carter Road, Boriwali East, Mumbai and it discloses that certain amount was given in the name of Narayan S/o Puna Ram, Kanala on different segments, it also contains the residential address of Suresh Kumar Choudhary, admittedly signatures below the amount are of "Suresh", which denotes payment and receipt of the amount, since Suresh has averred this in his statement made under Section 313 Cr.P.C. though allegedly under pressure.

23. Weapon of assault "iron kooth" recovered vide Ex.30 from the instance of Azad Singh, as well as, his cloths pant and baniyan, likewise a "dagger" recovered vide Ex.36 from the information of Shankar Lal alias Sakiya and his t-Shirt and pant have been found tainted with "A" group human blood, which has also got matched from the samples, while taking from the spot vide Ex.28, which have got matched with the blood of the deceased and has further been verified and corroborated by Ex.50 FSL report. Black coloured motor cycles has also been recovered from the possession and on the information of accused persons, which co-relates with Ex.17 and 18 the samples forwarded.

24. Evidence of Gulab widow of deceased is very much lucid, in disclosing homicidal death of her husband deceased Maana Ram. Suresh, Azad Singh, Narayan, Mangla Ram and Shankar Lal came to her husband for more than once and threatened him for elimination, if he did not abandon interest in claiming property of Bombay and the deceased was even daunted that in event, if he does not disassociate himself from the Bombay property, then he would be killed by hired-killers.

25. Gulab has explicitly said that a number of times, accused persons came to their home-cum-shop and she even prepared and served tea to them. Smt. Gulab has also disclosed that on the pretext of buying a vehicle, her husband was taken away by Azad Singh and Narayan on black coloured motor cycle and soon, few hours later his dead-body was found. Medical opinion has also established that nature of the injuries, which were found on the body of the deceased, were caused by kind of sharp weapon, recovered from the accused persons.

26. All the weapons, cloths of the accused persons and cloths of the deceased have got "A" group human blood, which have also got matched with the sample soil taken from the place of occurrence as discussed above.

27. It has undisputedly emerged that the accusedappellant Suresh was engaged in doing occupation in Bombay, where business of deceased Mana Ram's brother Lumba Ram was in vogue, some years ago, where deceased Mana Ram also got engaged but was subsequently ousted from there by his sister-inlaw Smt. Champa wife of the deceased Lumba Ram, since she sat her nephew Suresh employed there and Narayan was cousin of accused Suresh.

28. Grabbing solo control over Bombay-shop could also be there to be a perceptible motive in eliminating deceased, and evidence indicates that certain amount was rendered to accused Narayan by Suresh, obviously not for certain business but that too for an occult and oblique purpose, Ex.1 contains telephonic number/s, as well as, name of the business/shop of Carter Road, Boriwali, Bombay but I.O. has not precisely investigated title of the property.

29. PW16 Mukesh has also corroborated the incidents of threats and visits of accused persons on his father's shop, where he too was sitting after his study hours that a number of times accused visited in his presence and threatened his deceased father Mana Ram to disassociate his interests from the Bombay property, else face dire consequences.

30. PW12 Bhanwar Lal who was a customer of STD Shop of the deceased and used to make STD and deceased was owning some money so, he had gone to pay that outstanding amount has also observed that Suresh and Azad Singh were sitting there on the shop, Azad was having a "kooth" in his hand, he was sitting on the platform, Narayan was sitting on chair, he has also said that ten days before the death of the deceased Mana Ram, on 30th he heard Mana Ram was saying to Narayan and Azad what for they were haunting him, he did not get

any concern with the shop, by the time, he came back, they were there at the shop and on detection of the dead body of the deceased Mana Ram, he reactively observed that reason of killing of Mana Ram could be attributed to the cause of that day's verbal altercations and Mana Ram might have been killed by Azad, Narayan and Mangla Ram.

31. All the recoveries have properly linked and verified the circumstantial evidence, since the assault weapons, cloths of the deceased and the cloths of the accused persons have got "A" group human blood and all these circumstances have meticulously corroborated story of the prosecution, wherefore nothing is there to suggest that the learned trial court has committed any error in arriving at the findings, on the basis of the evidence discussed above.

32. It has also emerged from the evidence that deceased Mana Ram was also doing business of vehicular sale, so on pretext of getting befitting vehicle bought, he was taken away by Azad Singh and Narayan Lal and this kind of positive evidence is there attributing to dicta of last seen together, and all this reveals that threats were given to the deceased Mana Ram to be eliminated, if not yielded to abandon interest in the Bombay property, a number of times, accused person/s came with such ultimatums. Defence has also produced a witness DW1, who has said that such a diary was bought through him, which appears to be not much of relevance, apart from slight deviations nothing material has emerged from the cross-examination, causing frailty to the evidence of the prosecution, which is rather natural.

33. So far as, evidence relating to deposit and examination of samples is concerned, it has remained clinchingly established without any breakage, hence prosecution has established its case on reliable and material evidence without any feeblity.

34. The motor cycles on which the accused were taken away has also been recovered from the accused person/s and so far as question relating to detection of semi-digested food in the body of the deceased is concerned, it has properly been explained by the medical-expert and discussed by the trial court in para 109 of the judgment, so there appears no abnormality on this Court, as well.

35. Trails of criminal conspiracy have become manifest because a case under Section 379 with FIR No.418/2007, P.S. Kotwali was also registered against Mangla Ram and Azad Singh on 27.8.2007, which relates to theft of motor cycle, subsequently used in perperating crime, it also goes to reveal that in a conspired and concerted way and with a pre-plan, motor bike was stolen, which was subsequently used in the crime, as such entire evidence of the prosecution has succeeded and yielded in establishing the pre-planned cruel murder in "Mumbai filmstyled" way, on the basis of clinching, material and reliable evidence.

36. The essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence, there ought to be two or more persons, who must parties to such an agreement, one person alone can never be held guilty of

criminal conspiracy. An important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act, the illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborators would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use.

37. Hon"ble Apex Court while deciding *Sharad Birdhichand Sarda vs. State of Maharashtra*, AIR 1984 Supreme Court 1622 has laid down the conditions of circumstantial evidence on which conviction could be made in view of Section 3 of Evidence Act which postulates as under :- "The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must or should" and not "may be" 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."

As such, there is no direct evidence and in matters relating to indirect evidence, in *Padala Veera Reddy V. State of Andhra Pradesh*, 1989 Supp. (2) SCC 706, the Hon"ble Supreme Court has observed that in matters of circumstantial evidence, the evidence must satisfy the following texts:- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the

accused but should be inconsistent with his innocence.

38. In the recent judgment of Kishore Bhadke Vs. State of Maharashtra 2017 CRL.L.J. 988, it has been held in head-note (I) Penal Code (45 of 1860), Ss.300, 364, 120-B Kidnapping, murder and conspiracy - Circumstantial evidence - Medical evidence proving strangulation and thus, homicidal death - Dispute between deceased and accused in respect of land transaction established by unshattered, corroborated oral evidence - Deceased after meeting with accused not seen elsewhere at later point of time - Circumstances of motive and last seen together established - Discovery of dead body and blood stained cloths by accused - Mere absence of evidence regarding blood group, not fatal - Involvement of accused in crime and factum of conspiracy, established - Concurrent finding about guilt of accused - No interference. Likewise, in head note (E), it has been held laid down by Hon"ble Supreme Court that Evidence Act (1 of 1872), S.27 - Evidence as to recovery - Murder - alleged recovery of blood stained cloths at instance of accused - No explanation was offered by accused in respect of presence of human blood on his cloths - Mere absence of evidence regarding blood group cannot be fatal to prosecution. In view of the evidence and circumstances of the case, the authorities produced by the defence side do not help the accused appellants.

39. For the reasons adverted, deliberated and discussed above, we are of the considered view that all the accused persons have played active role in perpetrating the crime in a pre-planned way and prosecution has proved its case by dint of material and reliable evidence beyond all the contours of reasonable doubt.

40. So, we are of considered resolution that trial court has not committed any error in arriving at the findings impugned. Hence, the appeal fails and is hereby dismissed. The appellant-accused Mangla Ram is on bail, hence he is directed to surrender forthwith to serve the sentence, rest of the accused-appellants are already in jail, so all be served with the sentence. Record of the trial court be sent back forthwith along with copy of the judgment.