
(2016) 11 RAJ CK 0085
In the Rajasthan High Court
Case No : Criminal Appeal No. 639 of 2008

Sanjay Kumar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 34, Section 34, Section 392

Citation : (2017) 1 CriLR 139

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

Bench : Division Bench

Advocate : Mr. Rajeev Bishnoi and Mr. Dharendra Singh, Advocates, for the Appellant; Mr. C.S. Ojha, Public Prosecutor, for the State; Mr. L.D. Khatri, Advocate, for the Complainant

Final Decision : Allowed

Judgement

1. The appellants have assailed impugned judgment passed by District and Sessions Judge, Jaisalmer dated 29/07/2008 in Sessions Case No.40/2006, by which accused-appellants have been convicted and sentenced under Section 302/34 IPC for life imprisonment with a fine of Rs.500/- failing which to undergo one month's simple imprisonment and have further been convicted under Section 392/34 for five years rigorous imprisonment with a fine of Rs.500/- failing which to undergo one month's simple imprisonment.

2. The contents of F.I.R, which has been lodged by Brij Vallabh on 12/05/2006 at Police Station Nachana, Jaisalmer briefly narrates :-

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fuosnu gS fd eSa c` t oYyHk pkaM+d e` rd Jh jk.khnku th dk NksVk HkbbZ gwaA fnuakd 7@5@2006 dks ifjokj lfgr Jh y{ehukFk th efUnj ds igyh o"kZxkaB gksus ls ukpuk vk;s FksA dy fnukad 11@5@2006 dks eSa o esjs ifjokj okys rFkk esjs cM+s HkbbZ gjh oYyHk th pkaM+d gekjh xkM+h ysdj fnu dks 11 30 cts djhc tSlyesj ds fy, ?kj ls jokuk gq,A tSlyesj esa ge lHkh esjh cfgu ds ;gka :ds FksA ge tc ukpuk ls jokuk gq, rc ?kj ij esjs HkbbZ gjhoYyHk dk iq= lat;] mldh iRuh ljdk nsdh o esjs cM+s HkbbZ jk.khnku th ?kj ij gh FksA vkt fnu esa djhc 11 45 cts tSlyesj esa VsyhQksu ij lwpuk feyh fd vkids HkbbZ dh rfc;r cgqr [kjk gS] rqrUk ukpuk igaqps] o HkkHkh th dks Hkh lFk ysrs vkosa jk.khnku th dh iRuh Hkh fnuakd 10@5@2006 dks tSlyesj xBZ FkhA rc ge nksuksa HkbbZ esjs ifjokj okys o esjh HkkHkh izseh nsdh pkMa+d o mudh iq=h js[kk o tokbZ lk ijxkuUn th jkBh lHkh nks xkfM+;ksa esa tSlyesj ls jokuk gksdj djhc 2 45 cts fnu dks ukpuk igqpsa rks esjs cM+s HkbbZ Jh jk.khnku th dh yk" k ?kj ds vakxu esa iM+h Fkh] ftldks ns[kdj ifjokj okyksa us jksuk&ihVuk "kq: dj fn;kA lat; dh iRuh Jherh ljdk ?kj ij gh FkhA lat; ?kj ij ugha FkhA ljdk ls bl ckjs esa iwNus ij mlus dksbZ lUrks" k tud tokc ugha fn;kA bl ?kVuk dh og gh ,d ek= xokg gSA bjks vUns"kk gS fd mls iw.kZ tkudkj gksxA ?kj ij b/kj m/kj ns[kus ij dejska esa lkeku fc[kjk gqv utj vk;kA bl ij dejska esa ns[kus ij uxnh] tsojkr vkfn tks esjh ekrkth ds j[k gq, Fks] xk;c feysA lat; o equhe jktw ?kj ij o xkao ukpuk esa ugh feyus ds dkj.k eq>s vUns"kk gS fd bUgksaus gh uxnh o tsojkt ywVus dh xtZ ls esjs cM+s HkbbZ jk.khnku th dks gR;k dh gS ,oa /ku lEifr ysdj Qjkj gks x;s gSA xk;c uxnh tsojkr dk iw.kZ fooj.k esjh ekrkth dks ekywe gS] os psUubZ jgrh gSA muds vkus ij bldk iw.kZ fooj.k is" k dj nwaxkA d` i;k bl ckjs esa mfpr dk;Zokgh djs dk d"V djsaA

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The same was registered under Section 302/34 I.P.C. at Police Station Nachana.

3. Subsequent to the investigation, charge sheet was filed against both the accused-persons and they were tried under Section 302/34 and 392/34 and have been convicted and sentenced for the said offence as enumerated earlier, prior to challan, one of the accused Raju committed suicide at Korba, so proceeding did not commence against him.

4. Heard both the sides, learned counsel for appellants-accused has contended that the prosecution has miserably failed to establish alleged crime and nothing concrete has come in the prosecution evidence despite learned trial Court has erroneously passed the impugned judgment, it has also been contended that one of the accused Raju committed suicide and died during the course of trial, the case was established against him but nothing positive has come against appellant-accused Smt. Sarla wife of accused Sanjay and there is no iota of

evidence that she ever conspired or acted under common intention to commit alleged offence, but she did not participate in the alleged offence and an interrogatory note is also indicative of the same. It has further been argued that appellant-accused Sanjay Kumar is nephew of the deceased and under such a close kinship alleged offence cannot be committed, so far as unbreached circumstantial evidence and link evidence is concerned, prosecution has failed to adduce the same, in addition, it has also been argued that no offence is made out against accused-appellant Smt. Sarla wife of Sanjay Kumar, so she be acquitted and in alternate both the appellants accused be released on already undergone and appeal be allowed after quashing the impugned judgment.

Learned public prosecutor has vehemently opposed the contentions as raised by the defence counsel and has added that there is no error in the impugned judgment. Both the appellants-accused have acted under common intention to murder deceased after looting the valuables, one more accused Raju was also associated with crime, who acted actively in committing the offence, but during the course of investigation, co-accused Raju committed suicide, so matter was abated against him, there is no substance in the appeal so, it deserves to be dismissed and has submitted that the impugned judgment be upheld.

5. Perused the record and the evidence adduced, which is as under, prosecution witness PW.1 Gewar Chand s a neighbour of Ranidaan, who has said that on 12/05/2006 at about 11, he was informed by telephone that Ranidaan was sick and was asked to come over. When he went there, accused Sarla was there and people were gathered there, it was crowdy. Ranidaan was lying on bed. He has also said that body of the deceased was having signs of rope tying and such marks were also there on its neck, blood was coming out of the mouth, he has also narrated that signs of cord tying were there on both the hands, elbows and below elbows and at thighs. after observing the injuries we inferred that deceased was assassinated, he has also said that Raju Daroga and accused Sanjay were known to him and Raju was Munim of Sanjay, he had seen them, while visiting his shop.

PW.6 Brij Vallabh is complainant and younger brother of the deceased, has said that he was resident of Bombay, he had been to his village Nachana on 7th May, 2006 for performing Laxmi Nath Temple Pooja and had stayed in the said house, where deceased Ranidaan was residing. On 11/05/2006, he had gone to Jaisalmer and stayed there, on 12/05/2006, a phone call was received from Nachana of his sister Sita Devi informing that Ranidaan was not keeping well and asked to come over Nachana, when the phone was received, he was away to Laxminath Temple. He has also said that on 10/05/2006, wife of Ranidaan had come over to Jaisalmer, so on the information, all rushed to Nachana by two vehicles. On arriving at residence in Nachana, they saw dead body of brother Ranidaan lying in the Aangan. Sarla was present there, but Sanjay was not there. He has further said that Sarla was asked about Sanjay, but she did not reply, so he inferred that she was under criminal conscience, so was not ready to

He spoke and he observed the body of the deceased Ranidaan after removing cloth, he has further said that blood was coming out of the nose and mouth of the deceased. Body was having probable signs of tying on hands and legs and neck, suggesting some scuffle so, he formed an opinion that the death was not natural but deceased was killed. Subsequently, the rooms were checked. Almirahs of Ranidaan's room were lying brokenly opened and wall and earth soil was lying dug. Entire room was disordered, he has also said that when on 11th, he left, everything was perfect and well in order. The Almirahs were secure and floor was not broken, so he formed an opinion that the ancestral property, which was lying with his deceased brother, in his possession and kept in the Almirahs, was taken away by Sanjay, while absconding. He has further said that his mother was residing at Madras and her room used to remain closed, but lock of that room was also lying broken. On checking that room, walls and earth soil of it was found dug and broken, he has also said that he was residing in Bombay for 30 to 35 years, so was unaware about the jewellery and cash kept there and same may be known to his mother. He has also said that Raju was Munim of Sanjay. He has also said that Ranidaan was residing in the room, where his body was found, Sanjay and Sarla were also residing in the same premises along with their kids and while he left for Jaisalmer on 11/05/2006, Sanjay, Sarla and Ranidaan were there in the premises. He has also said that the said premises was our ancestral property and they used to stay in that house, whenever visited. Raju Munim did not come at the site of occurrence, so it was felt that he might have fled away along with Sanjay. Ex.P.6 report was lodged with thana Nachana, which bears his signature from E to F and on the basis of said Ex.P.7 FIR was registered. This C.A. witness has further said that Sanjay was having a grossery shop at Nachana for 4 to 5 years and our family lent money to him in 2005, Sanjay his wife Sarla and Raju fled away then after disposing of the shop belongings along with four to five lacs. A vehicle was there in the name of Sanjay, which was taken together by Sanjay and was left at Nagaur. He has also said that Sanjay had earlier fled away with Rs.10 lacs from Madras as well and had then stayed at Nachana for twelve days. He has narrated an important fact that after fleeing away, Sanjay frequently telephoned at Nachana, which were picked by him three to four times, then he threateningly said that Ranidaan was eliminated and next it will be his number and one by one all will be killed. He has further said that he recognises voice of Sanjay, who used to make phone through mobile and their parental property was not partitioned, in cross-examination, he has said that a report, when Sanjay fled away with Rs.10 lacs from Madras, was also lodged, then he was arrested by Goa Police. He has also said that for trade, whatever was lent it was spoiled and vanished by Sanjay, he has also said that Ranidaan was aging 60 years and was not a heart patient and never used to tie his hands and legs for relieving from any alleged pain.

It is pertinent to observe that appreciation of the evidence of this witness does not reflect any kind of frailty rather it infuses credence and truth.

6. PW.12 Harivallabh brother of the deceased and father of accused Sanjay has

said that Sanjay is my son and Sarla is my daughter-in-law and our ancestors' home is situated in Village Nachana. Sarla and Sanjay were residing there and Ranidaan as well as he was living there. Ten months back, Ranidaan died. He has said that on 11/05/2006 at about 11.30 a.m., he and his brother Brajvallabh and kids had been to Jaisalmer and Prem Devi wife of Ranidaan was also there since 10/05/2006, to her parental house in Jaisalmer, he has further said that at the time of departure, they left Ranidaan, Sanjay and his wife Sarla and child Riya there. On 12/05/2006, telephonic message came at about 11 that Ranidaan was not keeping well and we were informed to come. We returned back by two vehicles between 2.30 to 3 p.m. on 12/05/2006 we reached Nachana. Dead body of Ranidaan was lying in courtyard cloth claded. On seeing it, I observed that it was having signs of rope tying, we puzzled to see the body. Sarla was alone there. Sanjay was not there. On enquiry, Sarla did not convey anything. Locks and Almirah of the room were lying broken and jewellery kept therein of our mother, comprises of gold and silver, was disappeared, after abscond on 11/05/2006, Sanjay did not return home and four to five days later his phone came to me three to four times and Sanjay daunted that Ranidaan was killed, next will be the number of Brajvallabh. Under sorrow, he replied that cgqr vPNk fd;k] vc rw ;g Hkh dj ysA

He has also observed that Sanjay, Raju and wife of Sanjay fled away from Nachana after taking away four to five lakhs 8 to 10 months earlier to this incidence, he had abandoned the vehicle at Nagaur, which was brought from there.

He has said that two months before the incident, he had fetched them from Korba, Raju was Munim at the shop of Sanjay and was working with him from last four to five years. He has also said that the valuables, which were taken away, are mentioned in Ex.P.17, which bears his signature and identification of the said material and valuables was conducted by the Magistrate vide Ex.P.23, which bears his signature and the process of identification is annexure 1 and has also admitted his signature on Ex.P.4 and Ex.P.5 and has said that police had got photographs of deceased Ranidaan clicked, which are Ex.P.18 to Ex.P.28 and its negative are Ex.P.29. He has also said that apart from item Nos.3 and 4 all other items were precisely and properly identified in the identification process as mentioned in Ex.P.4, which comprises of belongings taken away from his ancestral house. He has also said that the belongings, which were taken away, were in possession under key with deceased Ranidan and I can very well recognize those belongings.

During the course of examination, the belongings were brought from Malkhana and recognised by this witness as item Nos.1 to 17 and there is a recital of this in the evidence that witness recognised and identified all the belongings except item Nos.3 and 4, which were numbered as Ex.P.1 to P.15. Nothing contrary or causing infirmity has emerged from the cross of this witness.

7. PW.13 Kumari Jyoti a 13 years girl, a domestic help has said that she used to

go to the house of Sarla for domestic support and was getting Rs.400/- per month and has said that she was there for ten to eleven months and after absconding of Sanjay, she relinquished the job. This girl has also narrated that when Ranidaan died, Sanjay fled away. Sanjay, Sarla and Ranidaan were living in that premises. The day when Ranidaan died, Sarla came to her home at 8 A.M. to call her and she said that Babuji was not keeping well, come promptly and Ranidaanji was called as Babuji. Sarla said her that milk was not available in the house, so prepare milkless black tea, then Sarla asked her to accompany to serve tea to Babuji and they went there, Babuji was there in the room slept on the cot. Sarla tried to awake him by stir. Ranidaanji did not awake. Sarla stirred his stomach in order to awake, but he did not awake, blood was coming out of the mouth of Babuji, his arms were injured, Babuji was dead, then Sarla consumed that tea, Sarla asked to prepare rice, she prepared, Sarla and she, both ate the same, then Sarla said that Babuji has not arisen, she doused water upon Babuji, but he did not arise, then Sarla asked to make a call to Jaisalmer, phone could not be made, since Sarla was not having number, then she said that call Kishan from yonder, she called Kishanji and he after witnessing Babuji, said that Babuji was no more then Kishanji called several individuals, then Sarla said that four quarters of liquor, which were lying there, to throw out so, she threw all the four empty quarters outside and came back. She has also said that after observing the estate of Babuji, Sarla did not get melancholy, she has also said that blood was spotted, oozing from Ranidaan"s mouth.

PW.14 Sanjay Sarraf a jeweller of Bilaspur, Chattisgarh who has said that on 16/05/2006, Sanjay came to his shop in Bilaspur at his Sadar Bazar shop of M/s. Balaji Jewellers, which is engaged in jewellery business. He had come to sell silver jewellery and utensils, he asked him to get them melted and they went and got the metal melted and after melting, 9 kg pure silver emerged and at the rate of Rs.19,000/- per kg, he purchased 9 kg of silver for Rs.1,71,000/- and I got it converted into three blocks, he has also said that accused Sanjay is present in the Court.

Three to four months later, accused Sanjay came to his shop with police and informed regarding selling silver to him, he admitted and silver blocks were sold by him during the course of trade. Police asked him to give them 9 kg silver, which was given to the police, it was sealed by police vide Ex.P.30, which bears his signature and has denied interrogatory that Sanjay did not come to him with the belongings.

PW.15 Nikhlesh Sarraf has supported recovery of the said silver of nine kg vide Ex.P.30 and Ex.P.31 being its the spot map, this witness is also of Bilaspur, nothing abnormal has emerged from the cross-examination of this witness as well.

PW.16 Shaitan Singh is a constable, who has given forwarding letter and Jars for getting them deposited with the FSL as mentioned in Ex.P.12.

8. PW.17 Dr. R.N. Nayak is a doctor conducting postmortem on the dead body of deceased and has said that the body was disseminating odour and putrifaction had commenced, he has also narrated nature and description of the injuries, which are mainly said to be on elbow, wrist, neck and has also said that finger marks were found on the neck and the neck was having signs of thumb and fingers, thyroid bone and hyoid bone were found broken. All the injuries were antemortem and the cause of death of Ranidaan was throttling and asphyxia. He has also expressed his opinion that such injuries on elbow could be caused while throttling neck, on defence struggle and has said that Ex.P.32 was prepared by him, which bears his signature. He has also said that the injuries found on left wrist and left elbow and right elbow could be caused by rope tying, nothing abnormal has emerged from the cross.

9. PW.18 Parmanand son of Meghraj has said that Ranidaan was his father-in-law and Ranidaan was living with accused in the same premises and they used to eat commonly. He has supported Ex.P.34 estatus of the corpse, Ex.P.35 Fard Panchnama and Ex.P.36 and P.37 and has admitted his signatures on these exhibits. He has also said that at the time of inspection of the premises of Ranidaan, room belongings were lying scattered, almirahs and suitcases were lying with broken locks. Keep-spots of walls were broken and floor dug,nearby rooms were also in the same disordered position.

PW.19 Satyanaraian has supported Ex.P.38 and Ex.P.39 and has said that iron bar was got recovered by Sarla.

PW.20 Kishan a neighbour of Ranidaan has said that he was called by Sarla and was asked to make phone to Jaisalmer by saying that Babuji Ranidaan's health was not well.

10. PW.7 Prem Devi widow of deceased has said that about eleven months elapsed, post demise of her husband. She has said that the premises belonged to their ancestors, our room was separate and accused Sarla and Sanjay were also residing in the same premises. There were Almirahs in the room, where Ranidaan resided and those were used to be kept locked and room of her mother-in-law was there, which too was kept closed. Jewellery was kept in Almirah, Brajvallabh is my brother-in-law, who used to live in Madras, who had been to Nachana in those days and stayed there on visit. On 10th, she had been to Jaisalmer. She has said that on 12th her nephew Kailash came to her and apprised about a phone call and said that Mamaji was not keeping well and asked to return Nachana. On 12th at about half past two, she rushed Nachana where she witnessed dead body her husband and she became unconscious. She was shown his face only and his body was not shown to her and on witnessing his face, she became senseless. On visiting room, she found Almirahas broken there and the belongings vanished. All the jewellery, which was kept in the Almirahas was disappeared. Walls of the rooms and its floor was broken. When she left to Jaisalmer on 10th, the Almirahs were locked and room walls were secure. Sarla was there, but Sanjay was not there, who did not come back again. She has also

said that while she witnessed face of her husband, blood was there ousted from his nose and mouth and teeth were broken. Wall of his mother-in-law's room was also found broken, in cross-examination, she has said that she could regain consciousness at about four to five in the evening and has denied any illness to her husband. She has also negated an interrogatory by saying that at the time of occurrence, she was away and Sanjay could not be involved falsely because there was no animosity with him.

11. PW.8 Gouri Shankar a jeweller of Sanbhalpur, Orissa has said that he had seen accused Sanjay and has said that the deponent was running a business of jewellery in the name of Shalimar Jewellers. On 18/05/2006, Sanjay came to his shop alone and purchased a ring and small items and paid money, about half past an hour later, he came and said that he was resident of Rajasthan and having none over that place and wished to start business there and asked for co-operation and also said that he was inclined to vend his belongings and later shown them, which comprises of silver glass, silver thali, payal, chamach, bichiya and small silver jewellery and also shown gold jewellery. He was inclined to sell them to him and he bought same, he paid Rs.74,000/- towards silver jewellery and Rs.86,000/- towards gold jewellery. He has also said that silver jewellery was got melted and its tunch was detected and on weigh four kgs silver was found and the payment was made accordingly, likewise gold jewellery was got melted and found of 100 grams, he has also said that on 11/07/2006, Rajasthan Police came to his shop and accused was with them, who informed them that the jewellery was sold to him, he accepted the same and three silver blocks, which were made from the purchased jewellery, were delivered to police and one gold block, which was prepared out of the gold jewellery, was also given to the police. Police had prepared Ex.P.14 which bears his signatures and material was sealed at the site by police. Police had prepared two memo of seizures. Ex.P.15 contains his signatures and had prepared a spot map of his shop, which is Ex.P.16.

PW.9 Tarachand is also a jeweller of Sanbhalpur, Orissa before whom the said seizures were made by the police from Gauri Shankar PW.8, has also corroborated Ex.P.14 and Ex.P.15 and Ex.P.16 and has said that the seizures were made before him.

PW.10 Dhanraj has said that he knows Ranidaan and has said that he was engaged in taxi plying and on 11/05/2006, Raju son of Mohan Singh who was known to him came to him in the night of 11/05/2006 to 12/05/2006 at about 1 to 1.30 Night and awakened him after a call and said that Sanjay had wanted a taxi for urgent work and he replied that his vehicle was disordered and driver was not available, so Raju went away without vehicle. Raju works with Sanjay and was his employee.

12. PW.11 Taradevi mother of the accused Raju has said that Raju was her son, who was working with Sanjay and Sanjay was paying Rs.1500/- per month to him and she was known with Ranidaan, uncle of Sanjay and has said that her house was 3 lane away from Sanjay's house. She has said that before a day

from death of Ranidaan, her son Raju came and took lunch, after that he had never come and she is not aware as of where he is. She has also said that there was a discussion in the village that Sanjay and Raju have fled away after killing Ranidaan.

PW.21 Bansi Lal is a photographer, who has got the photographs Ex.P.18 to 28 snapped on 20.06.2006 deposing the same, he has also said the Ex.P. 29 is its negative.

PW.22 Viram Singh is a vehicle driver, whose vehicle was hired by Sanjay and Raju, deposing this factum, he has said that he was known of Raju and Sanjay, Sanjay was having an attachee and Raju was having a bag in his hand and they asked to take them to Jodhpur. He has also said that both Sanjay and Raju sat in the vehicle, Sanjay gave him Rs.2,300/- instead of Rs.2,500 and said that Rs.200/- will be given later and said that they reached at Aakhaliya Chauraha, Jodhpur around 7 to 7.15 AM and has said that he returned to Nachana at about 11.30 and 2 to 3 hours later he was informed from the people that Sanjay had fled away after killing his uncle and has said that Sanjay is present in the Court. He has also said that Sanjay used to hire his vehicle, when doing shop there.

PW. 23 Kanhaiya Lal has said that Ex.P. 40 arrest warrant of Sanjay was issued from ACJM Pokaran and for service of it, he went Koarba and produced the warrant in CJM Court Koarba and arrested Sanjay Kumar on 29.06.2006 and presented Ex.P.41 application for transit remand, which was accepted from 29.06.2006 to 02.07.2006 vide Ex.P. 41 so, brought and produced accused Sanjay before CJM Jaisalmer. He has also supported Ex.P. 43 to Ex.P.48.

PW.24 Ratan Singh SHO Nachna has narrated sequence of informations and the chronology acted upon and has corroborated Ex.P. 8, 9, 12, 13, 15, 16, 17, 18, 22, 29, 30,31, 32, 33, 34, 35, 36, 37, 38, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 81. He has also narrated recoveries and seizures of the stolen jewelery and has precisely divulged entire process of investigation without any flaw, nothing abnormal has emerged from the cross-examination of this witness as well, cross-examined at length.

13. PW.25 Pramod Soni is also a jeweller of Koarba, who has said that Sanjay Chandak had been to Koarba, where he opened a restaurant in the name of Marvadi Tiffin and on one to two occasions, he had taken tiffin from the shop of accused, present in the court, later he left Koarba, he had informed that he had left his home after scuffle with his family members. He has said that he had asked Sanjay for requirement of Rs.50,000/- to Rs.60,000/- for business on which Sanjay had given 34,000 as debt. Three to four days later he was arrested by police and police enquired then he informed that he had taken Rs.34,000 from Sanjay for business and the same were given to police. A memo of that amount was drawn as Ex.P. 81, which bears his signatures.

PW. 26 Madhav Jaisawal, a crane operator of Koarba, has said about the visit and

request for a shop by Sanjay at Koarba and regarding obtainment of certain shop by Sanjay over there on rent. He too has said that Rs. 90,000 which were given by Sanjay were returned back vide Ex.P. 82, which bears his signatures. Out of which Rs.60,000/- were given by Ajay Jain, likewise PW.27 Prem Chand Lalwani resident of Koarba has also said that on the say of Ajay Jain, he had rented his house to accused, who is present in the Court for Rs.2000 advance and this amount was taken away by police.

PW.28 Naresh Kumar a medical shopkeeper of Koarba has also said that an agreement for certain shop was done with the accused and that amount of Rs.40,000/- was given back to police vide Ex.P.83 on which, he had admitted his signature.

PW.29 Rakesh Soni a shopkeeper and resident of Chattisgarh has said that he knows Sanjay and has said that in June 2006, Sanjay came to his shop to sell coins, he had informed that he had come from Rajasthan and said that he obtained said by and in domestic partition and asked to sale 1095 silver coins. He gave him 86 coins for selling, but did not return. One month later, he came with police and asked whether the coins sold, he said no and said that the said coins were lying with him, so 86 coins were given to police vide Ex.P. 68 and during the course of the testimony, said coins were identified as article 20, nothing abnormal has emerged in his cross-examination.

PW.30 Ajay Kumar Jain a businessman of Koarba has said that he knows Sanjay, who used to come to his shop to buy gold. He is present in the Court and used to buy Kirana from his shop. He was running a Marwari Bhojnalaya there. Sanjay had told that after home scuffle, he had been there after getting his share and asked for some place to run Kirana Shop. He has also said that two to three days later, he was arrested and the said payment was deposited by him in the Koarba Kotwali, which was Rs.3,000/- and its Fard Ex.P.84, which contains his signatures.

14. PW.31 Pardeshi Ram (P.K.) is a constable of Koarba has said that material was recovered from Sanjay Kumar vide Fard 1 and 2, which bears his signatures, the said recovered items were brought by thanedar Rajasthan Police.

PW.32 N.R. Arya SDOP of Chattisgarh has said that in January 2006 to November 2006, he was in charge of Koarba, Kotawali and had recovered descriptive items from Sanjay vide Ex.P. 85 rest of the Ex.Ps. 43, 44, 70, 81, 82, 83, 84, 86, 87 and have also been supported by this witness. He has also corroborated article 1 to 17 relating to Ex.P. 1 to 17 and Ex.P. 70, article 19, article 18 and has narrated precise recitals of the recoveries made from that place pertaining to the property involved.

15. PW.2 Rishi Kumar Judicial Magistrate has said that on presentation of Ex.P.1, application by SHO Nachana, he issued notices to Hari Vallabh and Braj Vallabh for identification of material on 10/08/2006, owing to downpour on 10/08/2006, 11/08/2006 was fixed, Hari Vallabh came on 11/08/2006 and he has further said that process of identification was done pertaining to Ex.P.2 seizure memo, while

narrating the methodology of the process of identification, he has said that apart from item Nos.3 and 4, all the items were precisely identified by him and Fard Identification Ex.P.3 was prepared in triple copies, which bears his signature from A to B, signature of Hari Vallabh from C to D. He has also said that SHO informed that Braj Vallabh did not come, because process of identification was not required to be done through him. Vide Ex.P.8 an inventory of the items found from the bale was prepared in three copies, containing his signature from A to B and C to D Signatures of Hari Vallabh. He has further said that date wise order sheet of the proceeding was drawn vide Ex.P.5 and after conclusion of the identification, items were resealed and were consigned to the SHO Nachna and the items, which were mingled additionally, were returned back, so this Judicial Magistrate has properly narrated, entire process of identification and has specifically said that apart from two items, all other belongings and items were properly and precisely identified by the witness but this witness has not been cross-examined.

PW.3 Naval Singh ASI has said that on 25/05/2006, he was posted at Police Station, Nachana and Ex.P.6 Tahrir report was transmitted by SHO from the site of occurrence and after endorsement same was registered, which contains his signatures.

PW.4 Khetaram, has said that vide Ex.P.8, two sealed glass jars were deposited in the Malkhana, which were sent to FSL vide Ex.P.9 through Bharmal Ram and has said that on 17/05/2006, an iron bar (Sariya) was deposited by C.I. Ratan Singh vide Ex.P.10, likewise on 19/07/2006, seven packets were deposited by Ratan Singh vide Ex.P.10.

PW.5 Bharmal Ram is a police cop who has said that two sealed packets with a forwarding letter vide Ex.P.11 were deposited in FSL vide receipt No.13.

16. Appraisal and elucidation of the entire evidence establishes that the prosecution has succeeded in producing clinching evidence against accused Sanjay. It is very much apparent from the aforesaid evidence that the appellant-accused earlier fled away with family money and misused the same, subsequently with help of co-accused Raju, taking advantage of loneliness of his real deceased uncle, he along with co-accused Raju tied and thrashed his uncle after confining him, which is why injuries occurred on his body, medical evidence suggests that deceased was having multiple injuries on his neck, arms and hands. The cause of his death has also been said to be throttling and asphyxia, finger prints have also been found on the neck of the deceased.

PW 12 Hari Vallabh, father of the accused-appellant Sanjay, as well as his uncle have candidly narrated that after fleeing away, 3 to 4 days later, he telephonically talked with both i.e. with his father and uncle Brij Vallabh and daunted that after elimination of deceased Ranidan, next number was of Brij Ballabh and they were threatened by him that all will be killed and eliminated.

17. Raju (co-accused), who committed suicide after fleeing away from Nachna at Koarba, when he went to hire a taxi on rent, which has very much emerged from

the evidence of prosecution witnesses that Raju went to house of taxi owner in the night odd hours and asked him to take Sanjay to Jodhpur because of certain urgent work, subsequently, on his denial, another taxi owner was taken there and he too was given Rs.2,300/- as rent instead of Rs.2,500/- and Rs.200/- were said to be paid later.

18. Appellant-accused Sanjay was well aware about placement of ancestral jewellery and valuables, so eliminating his uncle deceased Ranidaan, he broke open locks of several almirahas and dug out jewellery, concealed under wall closures and beneath the earth by breaking wall closures, which were later found disorderly and dug after the incident, it is pertinent to observe that all the valuables and jewelleries, which were taken away by the accused persons, were sold to different jewellers, who too have come in evidence and have specifically and explicitly narrated every fact and sequence of his misdeed, same was recovered from them either in original form or in melted position and during the course of identification, almost all the jewellery and valuables were properly and precisely identified by the owner family members and this aspect has properly been narrated by the Magistrate before whom the proceedings of identification, were conducted as well as father of accused Sanjay, Hari Vallabh, brother of deceased Ranidaan.

The way in which the family valuables were sold and got melted is also clear to indicate that the mental culpability of the accused was very much instinctly explicit because it has come in the evidence of several prosecution witnesses of Chhattisgarh as well as Orissa that they were allegedly told by accused Sanjay that a partition had taken place in their family and after family dispute, he had shifted to that place and wanted to engage in some business and on such false assertions, he persuaded them to get a desired rental properly there, accused Sanjay appears to be machinating clever person because he approached to the jewellers and bought a ring and certain small items advertently, in order to get himself acquainted with the jeweller and subsequently went with a fabricated plea that he was there after family scuffle and wanted to dispose of his jewellery and under this false garb of say, he got the valuables disposed of, interrogatory note of co-accused Sarla too, though of trifle relevance, has cast a revelation that how cruelly Sanjay eliminated his own uncle Ranidaan after chocking his neck and removing his valuables.

Extreme culpability and merciless killing could very well be inferred from his telephonic threatening to his father and uncle by saying that Ranidaan was eliminated and Brij Vallabh's reckoning was next to him and all will be killed more so, that even after the awful killing of Ranidaan.

19. In *Sevaka Perumal v. State of T.N.* (1991) 3 SCC 471 the Hon"ble Supreme Court has cautioned :-

"Undue sympathy to impose inadequate sentence would do more harm to the justice (delivery) system to undermine the public confidence in the efficacy of

law and society could not long endure under serious threats. If the Courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

A father will never involve his own sibling falsely but aspects of truth has perfectly and precisely been narrated by father of accused Sanjay, Hari Vallabh PW-12 as such, the prosecution has come with clinching evidence against accused appellant Sanjay, who committed the crime with another co-accused Raju, who is no more but prior to commencement of the proceedings, he committed suicide at Koarba as per prosecution version, which is properly reflected by the record.

20. It is worthy to be observed that appellant accused Sarla, who is she-spouse of Sanjay has not been properly connected with the crime by the prosecution and the evidence discloses that she called her domestic help and tried to ascertain the actual predicament of her father-in-law and also called a neighbour to apprise ill-health of her father-in-law and to call her family members from Jaisalmer.

Female spouse is a companion of her husband, but to connect her with the offence, a positive evidence is needed, it appears to be correct that she might be aware about the incidence as well as with the nature of the crime, which might have been committed in her notice, because such enormous felony and breaking of Almirahas, digging of floor and break opening of wall closures would not cause and occur without sound is silence.

It has emerged from the evidence that on a retro occasion, she had fled with her husband, while Sanjay took away family money, but this also does not depict that she was an accomplice in the offence of murder, though she could have been alleged to be guilty of screening offence and non-closure of evidence under Section 201 of I.P.C. under prevailing circumstances, but no iota of evidence has been adduced by the prosecution against Smt. Sarla, who was very much there in the home when awful was committed, had she been remained in active participation of the crime, she would have also absconded and fled away, but she was there with her small baby, so the finding of learned trial court, so far as it relates to appellant-accused Sarla, are not correct and positively appears to be erroneous.

21. Entire appreciation is enough to reveal that the prosecution has completely succeeded in proving its case by substantive and material evidence, which is duly corroborated by medical evidence, against appellant accused Sanjay beyond domain of reasonable doubt, but has failed to establish charge against, she spouse of Sanjay appellant-accused Smt. Sarla.

For the reasons deliberated, pondered and adverted upon, it appears fair to allow the instant appeal, partly.

Consequently, conviction and sentence as passed by the impugned judgment against the appellant accused Sanjay s/o Hari Vallabh is upheld.

Conviction and sentence against appellant accused Smt. Sarla w/o Sanjay Kumar is set aside and quashed because, prosecution has failed to establish, its case beyond realm of reasonable doubt against her and she being entitled to get benefit of doubt, stands acquitted from the charge under Sections 302/34 and 392/34 of I.P.C. she is on bail, so need not to surrender, her bail bonds are discharged. Accused-appellant Sanjay Kumar shall serve his life sentence, accordingly.

With the aforesaid terms, the appeal stands, partly allowed.