

(2016) 03 SHI CK 0092

In the High Court Of Himachal Pradesh

Case No : Cr. A. Nos. 33, 35, 75, 135 and 335 of 2010

Ram Lal and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, Section 313
Penal Code, 1860 (IPC) — Section 120-B, Section 201, Section 395, Section 396,
Section 412, Section 457, Section 460

Citation : (2016) ILRHP 91 : (2016) 1 SimLC 489

Hon'ble Judges : Rajiv Sharma and Sureshwar Thakur, JJ.

Bench : Division Bench

Advocate : Anoop Chitkara, Advocate, for the Appellant; M.A. Khan, Additional A.G., for the Respondent

Final Decision : Disposed Off

Judgement

Sureshwar Thakur, J.—Cr.A. Nos. 33, 35, 75, 135 of 2010.

1. These appeals stand directed against the impugned judgment rendered on 29.12.2009 by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P. in Sessions Trial No. 78/7 of 2005 whereby the learned trial Court convicted the appellants as under:-

Section 396 IPC:

To undergo imprisonment for life and to pay a fine of Rs. 5000/- each and in default to further undergo rigorous imprisonment for one year;

Section 395 IPC:

To undergo rigorous imprisonment for ten years and to pay a fine of Rs. 3000/- each and in default to further undergo rigorous imprisonment for six months;

Section 460 IPC:

To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2000/- each and in default to further undergo rigorous imprisonment for three months;

Section 120-B IPC:

To undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2000/- each and in default to further undergo rigorous imprisonment for three months;

Section 457 IPC:

To undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- each and in default to further undergo rigorous imprisonment for two months;

Cr. Appeal No. 335 of 2010:

2. The instant appeal has arisen against the impugned judgment rendered on 29th December, 2009 by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P. in Sessions Trial No. 78/7 of 2005 whereby the learned trial Court acquitted the respondents, namely, Gurdev Singh, Raj Kumar, Vikas Negi, Madhukar Bhagmore and Kamlesh qua the charge framed against them.

Cr.A. Nos. 33, 35, 75, 135 and 335 of 2010:

3. The prosecution story, in brief, is that during the intervening night of 15th/16th January, 2005, one Dr. Ram Krishan was found murdered in his house situated at village Kallari. The police was informed about the murder upon which Inspector Shiv Chaudhary, SHO, Police Station, Ghumarwin visited the spot and found that the hands and eyes of the deceased were tied and adhesive tape was put on his mouth and the articles inside the house were lying scattered. This information was recorded by the said SHO in a rukka prepared on the spot and sent it to the police station on the basis of which formal FIR was registered. Thereafter, photographs of the spot were taken and inquest report was prepared. The postmortem of the dead body of the deceased was got conducted by the doctor who opined that the cause of death was asphyxia caused by strangulation and stabbing of mouth and nostril by adhesive tape. During investigation, the Investigating Officer found one broken tooth, one empty four square Cigarette packet, one cover U.S.P. tape, one handkerchief, the remains of burnt cigarettes and Bidi etc. which were seized and separately taken into possession. The viscera of the deceased was preserved and sent to F.S.L. Junga for examination. It is further alleged that on 10th April, 2005 around 2:30 p.m. a unanimous telephonic call was received by the police from STD Booth at Baddi, District Solan that he could throw light on the murder in question. Thereafter, the police called back the owner of the STD Booth, namely, Mushtak Mohammad and asked him to detain the person who had called the police from his booth. Thereafter, the police visited Baddi and interrogated the person, namely, Hari Ram alias Padam Bahadur who disclosed that the offence in question was committed by Gurdev Singh, Raj Kumar alias Raju, Sunder Lal, Bittu etc. Thereafter, the police

interrogated accused Gurdev Singh and traced the outgoing calls etc. of the telephone from the Department concerned. It is further alleged that prior to this incident, accused Gurdev Singh, Sunder Lal and Raj Kumar had visited the place of occurrence. Thereafter, the other accused were also arrested in the case. On the basis of disclosure statements, made by the accused persons, weapons of offence, vehicle used in the commission of offence and the stolen articles, belonging to the deceased, were recovered from different places at the instance of the accused persons. The investigation further revealed that accused Vikas Negi facilitated the sale of stolen ornaments to accused Madhukar Bhagmore who melted the same and sold 35 grams of gold to Satya Jewellers. The melted gold and silver were recovered during investigation from Satya Jewellers and accused Madhukar Baghmore. The police had also taken blood sample etc. of accused for conducting DNA test with DNA found in burnt remains of Cigarette and Bidi which matched with the DNA of accused Rajiv and Randhir Singh. On conclusion of the investigation into the offence, allegedly committed by the accused, final report under Section 173 of the Code of Criminal Procedure was prepared and filed in the Court.

4. The accused, namely, Ram Lal alias Bittu, Sunder Lal alias Sunder, Randhir Singh, Rajiv Kumar, Bittu, Kamlesh Kumar alias Kamal, Gurdev Singh and Raj Kumar alias Raju were charged for theirs having committed offences punishable under Sections 120-B, 395, 396, 457 and 460 of the Indian Penal Code and accused, namely, Vikas Negi and Madhukar Baghmore were charged for theirs having committed offences punishable under Sections 412/201 of the Indian Penal Code, by the learned trial Court to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined as many as 55 witnesses. On closure of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded, in which they pleaded innocence. On closure of proceedings under Section 313 Cr.P.C. the accused were given an opportunity to adduce evidence in defence yet they chose not to lead any evidence in defence.

6. On appraisal of the evidence on record, the learned trial Court returned findings of conviction against accused/appellants, namely, Ram Lal alias Bittu, Sunder Lal alias Sunder, Randhir Singh, Rajiv Kumar and Bittu and acquitted accused/respondents, namely, Kamlesh Kumar alias Kamal, Gurdev Singh and Raj Kumar alias Raju, Vikas Negi and Madhukar Baghmore qua the offences they stood charged.

7. The learned counsels appearing for the appellants/accused/convicts have concertedly and vigorously contended qua the findings of conviction recorded by the learned trial Court standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, they contend that the findings of conviction be reversed by this Court in exercise of its appellate jurisdiction and theirs being replaced by

findings of acquittal.

8. Shri M.A. Khan, learned Additional Advocate General, has with considerable force and vigour contended qua the findings of acquittal, recorded by the learned trial Court, standing not based on a proper appreciation of evidence on record, rather, theirs standing sequelled by gross mis-appreciation of material on record. Hence, he contends qua the findings of acquittal being liable for reversal by this Court, in the exercise of its appellate jurisdiction and theirs being replaced by findings of conviction and concomitantly an appropriate sentence being imposed upon the accused/respondents. On the other hand, the learned counsel appearing for the respondents-accused, have, with considerable force and vigour, contended qua the findings of acquittal, recorded by the Court below, being based on a mature and balanced appreciation of evidence on record and theirs not necessitating any interference, rather meriting vindication.

9. This Court with the able assistance of the learned counsel on either side, has with studied care and incision, evaluated the entire evidence on record.

10. The inculpatory evidence marshaled by the Investigating Officer against accused Ram Lal @ Bittu is connotative of the aforesaid accused running an eatery in close proximity to the house of the deceased, at village Kallari. In proof thereof, the prosecution has relied upon the depositions recorded on oath of PW-13 (Nirmala Devi) and PW-17 (Hardial Singh). A close and sharp reading of the testimonies of the aforesaid witnesses unflinchingly underscores the factum of accused Ram Lal @ Bittu having taken two rooms on rent in close vicinity to the house of the deceased, wherefrom he was operating an eatery. Moreover both in their recorded depositions on oath have bespoken therein the factum of accused Ram Lal @ Bittu having without paying rent qua it to its owner stealthily departed there-from in the night intervening 18th--19th June, 2004. Nonetheless the evidence aforesaid is neither potent nor formidable for fostering an inference of accused Ram Lal @ Bittu alongwith co-accused Bittu and Randhir Singh immediately prior to the occurrence in as much as on 13.1.2005 having visited the house of the deceased, as deposed by PW-3 (Siri Ram) and PW-4 (Pushpa Devi), the probative worth whereof would stand alluded to herein-after. Abysmal want of evidence magnificatory of accused Ram Lal @ Bittu joining the company of co-accused aforesaid at Kallari on 13.1.2005, obviously also his standing not deposed by PW-3 and PW-4 to be last seen by the aforesaid witnesses in the company of the deceased on 13.1.2005 at Kallari, does dispel the factum of co-accused Ram Lal @ Bittu conspiring with the accused aforesaid in murdering the deceased. Dehors the aforesaid lack of display by the aforesaid evidentiary material of any element of conspiracy hence inhering or existing inter-se accused Ram Lal @ Bittu and the accused aforesaid, no other clinching or affirmative evidence stands adduced by the prosecution qua accused Ram Lal @ Bittu holding any conspiracy with the co-accused aforesaid more especially prior to the perpetration of the crime nor clinching evidence stands adduced by the prosecution of his holding conspiracy with the other co-accused qua whom an

inculpatory role stand fastened, galvanized from recovery therefrom of either khukri Ex. P-42 recovered under memo Ex. PW-35/C, tyre Lever (Ex. P-28), Screw driver (Ex. P-29) and Jamoor (Ex. P-45) under memo Ex. PW-30/B and other stolen items i.e. Bag Ex. P18 under memo Ext. PW-7/A, brief case Ext. P-26, gold ring Ext. P-24 under memo PW-8/A, Guilt ring Ext. P-25 under memo Ext. PW-8/B. With no forthright evidence of immense potency existing on record in personification of accused Ram Lal @ Bittu holding a conspiracy with other co-accused in theirs allegedly murdering the deceased or in the alleged commission of dacoity of various articles from his house, sequely the assay on the part of the prosecution to qua accused Ram Lal @ Bittu, propound any theory of his conspiring with them, stands annihilated. Be that as it may, the Investigating Officer yet has concerted to link or connect accused Ram Lal @ Bittu in the commission of the offence for which he stood charged, tried and convicted, on the anchorage of Ext. PW-7/A where-under FDR Ext. P-98 in the name of the deceased stood recovered from the house of the accused aforesaid at Tutu. The connectivity there-from of the accused aforesaid in the offences alleged to have been committed by him, stands enfeebled rather fully shattered in the face of recovery witness of FDR, Mast Ram PW-8, even though testifying qua recovery thereof from the premises of accused aforesaid standing effectuated under Memo PW-7/A, nonetheless proof hence of effectuation of recovery thereof from the premises of the accused aforesaid is rendered skeptical with PW-1 (Brahm Dutt Sharma) in his cross examination earmarking the factum of the deceased on his birthday having distributed to his daughters his immovable assets comprised in the FDRs. The earmarking of the aforesaid salient fact in the cross-examination of PW-1 prods an inference of the daughters of the deceased who had received the relevant FDRs on his birthday, coming to subsequent to the ill fated occurrence purvey them to the Investigating Officer, who concomitantly took to on the mere flimsy reason of the accused aforesaid purportedly stealthily departing six months prior to the occurrence from the vicinity of the house of the deceased untenably conclude therefrom, of the accused committing the offences ascribed to him, whereafter he proceeded to invent its recovery from the premises occupied by the accused aforesaid. Impetus to the inference aforesaid stands lent by the factum of the disclosure statement comprised in Ext. PW-36/C proven by PW-36 standing signed as witnesses by Karam Singh and Nain Singh both of whom are residents of Bilaspur. In pursuance to both aforesaid proving disclosure statement comprised in Ext. PW-36/C they accompanied the Investigating Officer to the premises taken on rent by accused Ram Lal @ Bittu at Tutu. Only Mast Ram was examined by the prosecution in support of the recitals constituted in the recovery memo qua FDR Ext. P-98 comprised in Ext. PW-7/A. Even though, as afore-stated PW-8 Mast Ram supports the factum of its recovery by the Investigating Officer at the instance of the accused Ram Lal @ Bittu from his tenanted premises at Tutu yet PW-7 the other witness to the aforesaid recovery memo, in his deposition comprised in his examination-in-chief omitted to identify accused Ram Lal @ Bittu to be the person whose premises he along with the Investigating Officer visited on 22.4.2005, whereat recovery of

FDR Ext. P-98 stood effectuated there-from. Contrarily, he identified accused Randhir Singh as Bittu. The effect of the aforesaid mis-identification of accused Ram Lal @ Bittu by PW-7 or his failing to identify him omits to give any momentum or fillip to the espousal of the prosecution of his being the person who was in occupation of the premises aforesaid purportedly occupied by him as a tenant at the apposite stage when he along with the Investigating Officer visited his house at Tutu wherefrom recovery of FDR stood effectuated. His further testimony comprised in his cross examination conducted by the learned Public Prosecutor though articulates the factum of accused aforesaid purchasing articles from his shop yet its creditworthiness stands stripped arising from the factum of his subsequently in his cross examination conducted by the learned defence counsel denying the factum of accused Ram Lal @ Bittu ever purchasing any Karyana articles from his shop on a credit basis. Even though he was a witness of the locality where accused Ram Lal @ Bittu was allegedly staying as a tenant of his brother-in-law Kanshi Ram, hence it was imperative for the prosecution to elicit from him a firm testimony of accused Ram Lal @ Bittu staying as a tenant of his brother-in-law Kanshi Ram. However, the aforesaid firm testimony for the reasons aforesaid is amiss. In sequel, the prosecution was under a solemn bounden legal obligation to adduce firm and clinching evidence in portrayal of accused Ram Lal @ Bittu putting up as a tenant at Tutu under Kanshi Ram. The aforesaid evidence was comprised in the deposition of Kanshi Ram. However, Kanshi Ram stood never cited as a witness nor examined by the prosecution to enable this Court to conclude with firmness of his letting out his premises to accused Ram Lal. The witnesses who accompanied the Investigating Officer were not local witnesses hence even if PW-8 Mast Ram has proved the recitals recorded in Ext. PW-36/C where-under at the instance of accused aforesaid recovery of FDR Ext. P-98 stood effectuated under Memo Ext. PW-7/A from the premises purportedly occupied as a tenant by him under Kanshi Ram yet the mere factum of the prosecution hence proving through PW-8 the recitals comprised in Ext. PW-36/C cannot constrain a conclusion of recovery of FDR Ext. P-98 standing effectuated from the premises occupied as a tenant by accused Ram Lal @ Bittu under Kanshi Ram. As a corollary, the inference which ensues is of the premises visited by PW-8 along with the Investigating Officer wherefrom recovery of FDR Ext. P-98 stood purportedly effectuated at the instance of the accused aforesaid by the Investigating Officer were not the premises occupied as a tenant by accused Ram Lal @ Bittu. The effect of the aforesaid inference is of the recovery of FDR Ext. P-98 being amenable to a deduction of its standing effectuated under Memo Ext. PW-7/A from not the premises taken on rent by accused Ram Lal @ Bittu from Kanshi Ram rather its recovery standing effectuated from elsewhere. The taint which hence the recovery of FDR Ext. P-98 under Memo Ext. PW-7/A acquires, erodes the efficacy of the propagation of the prosecution of accused aforesaid standing connected in the commission of the offences alleged against him. The apt sequitur of the above inference besides deduction which ensues therefrom is of the implication of the accused aforesaid or his standing arrayed as an accused by the prosecution in the commission of

the offences alleged against him stands harboured not on any formidable or clinching evidence rather stands anchored upon mere suspicions as well as surmises nursed by the Investigating Officer reared by the factum of the furtive besides surreptitious departure of the accused aforesaid from the tenanted premises adjoining the house of the deceased at Kallari. Obviously, an investigation reared by suspicion is both skewed as well as wholly unreliable. A skewed investigation had led to an invented recovery/discovery of FDR from the purported premises of the accused aforesaid whereas for the reasons aforesaid it could have with case as well as with facility given the where-withals of the Investigating Officer introduced therein. A necessary concomitant of the aforesaid inference is of motive, if any, which stood nourished by the accused aforesaid for committing the offences alleged against him for which he stood charged, tried and convicted, too faces annihilation. Also necessarily an important link propagated by the prosecution qua the accused aforesaid loses its potency as well as its vitality. With the inefficacious recovery of FDR Ext. P-98 from the alleged premises of the accused aforesaid besides motive of the accused aforesaid in committing the offences alleged against him standing decapitated, the natural effect thereof is no evidence of probative worth and sinew existing on record against the accused aforesaid, for hence sustaining any conclusion of his committing the offences for which he stood charged, tried besides obviously unwarrantedly convicted by the learned Court below especially when there is also for the reasons aforesaid no worthwhile evidence of his holding any conspiracy with the other co-accused. In sequel the recovery if any, for reasons aforesaid of bag of the deceased Ext. P-18 under Memo Ext. PW-7/A from the premises of the accused can also be concluded to be an ingenious invention resorted to by the Investigating Officer for connecting him in the offences alleged.

11. The factum of accused Ram Lal @ Bittu purportedly staying at Hotel Everest along with co-accused Sunder Singh, Randhir Singh and Rajiv Kumar with effect from 16.1.2005 to 18.1.2005 as manifested in hotel register Ext. P-44 is also inconclusive for concluding there-from of accused Ram Lal @ Bittu holding any conspiracy with them in committing the offences alleged against them especially in the face of the entry qua their stay in Hotel Everest on the dates aforesaid, standing not proved to be scribed by any of the accused aforesaid. Contrarily when on a sharp reading of the apposite entry recorded therein an inference of it standing introduced therein at the behest of the Investigating officer stands aroused, obviously nullifies its probative worth.

12. The inculpatory pieces of evidence collected by the Investigating Officer for sustaining the charge against accused Sunder Lal stands primarily embedded in the recovery of tyre Lever (Ex. P-28), Screw driver (Ex. P-29) and Jamoor (Ex. P-45) under memo Ex. PW-30/B, in pursuance to a disclosure statement comprised in Ex. PW-30/A as purportedly made by him.

13. Even if effectuation of recovery of the aforesaid incriminatory pieces of

evidence by the Investigating Officer at the instance of the accused aforesaid under memo Ex. PW-30/B stands efficaciously proven against the accused aforesaid nonetheless the effect as well as the impact of Post mortem report comprised in Ex. PW-26/A, in no circumstance can be lost sight of nor is overlookable. In the event of this Court on a threadbare analysis of the testimonies of PW-26 and PW-50 who jointly authored PW-26/A recording an inference of their testimonies unearthing the prime factum of the contusions as well as reddish blue abrasions recited in the post mortem report to be existing on the body of the deceased standing not forthrightly nor candidly testified by both PW-26 and PW-50 to stand begotten by weapons/strangulatory materials as allegedly recovered by the Investigating Officer at the instance of the accused, the ensuing sequel therefrom would be of there being lack of connectivity or relatibility inter-se the recovery of the aforesaid at the instance of the accused with the cause of demise of the deceased. As a corollary, with effectuation of recoveries thereof from accused Sunder Lal while being not germane to the cause of demise of the deceased nor hence having any nexus with it renders them amenable to be construable to be contrived as well as engineered by Investigating Officer, to on strength thereof falsely implicate the accused aforesaid. PW-26 and PW-50 who proved Post Mortem Report Ex. PW-26/A have recorded therein on theirs respectively observing the body of the deceased, the hereinafter narrations/recitals:-

"Emaciated, 5.2" length, Red chuni covering eyes. Leucoplast (Adhesive tape pasted over mouth nostrils. Blood stained fluid oozing from Nostril. Chocolate coloured half sleeves sweater light chocolate sweater. Blue Neck (Seater only neck) Grey pants with Naals and grey kurta, two pockets. Brown striped underwear with Naala ushaped. White Banyan 85 reddish blue coloured. Contusion in front and lateral both sides of neck in area 6 c.m. x 10 and there are reddish blue abrasions over said contusion confront side nick 3 c.m. x 1 c.m. below this there is another abrasion of reddish brown colour of same size i.e. 3 x m. x 1 m.m. below and left side of these said two abrasion, there is third reddish colour abrasion. Size 4 c.m. x 1 m.m. and below it 11 c.m. long continuous abrasion having same breath.

Other ante-mortem contusion, over right lateral knee joint. All 1 x 1 c.m. Left patella, 2 x 2 c.m. Left skin, 2 c.m. long contusion. Right elbow posture of hands crossed over abdomen, left eye having contusion, above eyebrow and lower eye lid, 4 x 4 c.m. Rigormartis and postmortem staining blush purple over back. Right shoulder having 4 contusions as described. Tips of finger bluish of hands. Cranium and spinal cord-normal,

Thorex.

On dissections of neck the subcutaneous tissue and underlying muscles are grossly contusion with pressure dark, blood, fluid oozed. Cricoid and thyroid cartilage and hyoid bone on both sides are fractured. Trachiea was normal and mucous membrane congested. Pleurae W.N.L. (normal), right and left lungs-

congested. Hear Normal.

Abdomen.

Walls and Peritoneum - were normal, Stomach contains semi-digested food with no pungent smell, small intestines and large intestines were normal, Liver, Spleen and Kidney congested. Bladder empty.

Muscles bone joins.

Already described.

Opinion.

Viscera was sent for chemical examination. Chemical Analyst Report No. 86A N.P.B. Ras 67/05 dated 17.1.2005 shows no evidence of poison. Deceased has died due to Asphyxia. Cause by strangulation and stabbing of mouth and nostril by adhesive tape, lissued Ext. PW-25/A post-mortem report (four leaves), which is in my hand and bears my signatures, and Dr. Didhra I have seen tape Ext. P-6, which is called as adhesive tape. Strangulation may be by rope or by a piece of cloth."

14. A reading of the opinion elucidated therein qua the cause of demise of the deceased is significant. Both have on oath testified a firm opinion of the demise of the deceased being attributable to asphyxia caused by strangulation and stabbing of mouth and nostril by adhesive tape Ext. P-6. Both have unequivocally in their respective depositions testified qua the contusions and abrasions observed by both to be found occurring on the neck of the deceased being a sequel to user thereon of a rope and cloth towel. Since the hyoid cartilage and hyoid bone of the deceased were fractured besides since the Investigating Officer had subsequently effectuated the recovery of tyre Lever (Ex. P-28), Screw driver (Ex. P-29) and Jamoor (Ex. P-45) under memo Ex. PW-30/B at the instance of accused Sunder Lal constrained the prosecution to during the course of holding the examination-in-chief of PW-50 produce Khukri Ex. P-42 recovered under memo Ext. PW-35/C in Court qua with a blow from its blunt side stood purportedly delivered on the neck of the deceased, occasioning fracture of his hyoid cartilage and hyoid bone, for it being shown to him for lending sustenance to the inculpatory role ascribed to accused Sunder Lal. Even though, he testified on oath qua the fracture of hyoid cartilage and hyoid bone of the deceased occurring or standing occasioned by a blow with the blunt side of Khukri standing delivered on the neck of the deceased. Nonetheless the effect of the opinion testified on oath by PW-50 qua the user of blunt side of khukri by the accused on the neck of the deceased begetting fracture of his hyoid cartilage and hyoid bone leading to asphyxia stands overwhelmed rather enfeebled by the Public Prosecutor omitting to (a) during the course of conducting the examination-in-chief of PW-26 co-author of Ext. PW-26/A produce Khukri in Court, for facilitating elicitation of an opinion from him in conformity with the one voiced in the examination-in-chief of PW-50 qua the fracture of hyoid cartilage and hyoid bone

standing begotten by the user of its blunt side on the neck of the deceased by accused Sunder Lal. Since both unanimously in their respective examinations-in-chief testified a firm opinion qua the demise of the deceased being attributable to asphyxia caused by strangulation and stabbing of mouth and nostril by adhesive tape, it was incumbent upon the prosecution to, obviously obtain from both during the course of recording of their respective examinations-in-chief, an opinion in conformity besides in unanimity qua the user of blunt side of khukri by accused Sunder Lal on the neck of deceased begetting fracture of his hyoid cartilage and hyoid bone leading to asphyxia. Sequally the unilateral opinion voiced by the PW-50 during his examination-in-chief qua fracture of hyoid cartilage and hyoid bone of the deceased standing begotten by user thereon of blunt side of khukri is not sufficient for carrying forward the propagation of the prosecution of its recovery under memo Ex. PW-35/C from accused Bittu connecting him with the occurrence of contusions as well as reddish blue abrasions existing on the neck of the deceased. Even otherwise a close scrutiny of the testimony of PW-50 unveils the prime factum of his at the stage when he conducted the post mortem examination on the body of the deceased standing uninformed by the Investigating Officer rather un-awakened by the latter qua his holding an opinion of the fracture of hyoid cartilage and hyoid bone of the deceased standing spurred by the user thereon of the blunt side of Khukri by co-accused. On the contrary, PW-50 and PW-26 both unanimously in their respective depositions have voiced therein of no weapon of offence sanding produced before them by the Investigating Officer at the time contemporaneous to theirs jointly conducting post mortem examination on the body of the deceased nor any towel or rope standing produced before them thereat by the Investigating officer whereas each of the aforesaid has been unanimously pronounced by both PW-26 and PW-50 in their respective depositions to be the strangulatory items or the materials, user whereof caused asphyxia of the deceased. Contrarily the only item produced by the Investigating Officer preceding the authors of Ext. PW-26/A holding a post mortem examination on the body of the deceased was adhesive tape Ext. P-6 recovery whereof for the reasons ascribed hereinafter stands concluded to be also unreliable. The haziness gripping the mind of the investigating Officer qua the cause of the demise of the deceased was assayed by him to be overcome by his subsequent to the authors of PW-26/A recording therein an affirmative opinion qua the cause of the demise of the deceased being attributable to asphyxia caused by strangulation and stabbing of mouth and nostril by adhesive tape, proceeding to at the instance of the accused recover tyre Lever (Ex. P-28), Screw driver (Ex. P-29) and Jamoor (Ex. P-45) under memo Ex. PW-30/B. An adept investigation bereft of any obscurity gripping the mind of the investigating Officer for it to hence attain credibility enjoined upon him to at the outset preceding the holding of Post mortem examination on the body of the deceased by PW-50 and PW-26 produced before them any or all of the items aforesaid especially when production thereat would easily have facilitated an opinion from both qua their user on the neck of the deceased by the accused wherefrom their recoveries stood effectuated under various memos

besides concomitantly of their respective user thereon sequelling or begetting the aforesaid ante-mortem injuries noticed to be occurring on the neck of deceased by both PW-26 PW-50. However, the purported strangulatory items/materials i.e. towel and rope user whereof on the neck of deceased purportedly caused asphyxia sequelling the demise of the deceased stood un-produced by the Investigating Officer before PW-50 and PW-26 excepting adhesive tape effectuation of recovery whereof is for reasons assigned herein-after replete with a taint of invention besides concoction by the Investigating officer. Dehors the above, non-production by the Investigating Officer of all aforesaid items or weapons of offence allegedly used by the accused in begetting fracture of hyoid bone and hyoid cartilage or theirs sequelling contusions and abrasions occurring on the neck of the deceased before both PW-26 and PW-50 co-authors of Ext. PW 26/A at the time contemporaneous to theirs jointly holding Post Mortem examination on the body of the deceased yet it was incumbent upon both, to on theirs holding post mortem examination on the body of the deceased whereat they noticed thereon occurrence of contusions besides reddish blue abrasions besides fracture of his hyoid cartilage and hyoid bone, to thereat in conformity unflinchingly voice the factum of the cause of the demise of the deceased being attributable to asphyxia caused by strangulation and stabbing of mouth and nostril by their respective user thereon. Both were experts. Consequently, even when PW-50 during his examination in chief was subsequently solitarily shown Khukri Ex. P-42 blunt side whereof stood thereat opined by him to stand used by accused in begetting fracture of hyoid cartilage and hyoid bone of the deceased, the solitary besides unilaterally opinion articulated thereat by him is bereft of any tenacity inasmuch as (a) when it was open for him to at the initial stage in Ext. PW-26/A with candour and unequivocation pronounce therein of the aforesaid occurrence of contusions and reddish blue abrasions on the neck of the deceased besides fracture of his hyoid cartilage and hyoid bone being squarely attributable to user thereon of towel besides blunt side of sharp edged weapon especially when its voicing thereat with candor by him would have lent sustenance and succor to user by the accused of blunt side of Khukri Ex. 42 or towel Ext. P-36 on the neck of the deceased for begetting strangulation/throttling leading to asphyxia sequelling his demise. Obviously lack of any pronunciation or enunciation at the outset in Ext. PW-26/A qua their user by the accused on the neck of the deceased begetting the afore-referred sequels renders the deposition of PW-50 of user of towel and blunt side of Khukri begetting strangulation besides fracture of hyoid cartilage and hyoid bone of the deceased leading to asphyxia sequelling his demise to be a mere afterthought spurred by proddings received by the prosecution to in tandem with the recovery of towel, Khukri, unveil in his deposition in his examination in chief, an opinion in portrayal of efficacy of recoveries thereof besides theirs linking and connecting the accused. (b) Imperatively, hence the pronunciation aforesaid reared by afterthought cannot constrain a conclusion from this Court of the occurrence of contusions besides abrasions on the neck of the deceased as also fracture of his hyoid cartilage and hyoid bone standing begotten by user thereon of towel, rope and

blunt side of Khukri. Be that as it may, hence recovery of towel, rope and Khukri cannot obviously provide firm connectivity of any of the accused wherefrom each of the aforesaid stood recovered by the Investigating Officer, in the offence alleged to have been committed by them.

15. Also the recovery of adhesive tape Ext. P-6 recovered under memo Ext. PW-30/A from accused Randhir Singh is both frail as well as a legally feeble piece of evidence against him in the face of PW-31 Ashok Kumar owner of the Chemist shop wherefrom it stood purportedly purchased not supporting the prosecution story. Furthermore, the recovery of Gold Ring Ex. P-24 and Guilt ring Ex. P-25 recovered under Memo Ext. PW-11/B at the instance of accused Randhir Singh is both flimsy as well as fragile in the face of both PW-11 and PW-13 in their respective cross-examinations not lending any sustenance to the prosecution version.

16. The significance of the testimony of PW-45 (Mushtaq Mohammad) now comes to the fore-front. It was from his STD booth wherefrom information stood purveyed to the police by an anonymous caller, of his holding evidence to give headway to the police in reaching to the persons who committed the offence recorded in F.I.R. Ext. PW-24/B. The call purportedly made from the Booth of PW-45 was anonymous. PW-45 was the best person to reveal the identity of the caller. However, his deposition is far away from constraining this Court to conclude qua any call standing made there-from by any person to the police agency whereupon F.I.R. stood recorded. The identity of the caller from the booth of PW-45 remaining un-surfaced rather camouflaged whereas a purported anonymous call made from the booth of PW-45 led to the recording of F.I.R. is connotative of the Investigating Officer conjuring an anonymous call from the booth of PW-45 qua the occurrence whereupon he recorded an F.I.R. An anonymous and conjured call from the booth of PW-45 has led to the recording of an enigmatic F.I.R. qua the occurrence. As a natural corollary the investigation launched qua the occurrence or the investigation qua the identity of the accused may hence be concluded to be arising from information purveyed by an enigmatic person to the police agency concerned. The revelation of the identity of the caller from the booth of PW-45 was imperative for investigation partaking the virtue of transparency. Concealment of his identity whereas he provided clues to the identity of the accused has tainted the investigation. Predominantly also the camouflaging of his identity has eroded the genesis of the prosecution case besides has prejudiced the accused with theirs standing disabled to given his identity remaining unrevealed seek his joining as a prosecution witness for enabling them to cross examine him for shattering the purported information or the pieces of evidence he held or possessed qua the identity of the accused, evidences whereof he purveyed to the Investigating Officer, whereupon an investigation qua the occurrence stood launched by him. Consequently, it appears that the entire investigation has been mis-directed, it standing misled by an enigmatic or hidden person who while holding a vendetta against the accused may have out of spite unveiled their identity, to the Investigation Officer. In

aftermath, the entire investigation is mis-navigated.

17. The prosecution did meet with success before the trial Court in attributing an incriminatory role to both accused Randhir Singh and Rajiv Kumar @ Kalu. The success achieved by the prosecution in securing conviction from it against both the accused aforesaid arose from DNA report Ext. PW-53/A proved by PW-53 (Dr. Sanjeev) voicing therein the factum of Bidi, Cigarette butts (Ex. 4(a), 4(b) and 5(a) to 5(d)) recovered from the site of occurrence under memo Ext. PW-1/A matching with the DNA profiling of accused Randhir Singh and Rajiv Kumar @ Kalu. The opinion aforesaid falters for the reason (a) it remaining un-enunciated in site plan Ext. PW-15/C of Bidi and Cigarette butts existing on the site of occurrence (b) there existing no entry in the Malkhana Register of the Police Station concerned qua the Investigating Officer after collecting them from the site of occurrence depositing them in the Malkhana concerned wherefrom he retrieved them for dispatching them for availing an opinion from the FSL concerned. The aforesaid lack of enunciation in the site plan besides lack of an entry qua deposit in the Malkhana of the Police Station concerned in quick spontaneity to the purported collection of Cigarette and bidi butts from the site of occurrence by the Investigating Officer contrarily enables this Court to conclude of the DNA profiling of bidi and Cigarette butts with the DNA profiling of accused Randhir Singh and accused Rajiv Kumar @ Kalu though opinionated being compatible being both unreliable besides inconclusive in returning findings of conviction against the accused aforesaid. For reiteration, especially for lack of enunciation thereof in site plan qua their occurrence thereat besides lack of deposit thereof in the police Malkhana in quick spontaneity to their collection from the site of occurrence an inference of their introduction against the accused as incriminatory materials or inculpatory pieces of evidence being an ingenuously doctored, contrivance at the instance of the Investigating Officer, stands aroused. The prosecution has propagated the factum of accused Randhir Singh and Rajiv Kumar @ Kalu immediately prior to the occurrence standing sighted with the deceased. The factum of the accused aforesaid immediately prior to the occurrence visiting the house of the deceased stands anvilled upon the testimonies of PW-3 and PW-4. However, the testimonies of both the aforesaid in lending succor to the propagation aforesaid of the prosecution of it constituting a preeminent conclusive piece of evidence of both accused aforesaid subsequently too visiting the site of occurrence to fructify their mission of committing the offences alleged against them is rendered suspicious as well as stands engulfed in an aura of embellishment besides improvement rendering it incredible, which incredibility imbuing it stands spurred by the factum of both deposing the factum aforesaid only in their depositions recorded on oath before the learned trial Court hence in detraction besides digression from their previous statements recorded in writing whereunder the facts aforesaid remain unrecited. Lack of occurrence of the aforesaid factum in their previous statements recorded in writing, for reiteration constitutes the aforesaid factum of both accused aforesaid deposed by PW-3 and PW-4 immediately prior to the occurrence sighted at the house of the

deceased, to be a tainted besides an embellished best piece of evidence hence incredible whereupon no reliance can stand imputed by this Court. As a sequitur with both PW-3 and PW-4 never sighting both accused Randhir Singh and Rajiv Kumar at any stage prior to the occurrence, sequently there was no enjoined necessity upon the agencies/Court concerned to hold a test identification parade of the accused aforesaid nor also was it warranted for the learned trial Court to on both the accused aforesaid refusing to participate in the test identification parade draw an adverse inference against them. As a corollary, it was wholly unwarranted for the learned trial Court to proceed to rely upon the identification of the accused in Court by PW-3 and PW-4.

18. So far as accused Kamlesh Kumar, Gurdev Singh, Vikas Negi and Madhukar Baghmore are concerned, on a wholesome reading of evidence adduced on record against them, this Court is of the firm view that the appreciation of evidence qua them as done by the learned trial Court does not suffer from any perversity or absurdity nor it can be said that the learned trial Court in recording findings of acquittal in favour of the accused aforesaid has committed any legal misdemeanor, in as much, as, it having mis-appreciated the evidence on record or omitted to appreciate relevant and admissible evidence. In aftermath this Court does not deem it fit and appropriate that the findings of acquittal recorded by the learned trial Court qua them merits any interference.

19. However, the prosecution has not been able to adduce cogent and emphatic evidence in proving the guilt of the accused, namely, Ram Lal alias Bittu, Sunder Lal alias Sunder, Randhir Singh, Rajiv Kumar and Bittu. The appreciation of the evidence, as done by the learned trial Court, suffers from an infirmity as well as perversity. Consequently, reinforcingly, it can be formidably concluded, that, the findings of the learned trial Court merit interference qua the accused aforesaid.

20. In view of above discussion, Criminal Appeals No. 33, 35, 75 and 135 of 2010, filed by the appellants/accused are allowed besides the Criminal Appeal No. 335 of 2010, preferred by the State, is dismissed qua respondents Kamlesh Kumar, Gurdev Singh, Vikas Negi and Madhukar Baghmore. The judgment of acquittal rendered by the learned Court below qua respondents aforesaid is maintained and affirmed. So far as accused/respondent No. 8 (Raj Kumar) is concerned, appeal preferred against him by the State, be kept pending he being a proclaimed offender. In sequel, the impugned judgment of 29.12.2009 rendered by the learned Additional Sessions Judge, Ghumarwin, District Bilaspur, H.P. (Camp at Bilaspur), so far it convicts accused aforesaid is set-aside. The appellants/accused are acquitted of the offence charged. The fine amount, if any, deposited by the accused is ordered to be refunded to them. Since the accused are in jail, they be released forthwith, if not required in any other case.

21. The Registry is directed to prepare the release warrants of the convicts/accused and send the same to the Superintendent of the jail concerned, in conformity with the judgment forthwith. Records be sent back forthwith.