

(1995) 09 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Murder Reference No. 1 of 1994 and Criminal (Jail) Appeal No"s. 422 and 423 of 1994 and Cri. Appeal No"s. 425 of 1994 and 335 of 1995

State of Rajasthan and Others

APPELLANT

Vs

Vijay Singh and Others

RESPONDENT

Date of Decision : 04-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313, 319, 366

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (1996) CriLJ 1202 : (1996) 1 RLW 83 : (1995) 2 WLN 623

Hon'ble Judges : V.S. Kokje, J;Pana Chand Jain, J

Bench : Division Bench

Advocate : Doongar Singh, D.S. Shishodia and Pradeep Shah, for the Appellant;
C.R. Jakhar, Public Prosecutor, for the Respondent

Judgement

V.S. Kokje, J.—Vijay Singh, Bhanwar Singh, Kalyan Singh, Kishan Singh, Khem Singh, Vaje Ram, Anandi Lal and Jalam Singh were prosecuted on charges under Sections 302,302/34 and 120B of the Indian Penal Code for having caused death of Ranjeet Singh, Devi Lal, Kanhaiya Lal. Suresh Chandra, Shanti Lal, Hazari Lal, Arjun Lal, Gulab, Prakash, Chuni Das and Sunder Lal by intentionally dashing a dumper driven by Vijay Singh son of Bhanwar Singh with the Jeep in which the eleven deceased persons were travelling. The motive for the crime was alleged to be enmity between the parties arising but of a property dispute and a Criminal Case going on between the parties.

2. Accused Vijay Singh is the son of accused Bhanwar Singh and accused persons Kalyan Singh, Kishan Singh and Khem Singh are the brothers of Bhanwar Singh. "The trial Court acquitted all the accused persons pf charge u/s 120B I.P.C. Accused Vijay Singh son of Bhanwar Singh was found guilty u/s 302 I.P.C. and accused Jalam Singh son of Chattar Singh was found guilty u/s 302/34 I.P.C. and both of them were sentenced to death. The other accused persons Bhanwar

Singh, Kalyan Singh, Kishan Singh, Khem Singh, Vaje Ram and Anandi Lal were acquitted of the charge u/s 302/34 I.P.C.

3. Murder Reference No. 1/94 is initiated u/s 366 of the Code of Criminal Procedure by the trial Court. D. B. Criminal Appeal No. 422/94 is an appeal submitted by convict Vijay Singh from jail against his conviction and death sentence. D.B. Criminal Appeal No. 423/94 is an appeal submitted by convict Jalam Singh from jail against his conviction and death sentence. D. B. Criminal Appeal No. 425/94 is an appeal filed on behalf of convicts Vijay Singh and Jalam Singh through their counsel Mr. Doongar Singh. D. B. Criminal Appeal No. 335/95 is an appeal filed by the State of Rajasthan against acquittal of Bhanwar Singh. Kalyan Singh, Kishan Singh, Khem Singh. vaje Raj and Anandi Lal from charges u/s 302/34 and Section 120B I.P.C. as also against the acquittal of Vijay Singh and Jalam Singh from charge u/s 120B I.P.C. which was registered as consequence of grant of Leave to Appeal in D. B. Criminal Leave to Appeal No. 207/94. Mr. Doongar Singh, learned counsel appearing for the convicts in Death Reference No. 1/ 94 took notice on behalf of the aforesaid six acquitted persons out of whom Bhanwar Singh, Kalyan Singh, Kishan Singh, Khem Singh, Vaje Raj and Anandi Lal were present in the Court and were identified by Mr. Doongar Singh. Accused Vijay Singh and Jalam Singh having been sentenced to death were in Jail.

4. In view of proviso to Section 366 of the code of Criminal Procedure, the death sentence cannot be confirmed until the appeal of the convicts is disposed of. The appeals were therefore heard along with Murder Reference and so the appeal against acquittal also from the same judgment, all these cases were heard together and are being disposed of by this common Judgment.

5. July 11, 1991 provided to be the doom's day for eleven persons travelling in Jeep No. RPJ 5511. A collision took place between Jeep No. RPJ 5511 in which these deceased persons were travelling and a dumper No. RRJ 7601, on the National Highway No. 8 between Rajasamand and Nathdwara at a place eight kilometers away from Rajasamand towards Nathdwara, called Badarda. A telephonic message was received from an unknown person at Police Station. Rajsamand at 11.30 A.M. and entry to this effect was made in the Rojnamcha (daily diary) of the Police Rajendra Kumar, Station House Officer started for the spot with the police party to verify the fact as the details were not given by the person who had telephoned. On the spot, the Station House Officer found that eight persons had already died on the spot in the collision. On the spot, at about 1.30 P.M., Keshu Lal son of Vardi Chand Joshi gave an oral information stating that it was not a case of accident but Vijay Singh who was driving the dumper had deliberately hit the Jeep by going on the wrong side. The driver of the Jeep tried to avoid a collision but could not save himself and those who were travelling in the jeep. On this oral information, First Information Report was lodged which was exhibit as Ex. P/3. The information was sent to the Police Station and a case was registered and investigation was commenced. The police reached a

conclusion that it was not an accident but he dumper was put on the jeep with intention to kill the occupants of the Jeep. Vijay Singh who was alleged to have been driving the dumper and the other accused persons alleged to be travelling with him in the dumper were charged with criminal conspiracy to cause death of those travelling in Jeep No. RPJ 5511. As Vijay Singh was alleged to be driving the dumper No. RPJ 7601, he was charged u/s 302 and Section 120B I.P.C. The others who were said to have shared with him the common intention of causing the death of persons of the rival group, travelling in Jeep No. RPJ 5511, were charged u/s 302 read with Section 34 and Section 120B, I.P.C.

6. According to the prosecution, there was enmity between the persons travelling in the dumper and the persons travelling in the Jeep because of some property dispute. A criminal case was also going on between the parties in the sessions Court, Rajasamand. In that Sessions Case No. 50/91, on July 11, 1991, which was the date fixed for prosecution evidence, Vijay Singh, Anandi Lal and Bhanwar Singh were the prosecution witnesses in the case and deceased Sunder Lal. Arjun Lal, Ranjeet Singh and others were accused persons in that case. According to the prosecution, accused persons Vijay Singh, Jalam Singh, Kishan Singh, Khem Singh, Vaje Ram and Kalyan Singh went to the Rajsamand Sessions Court on July 11, 1991 at about 10.00 A.M. and enquired as to whether deceased Sunder Lal and others, the accused persons in that case, had reached the Court or not and when they came to know that they had not till then reached Rajasamand, Vijay Singh sped away with the dumper in the direction of Nathdwara expecting deceased Sunder Lal and others to be coming from the other side in the Jeep and when they saw the Jeep in which deceased Sunder Lal and others were travelling, Vijay Singh in a high speed took the dumper on the wrong side and dashed it with full force on the Jeep with the intention to cause death of the occupants of the Jeep. According to the prosecution, after the collision Vijay Singh got down from the dumper with a gun in his hand and confirmed as to whether all the occupants of the Jeep had died or not. By this time, Bhanwar Singh and Anandi Lal with a pliant type Jeep arrived on the spot behind the dumper as per the conspiracy and took away the persons travelling in the dumper in that Jeep towards Udaipur. Witness Manjeet Singh was in the body of the dumper on the back side. He had received injuries and was taken to hospital by the persons who had collected there. During investigation, it was also found that accused Kalyan Singh, Kishan Singh, Vijay Singh and Jalam Singh had also received injuries in the collision.

7. The prosecution examined Kajod (PW-1), Shanti Lal (PW-2) Keshp Lal (PW-3), Ratan Lal (PW-7), Roshan Lal (PW-9), Arjun Lal (PW-10), Manjeet Singh (PW-12), Tulsi Ram (PW-13), Manju (PW-14) and Sunder Lal (PW-15) as eye witnesses of the collision.

8. Eight of them did not support the prosecution either wholly or partially and were declared hostile and were cross-examined by the Public Prosecutor. Roshan Lal (PW-9) and Arjun Lal (PW-10), who did not turn hostile were found to

be unreliable by the trial Court. Radhey Shayam (PW-16), Chuni Lal (PW-17) and Umesh Chandra (PW-23) were examined to prove the fact of the accused persons going to Rajsamand Sessions Court and having found that deceased Sunder Lal and others had not reached the Sessions Court, going in the dumper towards Udaipur. All the three have not supported the prosecution partially or wholly and were declared hostile and cross-examined by the Public Prosecutor. Dali Chand (PW-11) and Nand.Lal (PW-19) were examined on the point of criminal conspiracy. Kesav Lal (PW-4), Fateh Lal (PW-5), Heera Lal (PW-6), Hans Raj (PW-8), Lukman (PW-18) and Lalu Khan (PW-21) were examined as panchnama witnesses. Out of these also Lalu Khan, turned hostile and was cross-examined by the Public Prosecutor.

9. Dr. Anand Srivastava (PW-22), Dr. Yogesh (PW-27), Dr. G. L. Dad (PW-28) and Dr. Jagdish Chandra (PW-35) were the medical witnesses who have deposed about the postmortem examination report of the dead bodies and injuries suffered by the persons involved in the collision. The other witnesses examined were the Police Officers conducting or helping investigation the owner of Jeep No. RPJ 5511 and the Persons having information about the dispute over the plot of land, which was the bone of contention between the parties and a Photographer who had taken photographs of the spot.

10. All the accused persons have taken stand of total denial in their statements u/s 313 of the Code of Criminal Procedure Accused Vijay Singh further added that he does not know how to drive a dumper. A defence witness has been examined to show that there is a curve near the spot of the collision.

11. A perusal of the Judgment of the Sessions Court shows that after observing that there are two types of evidence in the case, one the circumstantial evidence and the other the eye-witnesses account, the Court started to analyse the evidence on the point as to what was the motive behind the crime and in Paragraph-55 reached a conclusion that the accused persons had a motive to commit the crime. Then, in Paragraph -56 onwards, the learned trial Judge started analysing the evidence and reached a conclusion that it was not a case of accident, but was a case of intentional and deliberate dashing of the dumper on the Jeep. Then the learned trial Judge, started analysing the testimony of eye witnesses from Paragraph -65 onwards. We feel that this was not the proper way of appreciation of evidence in a criminal case. When eye-witnesses are available, normally, their testimony has to be scrutinised first. Then it should be seen whether the eye-witnesses account is corroborated by other circumstantial evidence or not and lastly, it is to be seen as to whether there was any motive explaining as to why the crime was or could have been committed.

12. It is true that the ultimate conclusion has to be reached on the basis of the over all picture which emerges from the totality of evidence but while assessing evidence in a case a logical method has to be followed to analyse and scrutinise the evidence on record. If we proceed in an illogical or haphazard manner, it is all the more likely that we may not get at the truth.

13. We would therefore, start the assessment of the evidence with the scrutiny of the the statements of the eye witnesses.

14. Kajod (PW-1) who was examined by the prosecution as an eye witness to the collision did not support the prosecution, was declared hostile and cross-examined by the Public Prosecutor. He categorically stated that he did not see anything and had not seen the collision taking place. Nothing was brought in the cross-examination which could help the prosecution.

15. Shanti Lal (PW-2) who was also examined as an eye witness to the collision, did not support the prosecution and was declared hostile and cross-examined by the Public Prosecutor. Nothing came out in the cross-examination also which could help the prosecution.

16. Keshu Lal (PW-3), was the person who was said to have lodged the First Information Report and was examined as an eye witness to the collision. According to the prosecution he was also a witness for the accused persons reaching Rajasamand Court at 10.00 A.M. on the fateful day and enquiring about Sunder Lal and others. According to the prosecution he had followed the dumper on a Scooter had seen Vijay Singh driving the dumper and seen him deliberately dashing the dumper against the Jeep. He did not support the prosecution and stated that he had reached the Rajsamand Court at about 11.30 A.M. or 12.00 noon to meet Sunder Lal (deceased). He deposed that Sunder Lal son of Hira Lal was with him and when they reached Barada, the accident had. already taken place and people were lying there dead. He has also stated that his signatures were taken by the Police on papers and he did not know as, to how many papers were got signed from him. No paper was read over to him. The witness was declared hostile and cross-examined by the Public Prosecutor. In his cross-examination, though he had admitted his signatures on Ex.P/3, the First Information Report but denied its contents. He stated that he had reached the spot after the Police had arrived. This witness therefore, does not help the prosecution at all.

17. PW-7 Ratan Lal son of Balu Ram, the next eye witness was also declared hostile as he did not support the prosecution. He denied having seen collision and in the cross-examination also, nothing could be brought out which could support the prosecution.

18. Tulsi Ram (PW-13), was also examined as an eye-witness of the collision. He categorically stated that he did not work in the India Marbals Badarda and did not know anything about the accident. He denied having told the Police about the incident. He even denied that Police had taken his statement. The witness is therefore, of no help to the prosecution.

19. Mangu (PW-14), who was set up as an eye witness also stated that he was not working in the Moon Light Marbals, Badarda but had gone there and it was the place of his in-laws. He deposed that when he was standing at about 5.00 P.M. at Badarda Bus Stand, Police had come there. He had not seen the collision.

He had not seen Jeep or dumper and had not seen the deceased persons. He was declared hostile and cross-examined by the Public Prosecutor. Nothing which may help the prosecution came out of his statement.

20. PW-15 Sunder Lal son of Hira Lal was also examined as an eye witness. He along with Keshu Lal was going behind the dumper at the time of the collision. In his examination-in-chief, he admitted having gone to Rajnagar with Keshulal but denied having gone towards the Court. He denied having seen the accused persons in the Court Room. He was declared hostile and was cross-examined by the Public prosecutor. In his cross-examination, he stated that at about 12.30 P.M. he and Keshu Lal on a Scooter went from Rajnagar to Nathdwara, though he did not witness any collision but had heard about it. He denied having given any statement to the Police. This witness also is of no help to the prosecution.

21. This leaves us with the testimony of Roshan Lal (PW-9), Arjun Lal (PW-10) and Manjit Singh (PW-12). Out of these Roshan Lal (PW-9) and Arjun Lal (PW-10) have not been believed by the trial Court. The statement of Manjit Singh (PW-12), who was declared hostile was partially believed by the trial Court.

22. Roshan Lal (PW-9) deposed in his examination-in-chief that he had reached Del vada at about 8.45 A.M. and was taking tea in a Tea Shop there, witness Artun Lal (PW-10) came from the direction of Kailashpuri. Roshan Lal stopped him and asked him, where he was going. He replied that he was going to Kelva. Then, Roshan Lal requested him to take him along as he had to go to Rajnagar. They started on the Scooter. Near Village -Nagdia, deceased Sunder Lal came in the Jeep from the direction of Kailashpuri and overtook the Scooter on which the witnesses were riding. The Jeep was being driven by Ranjeet Singh Jhala and ten persons were occupying it. When they reached Nathdwara, they found that jeep was standing there and they went ahead on the Scooter. Again, near a culvert ahead of Nathdwara, the Jeep over-took them when they were 150 feet away from River -Khari, they saw a dumper coming from the direction of Rajsamand. The Jeep was on its left side. The dumper was in a very high speed. There was no obstacle on the road but the dumper came towards its right side and dashed against the Jeep which was going on left side. Jeep fell into a pit and the dumper turned turtle. Accused Vijay Singh got down from the dumper. He had a gun in his hand. Then accused Jalam Singh, Kalyan Singh, Kishan Singh, Khem Singh and Vijay Ram Kumar got down from the Jeep. Vijay Singh was looking at the Jeep which had overturned. A white Jeep then arrived from the direction of Rajsamand and stopped near the dumper. Accused Bhanwar Singh got down from it. He lifted Jalam Singh who seemed to have been injured and put him in the Jeep. There was one more person in the Jeep whose name was not known to the witness. Then all the accused persons who had alighted from the dumper boarded the Jeep and went towards Udaipur. According to the witness, they did not go nearer as they were afraid that they themselves may not be killed. Roshan Lal and Arjun Lal turned their back towards it out of fear. The witness further deposed that a man sitting in the dumper on his back side of the body

was thrown out due to the impact of the collision and fell down. The witness did not know him. the witness went away towards Nathdwara. Arjun Lal sent a message to Rama and then they returned to the spot at about 1.00 P.M. Eleven persons were dead on the spot but bodies of Sunder Lal, Prakash and one more deceased were not there on the spot. Eight dead bodies were on the spot. In the cross-examination, this witness had admitted that after witnessing collision, they came back to Nathdwara but did not inform the Police there, though the Police Station is on the way. The witness also admitted that when they reached the spot second " time, Policemen were present on the spot but this witness and Arjun Lal did not tell the Police that they had seen the collision. They also did not tell any one else that they had seen the collision, though several persons of their village were standing there on the spot. He also admitted that his statements u/s 161 of the Code of Criminal Procedure was recorded by the Police five to seven days after the incident. He also admitted that all the accused persons got out of the dumper from the driver side door and Vijay Singh had the gun in his hand. He had not gone back to fetch the gun from the dumper after having come out from the dumper. When confronted with the case diary statement Ex. D/I, the witness stated that he had not told the Police that Vijay Singh had come out of the dumper first and then again went back to take out the gun. He also denied having stated before the Police that accused Bhanwar Singh had taken all the other accused persons in the white Jeep towards Kankroli.

23. Arjun Lal (PW-10) stated that from Delvara, Roshan Lal accompanied him on the pillion of the Scooter as he had to go upto Rajnagar and the witness had given him the lift. When they reached Negadia, Sunder Lal's Jeep No. RPJ 5511 came from behind. It was being driven by Ranjeet Singh. When it was overtaking the Scooter, Sunder Lal asked the witness Arjun Lal as to where he was going and then the Jeep went ahead. There were about ten persons in the Jeep. When they reached Nathdwara, they saw that Jeep was standing there. Arjun Lal and Roshan Lal did not stop there and went ahead. Then near the bridge on the river -Banas, Sunder Lal's Jeep over -took the Scooter. Arjun Lal also increased speed of the Scooter as he was getting late. When they reached the bridge on the Khari river, the Jeep was about 150 feet ahead from them, a dumper of yellow colour came from the direction of Rajnagar to the right side of the road in a high speed and dashed against the Jeep which was on the left side of the road, when there was no traffic on the road. The Jeep fell in a pit and dumper over turned. The witness further deposed that the Jeep belonged to Sunder Lal who used to drive it often but on that day Ranjeet Singh was driving. Accused Vijay Singh came out of the dumper with the gun in his hand. Accused Jalam Singh, Kishan Singh, Khem Singh, Kalyan Singh and Vajay Ram also came out. Then a white coloured Jeep came from the direction of Kankroli stopped and accused Bhanwar Singh got out of it. there was one person in the Jeep who was not known to the witness. They put Jalam Singh who was injured in the Jeep and then all the accused persons sat in the Jeep and went towards Udaipur. When the Jeep was passing near them, Arjun Lal and Roshan Lal turned their back to it so

that the persons in the Jeep do not identify them they turned back the Scooter and went towards Nathdwara. Then about one or one and a half hour afterwards they went to the spot again where Sunder Lal, Prakash and Chuni Lal were not found on the spot but eight dead bodies were lying on the spot. The witness also deposed that a person who was sitting in the body of the dumper had got thrown away and fell on the road because of the collision. The witness did not remember whether this man was taken away by the accused person in the white Jeep. The witness also deposed that there was a land dispute going on between deceased Sunder Lal and accused Bhanwar Singh which was going on for a year or year and a half and there was some incident of firing a revolver also between the parties. In his cross-examination, this witness stated that he had witnessed the quarrel between Sunder Lal and Bhanwar Singh but was not cited as a witness in the case. The witness deposed that the Scooter was going at a speed of 60 K. M. per hour when the Jeep was going in a speed of 80 K. M. per hour, he deposed that after seeking the collision they did not go on the spot but went back to Nathdwara. he also deposed that deceased Shanti Lal son of Sohan Lal was his brother, both of being born of the same parents. He also admitted that he had knowledge at the time of the incident that his brother Shantilal was travelling in the Jeep which was dashed against by the accused persons. Shanti Lal was one of the deceased persons who died in the incident. He also admitted that the dumper had turned on the driver side. He further stated that when they came back at 1.00 P.M. at the spot, crowd was collected and the Policemen had also arrived, he did not disclose to the Police that he himself and Roshan Lal had seen collision because he had lost his mental balance. He admitted that his statements were recorded by the Police during investigation 7-8 days after the incident. The explanation he had given for having not gone to the Police Station was that riot-like situation had arisen in Village -Rama and he was in a state of shock because of the death of his brother. When he was confronted with the case diary statement the witness denied to have stated the Police that accused Vijay Singh had first come out of the dumper empty handed and went back to fetch the gun.

24. The trial Court has discussed the evidence of these two witnesses in Paragraph 72 of its judgment and has come to the conclusion that their testimony did not inspire confidence and could not be relied upon. The reasons given by the trial Court for holding them unreliable were that, they did not inform the Police immediately and having seen the incident, they did not go to the spot even after witnessing the collision, especially, when witness Arjun Lal knew that his brother Shanti Lal was there in the Jeep and he might have been injured, they did not tell any one else about their having seen the incident even after reaching the spot again after one or one and a half hours when many people had collected on the spot and Police had also arrived, and their statements having been recorded by the Police during investigation 7-8 days after the incident. We agree with the trial Court that the testimonies of these two witnesses do not inspire confidence and are not reliable for the reasons given by the trial Court.

25. Manjeet Singh (PW-12) is the only eye-witness whose testimony now remains to be examined. He deposed that he was working as a driver of accused Bhanwar Singh and used to drive the dumper No. RPJ 7601. He had gone on July 10, 1991 to Udaipur to unload the goods there. In the morning of July 11, 1991, accused Bhanwar Singh told him to take the dumper to Rajsamand for bringing marble from there. Then, the witness and accused Vijay Singh went in the dumper to Rajnagar and reached in front of Rajnagar Tehsil at about 10.00 in the morning. Then, they took the dumper back to Udaipur. According to the witness only accused Vijay Singh and Jalam Singh were with him in the dumper at that time and the dumper was being driven by Vijay Singh. As he was feeling drowsy, he climbed inside the body of the dumper. He also stated that there was no weapon in the dumper except a stick. When the dumper reached near Badarda, he was standing inside the body of the dumper and saw a Bus coming from the opposite direction. When the Bus was passing by the side of the dumper, a Jeep coming from behind the Bus tried to over-take suddenly and dished against the dumper in the middle of the road. The witness got thrown away and fell down, suffered fractures in his legs and became unconscious. He regained consciousness when the Police came and was taken to the Hospital. The witness was declared hostile by the prosecution and was cross-examined by the Public Prosecutor. When confronted with his case diary statement, he accepted that he had given statements to the Police but did not know what he had stated. He denied having told the Police many things which were recorded in his statement. Statement u/s 164 of the Code of Criminal Procedure of this witness was also recorded and when confronted with that statement, the witness stated that he had then given the statement which the Police wanted him to give. He stated that when his statement was recorded by the Magistrate in the Hospital at Udaipur, he was not asked anything, only his signatures were obtained. Curiously enough, the Public Prosecutor gave to this witness, a suggestion that he was one of the conspirators with the accused persons in the conspiracy to cause death of the persons in the Jeep. If the prosecution itself, had reached a conclusion that he was involved in the conspiracy along with the accused persons, his testimony would be that of accomplice. u/s 114 of the Indian Evidence Act is a rule of prudence and practice which practically amounts to a rule of law that the evidence of an accomplice ought not to be acted upon unless it is corroborated as against the particular accused in material respects. The corroboration in the case of an accomplice must point to the identification of the person charged with the particular act with which the direct evidence is concerned, the corroboration in material particulars must be such as to connect or identify each of the accused with the offence, the evidence of an accomplice ought to be regarded with suspicion. The degree of suspicion which will attach to it must vary according to the extent and nature of the complicity.

26. Thus if the prosecution believed that Manjeet Singh (PW-12) was an accomplice being involved in the conspiracy in the first place, the prosecution was based on a faulty investigation as the investigation did not proceed on these

lines as Manjeet Singh (PW-12) was not put in the dock as an accused person. Secondly, the testimony is totally uncorroborated by any other evidence so far as the manner in which the collision between two vehicles is concerned the prosecution has not conducted any investigation in order to exclude the possibility that Manjeet Singh (PW-12) the regular Driver of the dumper was not driving the vehicle at the time of the collision. It was all the more necessary when the Police had not even verified as to whether Vijay Singh could drive the dumper at all. The trial Court has partially relied on the testimony of this hostile witness. It has laid stress on the fact that the witness was not cross-examined at all by the accused persons which according to the trial Court would mean that the accused persons admitted his testimony as a whole and had no reason to doubt his testimony the trial Court reached a conclusion on the basis of the statement of Manjeet Singh (PW-12) that accused Vijay Singh was driving the dumper and Jalam Singh was sitting in the cabin. He was not believed by the trial Court on the point of a Bus coming from the opposite side and the accident being caused because the Jeep tried to over-take that Bus.

27. Thus none of the eye witnesses was found to be trust-worthy by the trial Court as an eye witness of the dumper being intentionally dashed against the Jeep by Vijay Singh.

28. Let us now turn to the evidence as to other circumstances of the case.

29. The prosecution has come up with the story that at about 10.00 A.M. Vijay Singh went in the dumper to the Court at Rajsamand, enquired about deceased Sunder Lal and when he found that deceased Sunder Lal and party had not reached there, took the "dumper" in which other accused persons were sitting towards Udaipur with the intention of dashing the "dumper" against the Jeep in which Sunder Lal and others were likely to come from Udaipur with the intention to cause their death. Witnesses have been examined to prove the arrival of the accused persons in the Court at Rajsamand and their enquiring about deceased Sunder Lal and party and after having known that deceased Sunder Lal had not arrived in the Court, going towards Udaipur with the intention of dashing the dumper against their Jeep. Manjeet Singh (PW-12), whose testimony has already been discussed above and who was the regular driver of the dumper has deposed that he was sent to Raj samand with dumper by accused Vijay Singh for bringing Marble. He and accused Vijay Singh went in front of Rajnagar Tehsil at about 10.00 A.M., then they again went back towards Udaipur and at that time, he himself, accused Vijay Singh and Jalam Singh were only there in the dumper and no other accused was there. He also deposed that accused Vijay Singh was driving the vehicle. Radhey Shyam (PW-16), deposed that on July 11, 1991 he had gone to Sessions Court, Rajsamand at 10.00 or 10.30 A.M. He was standing by the pan shop outside the Court and saw a dumper going towards Jal Chakki. It was being driven by Vijay Singh and he had seen Jalam Singh getting in the dumper and that there were four or five other persons in the "dumper" who were not known to him. He could not say whether these persons had gone inside the

Court premises or not. He was declared hostile and was cross-examined by the Public Prosecutor. He denied having made a statement to the Police about the accused persons enquiring about Sunder Lal going to the Public Prosecutor's Office and arrival of Bhanwar Singh there. He further admitted that the Jeep which was involved in the collision was often being driven by Sunder Lal and he used to come to Nathdwara in that Jeep. Chunni Lal (PW-17) was also declared hostile and was cross-examined by the Public Prosecutor. He admitted having come to Rajasamand Sessions Court on July 10, 1991, had not seen any one from both the parties i.e. party of deceased Sunder Lal and party of the accused persons. In his cross-examination, he admitted to have given statement to Police but added that Police had beaten him up and he was caught and taken away by them. He was confronted with his case diary statement but nothing substantially could come out of his cross examination.

30. Umesh Chandra (PW-23) a Constable was posted in a Public Prosecutor's Office at Rajsamand during the relevant time. He deposed that on July 10, 1991 he was posted at the Public Prosecutor's Office in Rajsamand. On that day, the case State v. Sunder Lal and others was posted for hearing but the learned Sessions Judge was on leave. The case was fixed for 11-7-1991 and 12-7-1991 also for prosecution evidence. He further deposed that on July 11, 1991 when he was sitting at about 10.00 A.M. in the Public Prosecutor's Office, four persons came in the Office whose names were not known to him. They asked him whether the accused Sunder Lal and others would come on the date or not, On which he replied that he did not know, since these persons were witnesses in the case, he asked them to read their case diary statements but they did not pay any heed and went away. He further deposed that he did not know, the persons also and would not be able to identify them. Then he heard in the evening about the accident and death of Sunder Lal and others. The witness though he was a Constable in the service of the State Police was declared hostile and cross-examined by the Public Prosecutor. He denied having given statement to the Police that on July 11, 1991, he was standing outside the Court and that he had met accused Vijay Singh, Jalam Singh, Kalyan Singh, Khem Singh, Kishan Singh and Vaje Ram outside the Court and that he knew them and had named them. He also deposed that he had not told the Police that these accused persons had enquired about Sunder Lal. He also denied having told the Police that these accused persons were taken by him to the Public prosecutor's Office and made them read their case diary statements. He also denied that he had given the statement to the Police that these accused persons, replied to him on his asking them to read their case diary statements, that what is there to be read in the statement, they will get Sunder Lal read the statement on that day Obviously this witness is of no help to the prosecution case.

31. While discussing the evidence on the point of the accused persons reaching the Sessions Court at about 10.00 A.M. on July 11, 1991 and enquiring about the deceased, it has to be borne in mind that 10-7-1991, 11-7-1991 and 12-7-1991 were dates fixed for evidence of the prosecution on an earlier date. The

proceedings of the case on 10-7-1991 and 11-7-1991 have been produced as Ex. P/68 and Ex. P/69 in the case. On July 10, 1991 according to Ex.P/68, all the accused person in that case except Nand Lal and Shankar were present. Witnesses Kalu, Kishan Singh, Chunni Lal, Ram Chander and Ratan Singh were also present. The Presiding Officer was on leave and therefore August 21, 1991 was fixed as the next date in the case for evidence of the prosecution. Both the parties i.e. the party of deceased Sunder Lal and the party of the accused persons were therefore knowing that there was no likely hood of the case being taken on July 11, 1991 as the Presiding Officer was on leave. It cannot be therefore said that the accused persons expected deceased Sunder Lal and others to attend the Court on July 11, 1991. The proceedings dated July 11, 1991 also show that the Presiding Officer was on leave and August 22, 1991 was fixed for the evidence of the witnesses who were supposed to be examined on July 11, 1991.

32. Ex.P/71 is a copy of the summons sent to the witnesses by the Sessions Court Rajsamand for appearing on July 11,1991. In that case accused Bhanwar Singh, Vijay Singh and Anandi Lal were cited as witnesses who had to appear on July 11, 1991. Ratan Singh son of Jalam Singh was also a witness summoned on that day. Accused Bhanwar Singh, Vijay Singh and Anandi Lal had therefore reason to go to the Court Rajsamand on that day. It cannot be inferred that they had come to the Court in search of deceased Sunder Lal and his party.

33. Much stress has been laid by the prosecution on the fact that the accused persons went towards Udaipur when they had no obvious reason for going in that direction at that particular time. It was not for the accused persons to provide an explanation for having gone towards Udaipur. It was for the prosecution to prove that their going towards Udaipur cannot be explained on any other count but that they had gone in search of deceased Sunder Lal and party. There is no evidence on record to prove that. Witnesses have not supported the prosecution on this point and it has not been proved beyond reasonable doubt that the accused party had gone in search of the party of deceased Sunder Lal with the intention of causing their death by dashing dumper against the Jeep.

34. The learned trial Court has relied on the testimony of Umesh Chandra (PW-23) for this purpose but even this witness who has turned hostile cannot be believed when he states that he asked the witnesses to see their case diary statements because he must have come to know on July 10, 1991 itself that the Presiding Officer was on leave and evidence was not to be recorded on July 11,1991 also. There was no question of this witness making them read their case-diary statements on July 11, 1991. The trial Court has not reached any definite conclusion on the point also and has observed that it appeared that only Vijay Singh, Bhanwar Singh and Anandi Lal had come as witnesses on July 11,1991 and they might have come to know on reaching Rajsamand that Sunder Lal and party had not reached the Court and then they thought of going towards Udaipur with the possible purpose of settling scores with Sunder Lal and party. This can

hardly be said to be a definite conclusion.

35. In Paragraph-84 of the Judgment of the trial Court, the Court has observed that on the assessment of evidence of Manjeet Singh (PW-12), Radhey Sham (PW-16) and Umesh Chandra (PW-23), it appeared to the Court to be reliable that the dumper was being driven by Vijay Singh at the time of collision and Jalam Singh was present in it, that Jalam Singh had boarded the dumper in Rajsamand sharing the intention of Vijay Singh to go towards Udaipur and settle scores with Sunder Lal and party. The Court also inferred that in order to achieve the common intention Manjeet Singh was removed from the driver seat was made to stand behind the body of the dumper and Vijay Singh took the steering in order to achieve the object. It is difficult to understand as to how common intention to cause death could be inferred from the mere fact of two persons riding in a dumper together. It is beyond comprehension as to how and on what evidence Jalam Singh could be said to be involved in the crime. There is no other act attributed to him or an iota of evidence against him about his common intention to cause death of the deceased persons. His travelling in the cabin along with Vijay Singh who was driving the vehicle side-lining the regular driver would prove nothing against him.

36. We now come to the question of motive which was put in the forefront by the trial Court.

37. The prosecution have examined Roshan Lal (PW-9), Arjun Lal (PW-10), Dali Chand (PW-11), Chunni Lal (PW-17), Nand Lal (PW-19), Tila (PW-20), and Hem Singh (PW-33), on this point.

38. Roshan Lal (PW-9) has stated in his examination-in-chief that there was a land dispute going on between deceased Sunder Lal and accused Bhanwar Singh. He also deposed that an year or an year and a half before the incident, a quarrel had taken place between deceased Sunder Lal and Bhanwar Singh in which firing had taken place. The witness was not cross-examined on the point.

39. Arjun Lal (PW-10) has stated in his examination-in-chief that there was a land dispute between deceased Sunder Lal and accused Bhanwar Singh and a quarrel had taken place one or one and a half years prior to the incident in which a revolver was fired. He was not cross-examined on the point.

40. Dali Chand (PW-11) who is the uncle of deceased Sunder Lal stated in his examination-in-chief that deceased Sunder Lal had purchased a land in Munwas and accused Bhanwar Singh also wanted to purchase that land. After purchasing the land, deceased Sunder Lal had collected stones for putting a boundary wall there and accused Bhanwar Singh also collected stones there. Deceased Sunder Lal asked accused Bhanwar Singh not to put up a boundary wall there. The witness also stated that this quarrel had taken place two to two and half years back. He further stated that after the aforesaid incident, accused Bhanwar Singh had come along with certain persons in a Jeep and at that time Sunder Lal had fired from his revolver in self defence. A case was registered against deceased

Sunder Lal and other in this Court and Sunder Lal had gone to Rajnagar for attending hearing of that case a day earlier to the incident in which he died. The witness further stated that on that day Sunder Lal came in the evening to him and told him that Vijay Singh, Bhanwar Singh, Kalyan Singh, Khem Singh and others have threatened him that they will finish Sunder Lal, the next day.

41. Chunni Lal (PW-17) has turned hostile and not supported the prosecution.

42. Nand Lal (PW-19) is the borther of deceased Sunder Lal. He had lost three brothers in the collision. He deposed that one or one and a half years prior to his death Sunder Lal had purchased a land in Village -Munwas which accused Bhanwar Singh, Kishan Singh, Kalyan Singh wanted to purchase. Deceased Sunder Lal wanted to put a boundary wall on the land and for that purpose had collected stones there. Accused Bhanwar Singh removed the stones from that place and put his own stones there. The enmity started between the parties because of this. He further deposed that on May 17, 1990, accused Bhanwar Singh, Jalam Singh, Vijay Singh, Anandi Lal, Yogesh, Kalu Sanadhya and others entered the house of deceased Sunder Lal armed with weapons and started fighting with Sunder Lal. Sunder Lal had a revolver which he fired in self defence. Kalu Sanadhya was hit in this fire. A case was registered by the Police against Sunder Lal's party and this witness was one of the accused persons. This case was going on in Sessions Court Rajsamand and was fixed on July 10, 1991. The witness had not come on that day as he was in Bombay. He further deposed that in the evening of July 10, 1991, deceased Sunder Lal telephoned him and informed him in Bombay that when he had gone to Rajsamand for the date of hearing, accused persons encircled him and told him that they will finish him within a day or two. He also proved certain documents showing the pendency of a case between the parties in the Sessions Court, Rajsamand. These documents were Ex.P/61 to Ex.P/ 71. In his cross-examination, he admitted that on information being received on July 10, 1991 from Sunder Lal about the threat given to him, he did not advise him to report the matter to the Police but had only advised him to be cautious.

43. Teela (PW-20) who had sold the land in dispute in Village -Munwas to deceased Sunder Lal deposed that he had sold that land to Sunder Lal for Rs. 7000/-. He also deposed that there was a dispute about that land between deceased Sunder Lal and accused persons.

44. Hem Singh (PW-33) was the Patwari of Kailashpuri at the relevant time and Village -Munwas in his circle. He deposed that on Araj Number 1442, area 1.0800 hectares possession of deceased Sunder Lal was recorded in the revenue records. In the cross-examination, this witness stated that according to him Sunder Lal was an encroacher's on the land.

45. From this over-all position in the evidence, there is no doubt that the persons travelling in the Jeep and the accused persons were not on good terms with each other and a dispute as also a Criminal prosecution was going on between them.

The rival parties were led by deceased Sunder Lal on one side and accused Bhanwar Singh on the other side. As already noted, accused Vijay Singh is the son of Bhanwar Singh and accused persons Kalyan Singh, Kishan Singh and Khem Singh are the brothers of Bhanwar Singh. Thus it is an established fact that the parties had strained relation because of the land dispute and because of the prosecution.

46. The question is whether it can be inferred that this was the motive for causing the death of as many as eleven persons putting a dumper on their jeep?

47. There is no tangible evidence of any facts which may lead to such a conclusion. After all the rivalry was not fresh; it was going on for quite sometime before the incident. A prosecution was going on between the parties for sometime and in that prosecution, members of the group led by deceased Sunder Lal were the accused persons. The members of the party led by accused Bhanwar Singh were the prosecution witnesses. If at all any one was seriously prejudiced or would feel aggrieved about the prosecution, they would be the accused persons in that trial and not the complainants and prosecution witnesses in that trial. After all why would the complainant party, which has a chance to get their rival parties behind the bars by giving evidence in the prosecution, would like to eliminate their rivals facing trial? It would have been a different story if there was some evidence on record to show that the complainants in the trial going before the Sessions Judge, Rajsamand had reason to believe or a reasonable apprehension that the accused persons in that trial will in all probability be acquitted and there was no other way to do away with them but to put them to death. Looking to the stage at which the Sessions trial before the Sessions Court Rajsamand was it is not possible to conclude that the accused persons in this case had reached that degree of exasperation or had any reason to believe or to apprehend that the accused persons were in all likely hood to be acquitted and there was no other way except putting a "dumper" on their Jeep, to get them punished or to get rid of them by causing their death some how.

48. In the aforesaid circumstances, it cannot be concluded that the accused persons had the motive to cause the death of deceased Sunder Lal and the members of his group. Previous enmity and rivalry between the parties is a double-edged sword. It may supply in a given case motive to the accused persons to commit the crime but it is equally true that in some circumstances, it may also supply motive to the complainants to falsely implicate their rivals in a criminal prosecution.

49. The learned counsel for the accused persons pointed out and stressed on the several infirmities in the prosecution case and in the investigation, preceding the trial. It was pointed out that there was medical evidence that deceased Ranjeet Singh, the Driver of the ill fated Jeep No. RPJ-5511, had received a gun shot injury in the head. This had not been explained properly by the prosecution. It was contended that autopsy on the body of Ranjeet Singh was conducted by a Medical Board consisting of three Medical Officers viz. Dr. V. K. Khilnani, Dr. S. N.

Sharma and Dr. A. Srivastava. Out of these, Dr. A. Srivastava was the only Medical Officer examined as PW-22. He deposed that injury No. 1 on the body of deceased Ranjeet Singh was 5 cm x 3 cm at the entry point. The corresponding existing entry being injury No. 2 having a wound 8 cm x 6 cm in dimension. It was a through and through injury. According to Dr. A. Srivastava (PW-22), the injury No. 1 was above the right ear which shows that the bullet had entered the point and had gone out through injury No. 2 which was above the right eye brow. According to the witness, the only possibility was that the bullet was fired from behind deceased Ranjeet Singh. The witness also deposed that since there was no blackening at the entry point injury No. 1, the fire arm was fired atleast from a distance of four meters from the deceased, he also deposed that this injury could be caused by piercing of a sharp object in a high speed. The learned counsel for the accused persons submitted that the injury could be caused by a sharp object piercing the head, was an opinion given by the witness in the cross-examination and it could not be accepted because it was contrary to the postmortem report Ex.P/72, conducted by three Medical Officers. The learned counsel for the accused persons submitted that a stray opinion of one of the Medical Officers who conducted the autopsy, directly contradicting the postmortem report Ex. P/ 72, cannot be accepted and according to him it has to be taken that there was a firing just before the collision and because of that firing Ranjeet Singh who was driving the Jeep was hit in the head and lost control of the vehicle resulting in the accident-According to the learned counsel, atleast the possibility of such a thing having taken place has not been obviated by the prosecution he further pointed out that Rajendra Kumar (PW-36), the Investigating Officer admitted in his statement before the Court that after receiving the postmortem report Ex. P/72, he had called for an explanation about the injury No. 1. What clarification was received and whether it was received or not is not put on record. According to the learned counsel for the accused persons, it is a grave lapse on the part of the prosecution, benefit of which must go to the accused persons. It was also pointed out that the learned trial Court did not consider the admission of Rajendra Kumar (PW-36) the Investigating Officer that he did not investigate the case with an angle to exhaust the possibility of deceased Ranjeet Singh who was driving the Jeep being shot from behind and the bullet had hit him from behind. It was also pointed out by the learned counsel for the accused persons that the vehicles were coming from opposite directions and any gun shot injury to Ranjeet Singh who was driving the Jeep from behind his head could not be attributed to any one in the "dumper."

50. It was next contended by the learned counsel for the accused persons that possibility of Driver Ranjeet Singh being hit accidentally by a loaded gun kept in the Jeep itself has not been ruled out it was also pointed out that it cannot be believed that the person driving the "dumper" and those accompanying him would endanger their own lives by causing such a reckless collision with the Jeep. According to the learned counsel, the way in which the collision had taken place shows that the Driver of the "dumper" had not taken any precaution to save

himself from the impact of vehicles. It was further pointed out that if the intention was to cause the death of the occupants of the Jeep, there was no need ab endangering the life of other persons said to be in the "dumper" which could have been achieved by only one person driving the "dumper". It was also pointed out that the main rivalry was between accused Bhanwar Singh and deceased Sunder Lal. It was not likely that Bhanwar Singh would put at stake the life of his own son Vijay Singh by endangering his life in this manner.

51. The learned counsel for the accused persons further pointed out that out of eleven persons travelling in the Jeep, eight persons died on the spot, remaining three were removed alive from the spot and were taken to Hospital. These were deceased Prakash Chuni Das and Sunder Lal. Prakash died in a Hospital at Nathdwara and the autopsy on his body was conducted by Dr. Jagdish Chandra Sharma (PW-35), at Nathdwara. Deceased Sunder Lal died in a Hospital at Rajsamand and deceased Chunni Lal was taken to Udaipur and died there. It was pointed out that the prosecution has not led any evidence to show as to who carried deceased Prakash and deceased Sunder Lal from the spot to the Hospital and whether during that period they were in a position to speak or were unconscious. It was further pointed out that postmortem examination report relating to deceased Chunni Das revealed that Injury No. 1 and 4 on his bodies were stiched wounds which meant that he was treated by some Doctor before his death. The prosecution has not explained as to who carried Chunni Das from the spot to Hospiial whether he was conscious or unconscious or whether he could speak during this time and if he could speak, what was his version about the incident. The question as to who treated him before his death also remains unanswered because it is certain that he was treated by some one before his death because Doctor performing autopsy found two stiched wounds on his body. The postmortem report also revealed that the body was brought for postmortem by one Ramdeo, S. H. O. The S. H. O. Ramdeo was not examined. According to the learned counsel therefore, the possibility of Chunni Das having stated before his death that it was a case of pure accident, cannot be ruled out.

52. It was further pointed out by the learned counsel for the accused persons that in all the inquest reports prepared in respect of all the eleven persons, cause of death was shown as accident. Not only this, Arjun Lal (PW-2), borther of deceased Shantilal was the signatory of inquest report Ex. P/8 in respect of deceased Shanti Lal and in this inquest report also, the cause of death was shown as due to accident. This Arjun Lal (PW-10) was examined eleven days after the occurrence by the Police u/s 161 of the Code of Criminal Procedure and was disbelieved by the trial Judge. At the time of postmortem examination, on the body of deceased Shanti Lal, Arjun Lal (PW-10) identified the body of his brother but even at 3.00 P.M. on July 11, 1991, when the S. H. O. was with him, at the place of postmortem, he did not complain to the S. H. O. that it was not an accident but was a murder. It was thus pointed out that even the brother of one of the deceased believed that it was a case of accident till the afternoon of July 11, 1991. It is also pointed out, that when the First Information Report is

said to have been lodged at 1.30 P.M. on July 11, 1991 showing it to be a cease of murder and not of accident, at the postmortem examination report prepared on July 11, 1991 after 1.30 P.M. and on July 12, 1991 mentioned the cause of death as accident. According to the learned counsel for the accused persons, this throws a grave doubt on the timing of the lodging of the First Information Report also.

53. It was further pointed out that the possibility that witness Manjeet Singh (PW-12), the regular Driver of the "dumper" was himself driving the "dumper" at the time of collision had not been ruled out. It is submitted that the Special Public Prosecutor filed an application u/s 319 of the Code of Criminal Procedure before the trial Court on October 12, 1992 to take cognizance against Manjeet Singh also but later on, the application was withdrawn. This coupled with the suggestion given to Manjeet Singh (PW-12), in his cross-examination by the Special Public Prosecutor after he was declared hostile that he was involved in the conspiracy to murder along with eight accused persons shows that he was taken to be an accomplice by the prosecution. According to the learned Counsel the testimony of this witness has to be discarded and could not have been used against the accused persons. It was further pointed out that driving licence of Manjeet Singh (PW-12) was found in the "dumper" and the medical evidence of Dr. G. L. Dad (PW-28) also was that the injuries received by Manjeet Singh (PW-10) were such which could be received by the Driver of the vehicle, if there was collision between the vehicle he was driving and another vehicle. It was further pointed out in his statement u/s 313 of the Code of Criminal Procedure that accused Vijay Singh had said that he did not know how to drive a heavy vehicle like a "dumper". There is no evidence placed by the prosecution to show that Vijay Singh could drive the "dumper." It was further pointed out that Manjeet Singh (PW-12) got injured in the leg as a result of the collision. He is not said to be taken in the Jeep by the accused Bhanwar Singh, the prosecution has put nothing on record as to who carried him from the spot to the Hospital. The Doctor who examined his injuries first in point of time has also not been examined and even the Magistrate before whom his statement u/s 164 of the Code of Criminal Procedure was recorded on July 13, 1992, was also not examined. It was also contended that statement of Manjeet Singh, that he was feeling drowsy and therefore, he climbed the body of the "dumper" clearly falsifies his entire testimony as no one feeling drowsy would climb the body of the "dumper" and stand there facing towards the direction the "dumper" was going on and be a witness to the accident which took place as described by him. It was therefore, contended that the entire testimony of Manjeet Singh (PW-12) was wholly unreliable and the trial Court could not rely only on those portions of his testimony which went against the accused persons. According to the learned counsel for the accused persons, the testimony of Manjeet Singh (PW-12) was wholly unreliable for the reason that not only that he has disowned statement before the Police but also disowned his statement u/s 164 of the Code of Criminal Procedure before the Magistrate. The prosecution failed to examine the

Magistrate even when Manjeet Singh (PW-12) had disowned the fact that he had given any such statement before the Magistrate. The learned counsel for the accused persons submitted that in such circumstances, the prosecution has miserably failed to prove the charges against the accused persons.

54. In view of the findings we have reached on the assessment of evidence as also for the weighty reasons pointed out by the learned counsel for the accused persons, we are of the view that the prosecution has miserably failed to prove the charges against the accused persons beyond reasonable doubt.

55. It appears that the prosecution was based on a grave suspicion arising out of the fact that the two colliding vehicles carried members of the rival parties. Public out-cry and general belief that it could not have been an accident but a deliberate act of causing death also seems to have played their role. This can be inferred from the initial reaction of the informant and investigators. The theory of murder was developed after a couple of hours after the collision. It is likely that because of this delay efforts to take down the first hand version from the three victims who were removed alive from the spot to hospitals were not made. Be that as it may be, we cannot allow even a grave suspicion to take place of proof and have to conclude that the prosecution has failed to bring home the charge to the accused persons. It also baffles us as to why the accused persons would chase the deceased on the date of the case alone when the evidence is that deceased Sunder Lal used to move about freely in the Jeep very often and the deceased were not keeping themselves in hiding so that they would not be available on any other day.

56. The conviction and the sentences against accused Vijay Singh son of Bhanwar Singh and accused Jalam Singh cannot therefore be sustained. For the same reasons there is no force in the appeal against acquittal of the rest of the accused persons. As the conviction is being set aside, Murder Reference No. 1/94 has to be answered in the negative. Appeals of Vijay Singh and Jalam Singh deserve to be allowed. The State Appeal against the acquittal of Bhanwar Singh, Kalyan Singh, Kishan Singh, Khem Singh, Vaje Raj and Anandi Lal deserves to be rejected.

57. In the result, D. B. Criminal Appeal Nos. 422/94, 423/94 and 425/94 are allowed and conviction and sentences passed against accused Vijay Singh and Jalam Singh are set aside. Consequently Murder Reference No. 1/94 is rejected and death sentence is not confirmed. D. B. Criminal Appeal No. 335/95 preferred by the State of Rajasthan against the acquittal of Bhanwar Singh, Kalyan Singh, Kishan Singh, Khem Singh, Vaje Raj and Anandi Lal is dismissed.

58. Appellants Vijay Singh and Jalam Singh are in Jail. They shall be set at liberty forthwith, if not required in any other case.

59. The bonds executed by Bhanwar Singh, Kalyan Singh, Kishan Singh, Khem Singh, Vaje Raj and Anandi Lal before this Court shall stand discharged.