
(2011) 02 CHH CK 0044
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 572 of 2004

Vinita Singh

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34, 404

Citation : (2011) 3 CGLJ 231

Hon'ble Judges : T.P. Sharma, J; Rajeshwar Lal Jhanwar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—Criminal Appeal Nos. 572/2004 & 559/2008 filed on behalf of Appellants Vinita Singh and Anil Sharma against the judgment of conviction and order of sentence dated 29.3.2004 passed by the Additional Sessions Judge, Korba in Sessions Trial No. 356/2003 are being disposed of by this common judgment.

2. By the aforesaid two appeals, the Appellants have challenged legality & propriety of the judgment of conviction and order of sentence dated 29.3.2004 passed by the Additional Sessions Judge, Korba in Sessions Trial No. 356/2003, whereby & whereunder learned Additional Sessions Judge after holding the Appellants guilty for commission of culpable homicide amounting to murder of Ashok Singh by Appellant Anil Sharma in sharing common intention with co-Appellant Vinita Singh under conspiracy, concealing evidence of criminal case and dishonest misappropriation of property possessed by the deceased at the time of his death convicted Appellant Anil Sharma under Sections 302, 120-B, 201 & 404 of the I.P.C. and Appellant Vinita Singh under Sections 302/34, 120-B, 201/34 & 404 of the I.P.C. and sentenced them to undergo imprisonment for life and fine of Rs. 1000/-, in default of payment of fine to further undergo S.I. for three months, imprisonment for life and fine of Rs. 100/-, in default of payment of fine

to further undergo S.I. for fifteen days, R.I. for three years and fine of Rs. 300/-, in default of payment of fine to further undergo S.I. for one month and R.I. for three years and fine of Rs. 300/-.

3. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the Appellants as aforementioned and thereby committed illegality.

4. As per case of the prosecution, Appellant Vinita Singh, wife of deceased Ashok Singh was residing with Ashok Singh in his matrimonial house at village Gangapur, Appellant Vinita Singh was having love affair with co-Appellant Anil Sharma and Anil Sharma used to visit the house of Appellant Vinita Singh frequently. Both the Appellants entered into an illegal agreement and in conspiracy to kill deceased Ashok Singh and in furtherance of the aforesaid conspiracy on 27.1.2003 at about 10 p.m. Appellant Anil Sharma took deceased Ashok Singh in his motor-cycle from the house of Appellant Vinita Singh, on a way Appellant Anil Sharma stopped motor cycle and caused fatal injuries to Ashok Singh by knife, thereafter, he dragged body of Ashok Singh beside the road and with a view to destroy evidence of criminal case under conspiracy with Appellant Vinita Singh poured petrol over his face and burn him badly, thereafter, both the Appellants sold motor cycle of the deceased. In furtherance of conspiracy Appellant Vinita Singh went to the house of Girijanand Singh (PW-3) at Ambikapur and informed him that Ashok Singh has gone somewhere by motor cycle but he did not return back from 27th January, 2003. Girijanand Singh (PW-3) informed the same thing to father of deceased Ashok Singh i.e. Laxman Singh (PW-1). Laxman Singh made search of his son, then went to Police Station Jainagar and lodged missing report. He also visited the house of Appellant Vinita Singh whom Vinita Singh told that on 27.1.2003 at about 6 a.m. Ashok Singh left the house by motor cycle, thereafter he did not return back. Missing report was lodged on 11.4.2003 vide Ex.P/14. On 29.1.2003 i.e., just two days after the incident burnt dead body of one male was seen between Chachiya and Toulipali. Rupdas (PW-8) intimated the merg to Police Station Kartala vide Ex.P/6. Investigating officer after summoning the witnesses prepared panchnama of dead body of unknown person vide Ex.P/ 7 and described symptom found over dead body which reveals that injury by sharp edged weapon was found over neck, chest, elbow joint, thigh and different part of the body. Dead body was burnt. Bloodstained and plain soil, pair of shoe, socks, half burnt sweater and other articles were seized from the spot vide Ex.P/9. Photograph of dead body was taken vide Article 10. Dead body was sent for autopsy to Primary Health Centre, Kartala vide Ex.P/27. Dr. S.A. Siddique (PW-2) conducted autopsy vide Ex.P/2 and found following injuries/symptoms.

(i) Body was burnt up to chest

(ii) Thirteen injuries were found over the body,

(iii) Injures were found over neck, chin, left shoulder, right leg and back.

Injuries were caused by sharp edged weapon and death was homicidal in nature. Kartala police was investigated the offence relating to murder of unknown person and F.I.R. Ex.P/18 was registered. During the course of investigation Jainagar police informed Kartala Police relating to the Appellants, then clothes and articles recovered from the spot were placed for identification. Laxman Singh (PW-1) identified the aforesaid clothes and articles as clothes and articles of Ashok Singh vide Ex.P/1. Accused Anil Sharma was taken into custody, he made disclosure statement of motor cycle and knife vide Ex.P/13. Knife was seized vide Ex.P/14 at the instance of Appellant Anil Sharma. Yamha Crux motor cycle No. CG15-2191 was seized at the instance of Appellant Anil Sharma from Dakeshwar Kumar vide Ex.P/16 along with registration and insurance as Articles 8 and 9. Hotel register was seized vide Ex.P/11. Copy of entry is Article 7. Spot panchnama was prepared vide Ex.P/19. Three accused were arrested including Jainarayan Sharma vide arrest Memo Exs.P/20, P/21 and P/22. On 16.3.2003 both Appellants went to the shop of Surendra Kumar (PW-14), who runs Auto Parts Shop, for repairing of Yamha Crux motor cycle, Appellant Anil Sharma introduced himself as Ashok Singh and requested for repair of motor cycle. After repair of such motor cycle, Appellants shown their intention that they want to sell their motor cycle. Earlier friend of Surendra Kumar i.e., Dakeshwar Kumar (PW-13) has shown his intention to purchase motor cycle, then Surendra Kumar (PW-14) informed Dakeshwar Kumar (PW-13) that the present Appellant is intending to sell his motor-cycle. Negotiation took place at Barpali relating to purchase of motor cycle and finally present Appellant Anil Sharma who introduced himself as Ashok Singh went to Balco where finally they agreed to sell motor cycle for consideration of Rs. 18,500/-. Dakeshwar Kumar (PW-13) immediately paid Rs. 15,000/- to present Appellant Anil Sharma and rest amount was agreed to pay after obtaining signature of owner of the vehicle from RTO. Motor cycle was handed over to Dakeshwar Kumar (PW-13). The Appellants were required to come at Korba Bus Stand for providing sign in papers. Dakeshwar Kumar was required to pay remaining amount after obtaining aforesaid papers. Document was executed as Ex.P/12, thereafter Appellant did not come to Bus Stand Korba. On 29.3.2003 Appellant Anil Sharma along with co-Appellant Vinita Singh went to Pratap Lodge, Katghora where they stayed till 31.3.2003, they informed that they are family members. Their entry was recorded in Article 7. Seized articles were sent for chemical examination vide Ex.P/23 and presence of blood was confirmed over knife recovered from Appellant Anil Sharma vide Ex.P/24.

5. Statements of the witnesses were recorded u/s 161 of the Code of Criminal Procedure and after completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Korba, who in turn committed the case to the Court of Sessions, Korba, from where learned Additional Sessions Judge, Korba received the case on transfer for trial.

6. In order to prove the guilt of the accused/Appellants, the prosecution has examined as many as twenty one witnesses. Accused/Appellants were examined

u/s 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question. The Appellants have examined defence witness Durg Prasad Rathiya (DW-1) who has deposed that while he was coming from Kudamura after attending Jilla Panchayat meeting, he and Santosh Mishra were stopped by inspector of Police Station Kartata to obtain sign on papers on the pretext that they have arrested accused and have recovered knife from them, but actually they have not seen any knife.

7. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge, Korba convicted and sentenced the Appellants as aforementioned.

8. We have heard Mr. H.V. Sharma, counsel for the Appellant in Cr.A. No. 572/2004, Mr. Abhay Tiwari, counsel for the Appellant in Cr.A. No. 559/ 2008, Mr. D.K. Gwalre. Govt. Advocate with Mr. Sanjeev Kumar Agrawal, Panel Lawyer for the State/Respondent, perused the judgment impugned and record of the trial Court.

9. Mr. H.V. Sharma, learned Counsel for Appellant Vinita Singh vehemently argued that after leaving of house by her husband Ashok Singh she informed within two days to cousin brother of Ashok Singh i.e., Girijanand Singh (PW-3) who immediately informed the same to father of deceased Ashok Singh i.e. Laxman Singh, but father of Ashok Singh was not serious, he has not made any search of his son. Appellant Vinita Singh was helpless. As per missing report, Laxman Singh has lodged the report on 11.4.2003, after lapse of more than three months, in these circumstances, if any help has been taken by her from co-Appellant Anil Sharma, that would not constitute any offence, she was compelled to take assistance from other persons, in these circumstances when family members have not given any assistance or help even after lapse of three-four months of missing of her husband. Learned Counsel further argued that evidence adduced on behalf of the prosecution is even, prima facie, not sufficient for suspicious that the Appellants may have committed the offence. The prosecution has utterly failed to prove the offence beyond shadow of doubt.

10. Mr. Abhay Tiwari, learned Counsel for Appellant Anil Sharma vehemently argued that the present Appellant has been convicted on the basis of circumstantial evidence and on the ground of conspiracy and the prosecution has not collected direct evidence against him. In order to convict the accused on the basis of circumstantial evidence, the prosecution is required to satisfy the following circumstances.

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

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other

hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved;
and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In order to prove conspiracy, the prosecution is required to prove that both the Appellants were having sufficient time for agreement, they actually entered into agreement to commit some offence and in furtherance of such agreement they have committed some offence. As per evidence collected on behalf of the prosecution, Ashok Singh was missing from his house since 27.1.2003, one burnt & injured dead body was found on 29.1.2003 and it was not identified on the date of recovery of dead body, even as per evidence of Dr. S.A. Siddique (PW-2), body was not identifiable on account of badly burnt condition, thereafter motor cycle has been recovered from Dakeshwar Kumar along with sale agreement Ex.P/12 which reveals that some Ashok Singh has sold the vehicle and not by Appellant Vinita Singh or Anil Sharma. As per record of the lodge, Anil Sharma stayed in the lodge along with his wife but the prosecution has not proved the fact that Appellant Anil Sharma has stayed with present Appellant Vinita Singh and he has introduced Vinita Singh as his wife. Family does not include wife and it includes other members of the family, even if it is presumed that after one and half months of such incident of missing or murder of Ashok Singh, if Vinita Singh has stayed with Anil Sharma who is known to her for search of her husband, then same cannot be treated as offence, especially when after informing father of the deceased by Appellant Vinita Singh, father of the deceased or other relatives has not taken any action for search of Ashok Singh, in these circumstances, any assistance or help given by Anil Sharma would not constitute the offence of murder and conspiracy, they have not sold motor cycle to any person and he has not committed any offence.

11. On the other hand, learned State counsel opposed the appeals and argued that Ashok Singh (since deceased) was living with Vinita Singh. As per her husband, he left her house on 27.1.2003 and did not return back, she has informed to Girijanand Singh (PW-3), cousin brother of Ashok Singh within few days, police has arrested her on 17.6.2003 after four and half months, after leaving the house by her husband she visited Katghora lodge and stayed with co-accused Anil Sharma, she has sold motor cycle in the month of March, 2003 which as per her allegation her husband has taken with him at the time of leaving his house which was not possible for her to sale such motor cycle when same was not within her possession, she has visited different places and she stayed in lodge but she has not intimated the police relating to missing of her husband. These circumstances coupled with evidence collected on behalf of the

prosecution are sufficient for drawing inference that both the Appellants entered into conspiracy for commission of murder of Ashok Singh and in furtherance of conspiracy they have murdered Ashok Singh and have concealed the evidence of criminal case, they have also sold motor cycle/property to Dakeshwar Kumar which was possessed by deceased Ashok Singh. These facts are sufficient for conviction of the Appellants as aforementioned and after appreciating the evidence available on record the trial Court has rightly convicted and sentenced the Appellants as aforementioned.

12. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence adduced on behalf of the prosecution and defence.

13. As per evidence of Rupdas (PW-8) and Makhan Lal (PW-9), one unknown dead body of male was lying between Chechiya and toulipali beside the road, then Rupdas (PW-8) informed the police vide Ex.P/6. Police prepared inquest vide Ex.P/7. As per Ex.P/9, bloodstained & plain soil, one pair shoe, one pair socks, half burnt sweater, half burnt inner stained with blood were recovered from the spot at the time of inquest. These facts are un rebutted. As per Dr. S.A. Siddique (PW-2), he has conducted autopsy vide Ex.P/2 of unknown dead body and found thirteen injuries by sharp edged weapon and body was partially burnt. Photographer Arvind Kashyap (PW-17) has deposed in his evidence that he has taken photograph of the dead body vide Article 10. At the time of recovery of dead body, inquest and autopsy, dead body was unknown but pair of shoe and socks found over the body, half burn inner and sweater of the deceased person near the place of incident. As per para 7 of evidence of Laxman Singh (PW-1), father of deceased Ashok Singh, he has identified clothes of the deceased and Article 7 photograph of burnt dead body and has identified the same as clothes of deceased Ashok Singh and he has also identified the dead body on the basis of photograph on the basis of special feature of teeth shown in photograph vide Article 10. Para 11 of his cross-examination, he has again repeated that he has not seen the dead body of his son but has seen photograph of his son and he has identified on the basis of photo of teeth. He has also admitted that teeth found in the photograph may also find in the body of other persons but has specifically deposed that he has identified the photograph of dead body on the basis of teeth that photo is of his son deceased Ashok Singh. Defence has not asked anything relating to identification of the clothes of the deceased and in absence of any contrary circumstances or evidence, the only presumption would be legally possible that dead body found on 29.1.2003 was of Ashok Singh, son of Laxman Singh (PW-1) and husband of Appellant Vinita Singh. As per evidence of Dr. S.A. Siddique (PW-2), death was homicidal in nature. Ashok Singh was died between 27.1.2003 and 29.1.2003, his dead body was found between Chachiya and Toulipali beside the road and death of Ashok Singh was homicidal in nature.

14. As regards the complicity of the Appellants in the crime in question, conviction is substantially based on circumstantial evidence. In case of conviction based on circumstantial evidence, the prosecution is required to satisfy the

following circumstances.

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

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

15. In the present case, the prosecution has tried to prove the following facts.

(i) Ashok Singh was residing with Appellant Vinita Singh.

(ii) Vinita Singh was love affair with Appellant Anil Singh.

(iii) Since 27.1.2003 Ashok Singh was missing with his motor cycle from the house of Appellant Vinita Singh where he was residing with his wife Vinita Singh.

(iv) His murdered dead body was found on 29.1.2003 between Chechiya and Toulipali beside the road.

(v) Vinita Singh, wife of Ashok Singh, has not lodged any report till her arrest.

(vi) Motor cycle which was taken by deceased Ashok Singh as per allegation of Appellant Vinita Singh was sold by Vinita Singh and present Appellant Anil Sharma introducing himself as Ashok Singh to Dakeshwar Kumar (PW-13).

(vii) Present Appellant Anil Sharma executed agreement to sell of motor cycle vide Ex.P/12, in which he has signed as Ashok Singh.

(viii) Present Appellant Anil Sharma along with Vinita Singh stayed in Pratap Lodge at Katghora on 29.3.2003 to 31.3.2003, in which Anil Sharma has shown himself as Ashok Singh and Vinita Singh is family of Anil Sharma.

(ix) Present Appellants have provided Articles 8 and 9 of registration book and insurance book of motor cycle to Dakeshwar Kumar at the time of such sell of motor cycle.

(x) Motor cycle and knife have been recovered at the instance of Appellant Anil Sharma.

16. As per evidence of Girijanand Singh (PW-3), cousin of deceased Ashok Singh, in February, 2003 Appellant Vinita Singh came to his house and told that her

husband Ashok Singh has left her house and has told that he is going to village Kharra to his father's elder brother house by Yamha Crux motor cycle but he did not return back since last four days. Then he narrated the same fact to Laxman Singh (PW-1) that Ashok Singh has left his house on 27.1.2003 for Kharra by Yamha Crux motor cycle and has not come back till today. Laxman Singh made search of his son and finally, he lodged report in Police Station. Defence has cross-examined this witness at length but has not asked anything relating to the fact that Appellant Vinita Singh has not informed such facts to him, even this fact has not admitted by Appellant Vinita Singh while answering question Nos. 8, 9 and 10 in her examination u/s 313 of the Code of Criminal Procedure

17. Sumitra Singh (PW-5), mother of Appellant Vinita Singh has deposed in para 3 of her evidence that on 26th after flag hosting Ashok Singh left his house and went to village Kharrapara from Gangapur but he did not return back. She has also corroborated the factum of identification of the articles of deceased Ashok Singh at Police Station Korba vide Ex.P/1. Nothing has been asked to this witness by the defence relating to the fact that on 26th her son-in-law i.e., Ashok Singh has not left her house for Kharrapara.

18. Laxman Singh (PW-1), father of deceased Ashok Singh, has also corroborated the fact that he was informed by Girijanand Singh on about 2nd or 3rd February, 2003 that he was informed by Appellant Vinita Singh that Ashok Singh has left his house by motor cycle for village Kharra but he did not return back. He has further deposed that thereafter he went to village Gangapur, he asked Appellant Vinita Singh, then she told that on 27th January at about 6 a.m. Ashok Singh has left her house for Kharra by motor cycle but he did not return back, then he told to Appellant Vinita Singh to accompany him for Bishanpur which she refused and told that she will come on Monday, thereafter he came to know about death of his son. He further deposed that he directed Vinita Singh to go and stay with him at Bishanpur, then she told that she will come on Monday but she did not come, then he again went to Gangapur on Sunday, at that time Vinita Singh was not present in her house and then he came to know that she has gone with Appellant Anil Sharma, he asked to mother of Appellant Vinita Singh whom she told that she has gone to hospital for treatment. When it was inquired then he found that she has not gone to hospital, then he doubted upon the activity of Appellant Vinita Singh. In para 8 of his cross-examination he has also deposed that Appellant Anil Sharma frequently used to visit his house along with his son Ashok Singh and daughter-in-law Vinita Singh.

19. Subhash Kumar Singh (PW-11), younger brother of deceased Ashok Singh has substantially corroborated the aforesaid witness relating to missing of his brother and search of his brother.

20. As per second set of evidence relating to selling of motor cycle, the prosecution has examined Surendra Kumar (PW-14) and Dakeshwar Kumar (PW-13). Surendra Kumar (PW-14), owner of Auto Parts Shop, Barpali in his evidence has deposed that in the month of March, 2003 he was sitting in his

shop where Appellant Vinita Singh and present Appellant Anil Sharma came to his shop and requested for repair of Yamaha Crux motor cycle which was repaired, Appellant Anil Sharma introduced himself as Ashok Singh, thereafter they shown their intention to sell motor cycle because earlier Dakeshwar Kumar (PW-13) his friend has also shown his intention to purchase motor cycle. He informed Dakeshwar Kumar that present Appellant Anil Sharma who has introduced himself as Ashok Singh is ready to sell motor cycle, thereafter negotiation took place at Barpali, Dakeshwar Kumar (PW-13) went with Appellants to Balco, Appellant Anil Sharma also introduced himself as Ashok Singh at Balco and he agreed to sell motor cycle on consideration of Rs. 18,500/- in his presence, thereafter Dakeshwar Kumar paid him Rs. 15,000/- and agreed to pay remaining Rs. 3500/- at the time of providing sign in RTO by Vinita Singh, owner of the vehicle, he called them at Korba Bus Stand, but they did not reach Korba, at that time sell letter was written vide Ex.P/12 and Anil Sharma signed over Ex.P/12 in the name of Ashok Singh. Dakeshwar Kumar (PW-13) has corroborated the evidence of Surendra Kurhar (PW-14) and has also deposed that document Ex.P/12 was written at the instance of Appellant Anil Sharma. After sometime police came and asked, then he informed that he has purchased the vehicle from Ashok Singh. Thereafter vehicle was seized vide Ex.P/13. In para 5 of cross-examination of Surendra Kumar (PW-14) he has deposed that stamp of Ex.P/12 was brought by Dakeshwar Kumar (PW-13) from Balco. In para 6 he has denied the suggestion that present Appellant Anil Sharma was not present at the time of negotiation and has also denied the suggestion that husband of Vinita Singh i.e. Ashok Singh was present and he has paid the amount to husband of Vinita Singh. Defence has cross-examined Dakeshwar Kumar (PW-13) at length. In his detailed cross-examination he has specifically deposed that he has purchased the vehicle from Appellant Anil Sharma who has introduced himself as Ashok Singh and signed on Ex.P/12 as Ashok Singh.

21. Definitely, present Appellant Anil Sharma has not been subjected to identify by this witness, but they have been identified these Appellants Vinita Singh and Anil Sharma in the Court at the time of evidence. Dock identification is substantive piece of evidence and test identification parade is corroborative piece of evidence and requires with a view to ensure the fact that investigation is going towards right side. In absence of conduction of test identification parade by itself is not fatal to the prosecution if the persons identified the accused during the course of evidence in the Court on the basis of their previous opportunity to see them. Evidence of these witnesses clearly reveal that they have not casually seen the Appellants but both the Appellants were present for long time before Surendra Kumar (PW-14) in his shop in connection with repair of their motor cycle, they discussed about selling of their motor cycle, then negotiation took place before him and Appellant Anil Sharma also went Balco with him and document Ex.P/12 was prepared, Anil Sharma has signed over the document as Ashok Singh. This evidence shows that Surendra Kumar (PW-14) and Dakeshwar Kumar (PW-13) were having sufficient opportunity to see both the Appellants to

watch their conduct to obtain their signature to provide cost of motor cycle and this sufficient time was sufficient for their identification before the Court. Evidence of Surendra Kumar (PW-14) and Dakeshwar Kumar (PW-13) are sufficient for drawing definite conclusion that present Appellants Vinita Singh and Anil Sharma have sold Yamha Crux No. C.G. 15-2191 to Dakeshwar Kumar (PW-13) in which Anil Sharma has introduced himself as Ashok Singh, husband of Vinita Singh. Stamp was also purchased in the name of Vinita Singh from Katghora, that too on 16.3.2003, much before arrest of the Appellants. This shows that Ex.P/12 has not concocted after arrest of the present Appellants.

22. As regards another set of evidence relating to stay of the Appellants at Pratap Lodge, Katghora, the prosecution has examined Lalchand (PW-19), Manager of Pratap Lodge, Katghora who has deposed that present Appellant Anil Sharma came along with Appellant Vinita Singh in his lodge on 29.3.2003 where they stayed and the police has seized register vide Ex.P/11. Siddarth (PW-12) has deposed in his evidence that police has seized Article 7 relating to entry dated 29.3.2003 which reveals that Ashok Singh of Surajpur has stayed in said lodge which has been seized vide Ex.P/11. As per his evidence he has not seen the accused persons. Defence has cross-examined this witness at length. He has specifically deposed that the Appellants had stayed in his lodge. In para 7 of his cross-examination, he has denied the suggestion that Appellant Anil Sharma and Appellant Vinita Singh have not stayed in his lodge.

23. Durga Prasad Rathiya (DW-1) has deposed that police has obtained signature upon the papers after informing him that they have arrested the accused and seized knife but actually the police has not seized anything before him. As per his evidence he was returning after attending Jilla Panchayat meeting appears that he is qualified person, he has not stated anything in his evidence that when articles were not seized before him then how he has signed the papers. This shows that he is concealing the truth and his evidence cannot be used in favour of defence or in favour of the prosecution.

24. Sumitra Singh (PW-5), mother of Appellant Vinita Singh and mother-in-law of deceased Ashok Singh has deposed that her son-in-law Ashok Singh went for Kharra but he did not return back. The prosecution has declared her hostile. In para 6 of her evidence she has deposed that there was friendship between Ashok Singh and Appellant Anil Sharma, they used to visit the house of each other. Same thing has not been contradicted in his cross-examination and the aforesaid fact is unrubutted in the evidence of Sumitra Singh (PW-5), but while answering question Nos. 5 and 6 Appellant Anil Sharma has denied the fact that he used to visit the house of Ashok Singh and Ashok Singh used to visit his house. Appellant Vinita Singh has also denied this fact while answering question Nos. 5 and 6 in her examination u/s 313 of the Code of Criminal Procedure

25. In case of criminal conspiracy, normally direct evidence against conspirer would not be possible and the Courts are required to consider the entire circumstances relating to commission of conspiracy, meeting of mind and result.

26. Evidence adduced on behalf of the prosecution proves the following facts;

(i) Ashok Singh was present on 27.1.2003 in his house at Gangapur, he was residing at Gangapur with his wife Appellant Vinita Singh.

(ii) Present Appellant Anil Sharma used to visit the house of Ashok Singh and Ashok Singh also used to visit his house, but both the Appellants have deliberately denied this fact in their examination u/s 313 of the Code of Criminal Procedure

(iii) From 27.1.2003 deceased Ashok Singh along with his motor cycle Yamha Crux, on 29.1.2003 badly injured and half burnt body was found between Chachiya and Toulipali beside the road and finally same was identified on the basis of articles found on the dead body and near the dead body as the dead body of Ashok Singh (since deceased).

(iv) As per medical evidence, Ashok Singh died as a result of homicidal death.

(v) Appellant Vinita Singh has informed cousin brother of Ashok Singh i.e. Girijanand Singh within few days of 27.1.2003 that Ashok Singh has left his house by motor cycle for Kharra who is resident of village Bishanpur where father of deceased Ashok Singh was residing.

(vi) Girijanand Singh (PW-3) informed the aforesaid fact to father of Ashok Singh i.e. Laxman Singh (PW-1).

(vii) Laxman Singh made search of his son and visited the house of Appellant Vinita Singh at Gangapur and interrogated her.

(viii) Appellant Vinita Singh informed him that on 27.1.2003 at about 6 a.m. Ashok Singh has left her house by Yamha Crux motor cycle for village Kharra.

(ix) Laxman Singh directed Appellant Vinita Singh to go to his house, then she told that she will come on Monday but she did not go to the house of Laxman Singh at Bishanpur.

(x) Again Laxman Singh visited Gangapur, resident of Appellant Vinita Singh on Sunday but Vinita Singh was not present in her house.

(xi) Laxman Singh was informed that Vinita Singh has gone with Anil Sharma. When Laxman Singh asked to Sumitra Singh (PW-5), mother of Appellant Vinita Singh then she told that after telling her that she is going for getting injection she has gone.

(xii) Laxman Singh inquired from maternal uncle of Appellant Vinita Singh, then he was informed that Vinita Singh has not come to hospital.

(xiii) In the aforesaid circumstances, Laxman Singh doubted about the activity of Appellant Vinita Singh.

(xiv) On 16.3.2003, both the Appellants were in possession of Yamha Crux motor

cycle No. C.G.15-2191 which was allegedly taken by deceased Ashok Singh as per statements given to Laxman Singh (PW-1) and Girijanand Singh (PW-3) by Appellant Vinita Singh.

(xv) The Appellants had sold motor cycle to Dakeshwar Kumar (PW-13). At the time of such transaction and repair of motor cycle Appellant Anil Sharma in presence of Appellant Vinita Singh introduced himself as Ashok Singh to Dakeshwar Kumar (PW-13) and Surendra Kumar (PW-14).

(xvi) Appellant Anil Sharma executed sale deed of motor cycle vide Ex.P/12 and signed as Ashok Singh.

(xvii) On 29.3.2003 Appellant Anil Sharma along with Appellant Vinita Singh went Pratap Lodge, Katghora where they stayed till 31.3.2003 and both the Appellants have introduced Anil Sharma as Ashok Singh and Appellant Vinita Singh as family of Ashok Singh.

27. If the aforesaid circumstances are considered together, then only inference would be possible that both the Appellants have offered false explanation that Anil Sharma do not visit the house of Appellant Ashok Singh or father of Ashok Singh, Ashok Singh has been killed between 27.1.2003 and 29.1.2003, Appellant Anil Sharma was in habit to visit the house of Appellant Vinita Singh, instead of informing the police or directly to her father-in-law Appellant Vinita Singh has informed Girijanand Singh (PW-3) relating to missing of her husband Ashok Singh, she denied to go with her father-in-law and within short time she left her house and went with Appellant Anil Sharma and falsely informed her mother Sumitra Singh (PW-5) that she is going for getting injection to hospital, motor cycle which would not to have been possessed of the aforesaid Appellants, in case same was taken out by deceased Ashok Singh, was found in possession of both the Appellants which they have sold to Dakeshwar Kumar (PW-13) on 16.3.2003 introducing Appellant Anil Sharma as Ashok Singh and on 29.3.2003 both the Appellants again introduced themselves as family members and Anil Sharma as Ashok Singh, husband of Appellant Vinita Singh and they stayed for three days and there was no such propriety for their stayed in any lodge.

28. These circumstances only lead and point out the fact that both the Appellants have entered into illegal agreement and committed conspiracy for commission of murder of Ashok Singh and as a result of such conspiracy Ashok Singh was killed, knowing well the fact that Ashok Singh has been killed present Appellants have tried to mislead father and other relatives of Ashok Singh including mother of Appellant Vinita Singh, knowing well the fact that Ashok Singh has been murdered they have sold the property i.e., motor cycle of deceased Ashok Singh.

29. In these circumstances, the only inference would be possible that the present Appellants are the persons who have committed culpable homicide amounting to murder of Ashok Singh in furtherance of conspiracy and were in possession of the property of the deceased which was in possession of the deceased which they have sold.

30. After appreciating the evidence available on record, learned Additional Sessions Judge has convicted Appellant Anil Sharma under Sections 302, 120-B, 201 and 404 of the I.P.C. and Appellant Vinita Singh under Sections 302/34, 120-B, 201/34 and 404 of the I.P.C. and sentenced them as aforementioned. Conviction of the Appellants is based on credible, clinching and legal evidence sustainable under the law.

31. On close scrutiny of the evidence, we do not find any illegality in the conviction and sentence imposed upon the Appellants.

32. Consequently, Criminal Appeal Nos. 572/2004 and 559/2008 being devoid of merit are liable to be dismissed and are accordingly dismissed.