

(2015) 10 SHI CK 0040

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 660 and 757 of 2008

Vipan Kumar and Others

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374, 378
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2016) 1 ShimLC 31 : (2016) 1 ShimLC 247

Hon'ble Judges : Sanjay Karol, J;Piar Singh Rana, J

Bench : Division Bench

Advocate : Ajay Sharma, for the Appellant; Ashok Chaudhary, V.S. Chauhan, Addl. A.Gs. and J.S. Guleria, Asstt. A.G., Advocates for the Respondent

Judgement

Sanjay Karol, J—In the Jail appeal (Cr. Appeal No. 660 of 2008) filed under Section 374 Cr.P.C., convict Vipan Kumar has assailed the judgment dated 30.08.2008, passed by Presiding Officer/Additional Sessions Judge, Fast Track Court, Hamirpur (H.P.), in Sessions Trial No. 2 of 2008, titled as State Versus Vipan Kumar & another, whereby he stands convicted for having committed offences punishable under the provisions of Sections 302 and 201/34 of the Indian Penal Code and accused Jagat Ram stands convicted for having committed offence punishable under the provisions of Section 201 read with Section 34 IPC. Convict Vipan Kumar stands sentenced to serve rigorous imprisonment for life and pay fine in the sum of Rs. 10,000/-, under the provisions of Section 302 IPC and in default thereof, to further undergo rigorous imprisonment for a period of one year. He is further sentenced to undergo rigorous imprisonment for a period of three years and pay fine of Rs. 5000/-, for commission of offences punishable under the provisions of Section 201/34 IPC and in default thereof, to further undergo rigorous imprisonment for a period of six months. Whereas, convict Jagat Ram is sentenced to undergo rigorous imprisonment for three years and pay fine of Rs. 5000/-, under the provisions of Section 201 read with Section 34 IPC and in default thereof, to further undergo rigorous imprisonment for a period

of six months.

2. Also, assailing the aforesaid judgment, State has filed Cr. Appeal No. 757 of 2008, under the provisions of Section 378 of the Code of Criminal Procedure, 1973, against the judgment of acquittal of accused Jagat Ram, for offence under the provisions of Section 302 IPC.

3. It is the case of prosecution that on 13.09.2007, Member of Zila Parishad Sandesh Kumar (PW.1) learnt that a dead body was lying on the road near the water supply pipes of village Galot Kalan. After recording entry (Ex. PW.20/B), police party headed by SHO Anjani Jaswal (PW.21) proceeded to the spot. Smt. Kesari Devi (PW.2) mother of the deceased identified the dead body to be that of her son Sudesh Kumar. She disclosed to the police, that since previous day accused Vipin Kumar had quarrelled with the deceased she apprehended him to have killed him. On the basis of Statement (Ex. PW.2/A), FIR No. 391/07, dated 13.09.2007 (Ex. PW.15/A) was registered at Police Station, Sadar Hamirpur, H.P., under the provisions of Section 302/34 of the Indian Penal Code. Spot was got photographed and blood stained mud and stones (Ex. P-2) taken into possession vide memos (Ex. PW.1/B, Ex. PW.1/C & Ex. PW.1/D)) in the presence of Sandesh Kumar (PW.1) and Brahma Dass (not examined). Inquest report (Ex. PW.21/B) was prepared. Dead body was taken into possession and sent for postmortem, which was conducted by Dr. S.K. Kashmiri (PW.14). Investigation revealed that the previous day, i.e. on 11.09.2007 deceased Sudesh Kumar had fought with Vipin Kumar who had lodged a complaint. Also police got the spot photographed. When police went to the house of Vipin Kumar, by breaking open the window of the first floor of his house, he fled away. However, accused Jagat Ram was sitting in one of the rooms of the ground floor. At that time, he was under the influence of alcohol. Police found the room occupied by Vipin Kumar to be splattered with blood, from where blood stained plaster of the wall (Ex. P-7) was recovered vide memo (Ex. PW.1/F). Empty glasses (Ex. P-11 to P-13) and bottles of alcohol (Ex. P-9 & P-10) were taken into possession vide recovery memo (Ex. PW.1/H). Also calendars (Ex. P-5 and P-6) hanging on the wall, which were also splattered with blood, were taken into possession vide memo (Ex. PW.1/E). Accused Jagat Ram led the police to the place where he had concealed his blood stained Kurta and Pajama (Ex. P-14 & P-15), which were taken into possession vide memo (Ex. PW.1/J). Kassi (Ex. P.16) used for digging the pit for concealing the same was recovered vide memo (Ex. PW.1/K).

4. When arrested, Vipin Kumar made a disclosure statement (Ex. PW.7/A) to the effect that he could get recovered the weapon of offence and blood stained mattress, which he had concealed. Such statement was recorded in the presence of Dina Nath (PW.7) and Angat Ram (not examined). He also got recovered weapon of offence i.e. Kamani-Patta (spring leaf) (Ex. P-98) vide memo (Ex. PW.7/C) and mattress (Ex. P-100) vide memo (Ex. PW.7/D). Police also took into possession Karchhi (Ex. P-26) used by accused Vipin Kumar to break open the window vide recovery memo (Ex. PW.1/P). Chappals (Ex. P-27) of the deceased,

so found in the room of Vipran Kumar, were recovered vide memo (Ex. PW.1/Q). Seized articles were sent for forensic analysis and report of FSL, Junga (Ex. PW.19/A) taken on record.

5. Investigation revealed that on 12.09.2007, deceased had gone to the house of accused Vipran Kumar for enquiring as to why he had lodged a complaint pertaining to the incident which took place on 11.09.2007. At that time, accused who were under the influence of liquor, gave beatings to the deceased with Kamani-Patta (spring leaf) resulting into his death. Thereafter both the accused dragged the dead body and dumped it on the road. Also they concealed the weapon of offence and other incriminating articles. With the completion of investigation, which prima facie revealed complicity of the accused in the alleged crime, Challan was presented in the Court for trial.

6. Both the accused were charged for having committed offences punishable under the provisions of Sections 302 and 201 read with Section 34 of the Indian Penal Code, to which they did not plead guilty and claimed trial.

7. In order to establish its case, in all, prosecution examined as many as twenty one witnesses. Statements of the accused under Section 313 of the Code of Criminal Procedure were also recorded, in which they took the defence of innocence. No evidence in defence was led.

8. Trial Court, based on the testimony of the prosecution witnesses, convicted accused Vipran Kumar for having committed offences punishable under the provisions of Sections 302, 201/34 IPC, whereas accused Jagat Ram stands acquitted of the charge of murder, but however, stands convicted for offence punishable under the provisions of Section 201/34 IPC and sentenced as aforesaid. Hence the present appeals.

9. We have heard, Mr. Ajay Sharma, learned counsel, on behalf of the appellant (in Cr. Appeal No. 660 of 2008) and on behalf of the respondent (in Cr. Appeal No. 757 of 2008) and M/s. Ashok Chaudhary and V.S. Chauhan, learned Addl. AGs., and J.S. Guleria, learned Asstt. AG., on behalf of the State. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find the findings returned by the trial Court to be based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice. Prosecution has been able to prove its case, beyond reasonable doubt against the convicts.

10. Before we deal with the factual matrix, with profit, we discuss the law on the point.

Law on circumstantial evidence

11. Law with regard to circumstantial evidence is now well settled. It is a settled

proposition of law that when there is no direct evidence of crime, the guilt of the accused can be proved by circumstantial evidence, but then the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and such circumstances must be conclusive in nature, to fully connect the accused with the crime. All the links in the chain of circumstances must be established beyond reasonable doubt, and the proved circumstances should be consistent, only with the hypothesis of guilt of the accused, being totally inconsistent with his innocence. While appreciating the circumstantial evidence, the Court must adopt a very cautious approach and great caution must be taken to evaluate the circumstantial evidence. [Pudhu Raja and Another Vs. State, rep. by Inspector of Police, (2012) 4 JCC 2751 : (2012) 9 JT 252 : (2012) 9 SCALE 177 : (2012) 11 SCC 196 ; Madhu Vs. State of Kerala, AIR 2012 SC 664 : (2012) CriLJ 1230 : (2012) 1 Crimes 148 : (2012) 1 JCC 620 : (2012) 1 JT 181 : (2012) 1 SCALE 226 : (2012) 2 SCC 399 : (2012) AIRSCW 782 : (2012) 1 Supreme 342 ; Dilip Singh Moti Singh Vs. State of Gujarat, (2002) 8 JT 497 , Mulakh Raj, etc. Vs. Satish Kumar and others, AIR 1992 SC 1175 : (1992) CriLJ 1529 : (1992) 2 Crimes 130 : (1992) 2 JT 554 : (1992) 1 SCALE 804 : (1992) 3 SCC 43 : (1992) 2 SCR 484 ; and Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622 : (1984) CriLJ 1738 : (1984) 2 SCALE 445 : (1984) 4 SCC 116 : (1985) 1 SCR 88 .

12. Also, apex Court in Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 , held that when a case rests upon circumstantial evidence, following tests must be satisfied:

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

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

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

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

(See: Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, AIR 2006 SC 1656 : (2006) 4 JT 16 : (2006) 3 SCALE 452 : (2006) 10 SCC 172 : (2006) AIRSCW 1602 : (2006) 3 Supreme 175 ; Balwinder Singh Vs. State of Punjab, AIR 1996 SC 607 : AIR 1995 SC 607 : (1996) CriLJ 883 : (1995) 8 JT 81 : (1995) 6 SCALE 261 : (1995) 4 SCC 259 Supp : (1995) 5 SCR 10 Supp ; and Harishchandra Ladaku Thange Vs. State of Maharashtra, AIR 2007 SC 2957 : (2007) 10 JT 496 : (2007) 10 SCALE 464 : (2007) 11 SCC 436 : (2007) 9 SCR

562 : (2007) AIRSCW 6247 : (2007) AIRSCW 5394 : (2007) 6 Supreme 232 .

13. Each case has to be considered on its own merit. Court cannot presume suspicion to be a legal proof. In the absence of an important link in the chain, or the chain of circumstances getting snapped, guilt of the accused cannot be assumed, based on mere conjectures.

14. The apex Court in State of U.P. Vs. Ashok Kumar Srivastava, AIR 1992 SC 840 : (1992) 1 Crimes 576 : (1992) 1 JT 340 : (1992) 1 SCALE 149 : (1992) 2 SCC 86 : (1992) 1 SCR 37 , while cautioning the Courts in evaluating circumstantial evidence, held that if the evidence adduced by the prosecution is reasonable, capable of two inferences, the one in favour of the accused must be accepted. This of course must precede the factum of prosecution having proved its case, leading to the guilt of the accused.

15. Undisputedly it is not a case of direct evidence. Trial Court has not separately culled out the circumstances. Broadly prosecution case rests upon the following circumstances:--

"(1) On 11.09.2007, scuffle took place between accused Vipin Kumar and deceased Sudesh Kumar.

(2) On 12.09.2007, deceased was last seen going towards the house of the accused.

(3) Same day, late in the night, cries were heard coming from the house of the accused.

(4) Recovery of dead body from a place which was approximately 30 meters away from the house of the accused. Deceased died as a result of head injuries.

(5) Dragging marks of dead body found near the house of the accused.

(6) Disclosure statement (Ex. PW.7/A) made by accused Vipin Kumar, which led to recovery of weapon of offence.

(7) Recovery of blood stained clothes and other incriminating articles belonging to both accused Vipin Kumar and Jagat Ram, from the pits dug by them."

Circumstance No. 4

16. The identity of the accused and the deceased is not in dispute. Sandesh Kumar (PW.1) has deposed that on 13.09.2007, on information furnished by one Ravi Kant, he informed the police that dead body of a person was lying near the water supply pipes. Accordingly he informed the police at Police Station, Hamirpur. Anjani Jaswal (PW.21) states that after recording entry (Ex. PW.20/B), he alongwith the police party went to the spot, where Kesari Devi (PW.2), mother of the deceased identified the body to be that of her son Sudesh Kumar.

17. Postmortem of the dead body was conducted by Dr. S.K. Kashmiri (PW.14), who found the following external injuries on the body of the deceased:--

- "1. One incised looking wound on the left eye brow measuring 1 1/4" x 1/2", muscle deep.
2. One incised looking wound on the right eye brows, measuring 2" x 1/2", muscle deep.
3. One incised looking wound on the right temporal region measuring 2 1/2" x 1/2" underlying bone torn fractured into pieces and pieces of brain matter coming out through the wound.
4. One incised looking wound below the right eye measuring 1" x 1/2", muscle deep.
5. One incised looking wound on the right parietal region measuring 3/4" x 1/2". The underlying bone torn into multiple pieces.
6. One incised looking wound below the right lower lip measuring 1" x 1/2" muscle deep.
7. One incised looking wound near right ear, measuring 1" x 1/2". The underlying bone torn into multiple pieces.
8. One incised looking wound on the left side occipital region measuring 2 1/2" x 1/2", muscle deep.
9. One abrasion on the posterior surface of left forearm measuring 2" x 1" dark brown in colour.
10. One abrasion on the posterior surface of left wrist joint measuring 1" x 0.3 cm, dark brown in colour."

According to the witness, who also issued postmortem report (Ex. PW.14/B), deceased died on account of ante mortem injury sustained on the head. Such injuries could have been caused with the weapon of offence i.e. Patta (Ex. P-98).

18. Thus recovery of dead body and cause of death stand proved on record.

Circumstance No. 1 & 2

19. The fact that on 11.09.2007, accused Vipin Kumar had lodged a report pertaining to the altercation which took place between him and the deceased is not disputed. Allegedly deceased had given beatings to Vipin Kumar.

20. Through the testimonies of Sandesh Kumar (PW.1) and Azad Singh (PW.6), it is clear that altercation, which took place in the bazaar at Galot Kalan, was witnessed by Azad Singh. Also Vipin Kumar had complained to Sandesh Kumar about the conduct of the deceased, on which, Sandesh Kumar had told him that it takes two to make a quarrel, at which Vipin Kumar got annoyed and left with his father to his house.

21. Seema Devi (PW.4) wife of the deceased has deposed that on 12.09.2007, her husband learnt about the complaint lodged by Vipin Kumar. Same day at

about 4.30 PM, he went to purchase Beeris, making inquiries from Vipin Kumar by visiting his house.

22. Daman Singh (PW.3) states that on 12.09.2007 at about 6.30-7.00 PM he saw the deceased going towards the house of Vipin Kumar in connection with quarrel. Significantly none of the witnesses has deposed that deceased was annoyed/agitated with Vipin Kumar for having reported the matter with regard to the incident which took place on 11.09.2007. Also he was not in anger. It has also not come on record that deceased went armed to the house of the accused. He had just gone alone and empty handed, without having an intent of picking up a quarrel with Vipin Kumar. Thus, these circumstances also stand established on record by the prosecution.

Circumstances No. 3, 5 to 7

23. According to medical evidence, deceased would have died late in the evening of 12.09.2007. Soma Devi (PW.8), who is immediate neighbour of the accused, states that on 12.09.2007, at about 9.00-9.30 PM, she heard cries coming from the house of Vipin Kumar. However she did not go there, as no male member was present in her house. Next day she learnt about the dead body lying on the road near the house of the accused. Witness admits that she is not in talking terms with the accused, for they are not good persons, but then this fact alone would not render her version to be false or doubtful.

24. Through the testimony of Satish Kumar (PW.10), it has also come on record that on 12.09.2007 both accused Vipin Kumar and Jagat Ram had consumed liquor with this witness and at about 6.30-7.00 PM parted company when the accused left for their house.

25. Thus far, prosecution has been able to establish, beyond reasonable doubt, that at the time when deceased went to the house of the accused, they were under the influence of liquor.

26. It has come on record through the testimony of Kesari Devi (PW.2), mother, as also Seema Devi (PW.4) wife of the deceased, that from the evening of 12.09.2007 deceased was found to be missing from his house. Both the mother and the wife made enquiries about his whereabouts who was not to be found anywhere. It was only in the morning of 13.09.2007, that they learnt about his death. On 13.09.2007 itself, Kesari Devi expressed her apprehension to the police about the involvement of the accused in the crime. Her statement (Ex. PW.2/A) is on record to such effect, which made the police, reach their house.

27. In the statement of Anjani Jaswal (PW.21), it has come that seeing the police party, accused Vipin Kumar fled away by breaking open the window. It has also come in the testimony of Sandesh Kumar and Anjani Jaswal that signs of dragging of the body from the house of the accused to the road were found on the spot. Anjani Jaswal prepared the necessary documents. On the first floor of the house, under occupation of accused Vipin Kumar, police found blood

splattered all over. Also chappals (Ex. P-27), so identified by Kesari Devi to be that of her son (deceased) were found, which were taken into possession vide recovery memo (Ex. PW.1/Q). Inside the room, two blood stained calendars (Ex. P-5 & Ex. P-6) hung on the wall were taken into possession vide recovery memo (Ex. PW.1/E). Also blood stained plaster of the wall (Ex. P-7) was taken into possession vide memos (Ex. PW.1/F & Ex. PW.1/G). The bottles of alcohol and empty glasses (Ex. P-9 to P-13) were taken into possession vide recovery memo (Ex. PW.1/H). Also Karchhi (Ex. P-26) with which accused Vipin Kumar broke open the window, was recovered vide memo (Ex. PW.1/P).

28. With the accused Vipin Kumar having fled away from the spot, police noticed accused Jagat Ram, under the influence of alcohol, sitting inside the room on the ground floor. Accused Jagat Ram, who was arrested was got medically examined from Dr. Lokender Sharma (PW.18), who issued MLC (Ex. PW.18/B). No signs of injury were found on his body, but he was under the influence of liquor.

29. Record reveals that same day, accused Vipin Kumar was also arrested by the police and got medically examined from the very same doctor, who issued MLC (Ex. PW.18/D). Minor abrasion on his finger was found. According to the doctor, such injury could have been caused, if a person were to break open the window.

30. Record further reveals, as has come in the testimony of Sandesh Kumar (PW.1), Sunil Kumar (PW.5) and Anjani Jaswal (PW.21) that police recovered incriminating articles i.e. blood stained Kurta & Pajama of accused Jagat Ram vide memo (Ex. PW.1/J), which was so concealed in a pit dug by Kassi (Ex. P.16) recovered vide memo (Ex. PW.1/K). Also in a pit just near the house of the accused clothes wrapped in a cloth were recovered vide memo (Ex. PW.1/L). Blood stained pants of accused Vipin Kumar was also recovered vide recovery memo (Ex. PW.1/M). Also blood stained clothes were recovered vide memo (Ex. PW.1/N). Recovered clothes belonged to the accused who have so identified them to be so in the presence of independent witnesses Sandesh Kumar (PW.1) and Sunil Kumar (PW.5).

31. Record reveals that during the course of investigation on 16.09.2007, in the presence of Dina Nath (PW.7) and Angat Ram, accused Vipin Kumar made a disclosure statement that he could get recovered the weapon of offence which he had concealed. Also he could get recovered the mattress concealed by him in the backyard of his house. Testimony of Dina Nath establishes such fact, beyond reasonable doubt. Anjani Jaswal (PW.21) after associating independent witnesses, went with accused Vipin Kumar to the place where such articles were concealed in his house. Weapon of offence i.e. Kamani-Patta was concealed under the log of wood, which was taken into possession vide recovery memo (Ex. PW.7/C) and mattress as also pieces thereof which were stained with blood were taken into possession vide recovery memo (Ex. PW.7/D).

32. With regard to recovery of the incriminating articles, testimony of Sandesh Kumar (PW.1), Sunil Kumar (PW.5) and Dina Nath (PW.7) as also that of police

official Anjani Jaswal (PW.21) is absolutely inspiring in confidence. It stands established that articles recovered were sealed and kept in a safe custody. Statement of MHC Vijay Prakash (PW.20) as also Rakesh Kumar (PW.16), who took the sample to the FSL, Junga is evidently clear on this aspect. So long as the sealed samples remained with the police officials none tampered with the same. Report of FSL (Ex. PW.19/A) does reveal that blood found on the soil and the stones, where dead body was lying was the same. Also the blood found on the clothes of accused Jagat Ram, Kassi, bed sheet, towel, clothes of Vipan Kumar and Sudesh Kumar (deceased) was of the very same group i.e. "A". Report to this effect stands proved by Dr. Gian Thakur (PW.19). Thus, prosecution has been able to establish even these circumstances, beyond reasonable doubt.

33. Trial Court has acquitted accused Jagat Ram of the offence of murder, on the ground that his intention in killing the deceased was not unfurling from the prosecution evidence. Also he took no part in the murder. Undisputedly Jagat Ram, father of Vipan Kumar, had no prior animosity with the deceased. Quarrel had taken place only between accused Vipan Kumar and the deceased. On the day immediately prior to the occurrence, accused had consumed alcohol. We are in agreement with the findings returned by the trial court that only after Vipan Kumar committed murder of the deceased, did Jagat Ram help him to destroy the evidence. It has also come on record that Jagat Ram and Vipan Kumar were only residing in the house and none else was with them. In the middle of night, Vipan Kumar alone could not have destroyed the evidence. After the offence was committed by Vipan Kumar by giving a blow with the Kamani-Patta, Jagat Ram helped his son in destroying/concealing the evidence. The dead body was dragged and kept on the road. Blood stained clothes were concealed in the pits dug near the house. Quite apparently, both the accused with the common intent of causing disappearance of evidence, in order to screen Vipan Kumar further committed the offence. Bed sheets, towel, mattress, all stained with blood were also concealed.

34. The ocular version as also the documentary evidence clearly establishes complicity of convict Vipan Kumar in the alleged crime of murder. The testimonies of prosecution witnesses are totally reliable and their depositions believable. There are no major contradictions rendering their version to be unbelievable.

35. From the material placed on record, it stands clearly established by the prosecution witnesses, beyond reasonable doubt, that appellant Vipan Kumar is guilty of having committed the offences charged for and Jagat Ram helped him in concealing the evidence. There is sufficient, clear, convincing, cogent and reliable piece of evidence on record to this effect. The circumstances stand conclusively proved by unbroken chain of unimpeachable testimony of the prosecution witnesses. The guilt of convict Vipan Kumar stands proved beyond reasonable doubt to the hilt. The chain of events stand conclusively established and lead

only to one conclusion, i.e. guilt of the convict. Circumstances when cumulatively considered, fully establish completion of chain of events, indicating the guilt of the accused and no other hypothesis other than the same. It cannot be said that convict is innocent or not guilty or that he has been falsely implicated or that his defence is probable or that the evidence led by the prosecution is inconsistent, unreliable, untrustworthy and unbelievable. It cannot be said that the version narrated by the witnesses in Court is in a parrot-like manner and hence is to be disbelieved.

36. Thus, from the material placed on record, it stands established by the prosecution, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence, that convict Vipin Kumar committed murder of deceased Sudesh Kumar and after causing his death, he alongwith Jagat Ram, with an intent of screening themselves from legal punishment, tried to destroy the evidence.

37. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and complete appreciation of the material so placed on record by the parties. Findings cannot be said to be erroneous in any manner.

38. Hence, appeal filed by convict Vipin Kumar against his conviction under the provisions of Sections 302 and 201/34 IPC (being Cr.Appeal No. 660 of 2008) as also appeal filed by the State against the acquittal of Jagat Ram for commission of offences punishable under the provisions of Section 302 IPC (being Cr.Appeal No. 757 of 2008), are dismissed. Bail bonds, if any, furnished by accused Jagat Ram are discharged.

Records of the Court below be immediately sent back.