

Jale Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-14-1995

Reported in : 1996CriLJ1177; 1996(2)WLC373; 1995(2)WLN692

Judge : B.R. Arora and; R.R. Yadav, JJ.

Acts : [Evidence Act, 1872](#) - Sections 8; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 161 and 313

Appeal No. : D.B. Cri. Jail App. No. 456 of 1988

Appellant : Jale Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : S.K. Mathur, Amicus Curiae and; Chandra Lekha Parihar, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

R.R. Yadav, J.

1. This Jail Appeal is preferred against the judgment dated 30-11-1988 passed by the learned Additional District and Sessions Judge, Nohar District Sri Ganganagar in Sessions Case No. 50 of 1987, by which he found the appellant guilty for the

offence under Section 302, I.P.C. and sentenced him to life imprisonment and a fine of Rs. 500/-, in default of payment of fine to further undergo six months R. I.

2. The prosecution case at the trial was that on 4-5-87 at 11.00 AM Chhotu Lal Jat son of Chokha Ram Jat, resident of Sangariya lodged an oral report at Police Station, Nohar to the effect that at 8.00 AM, his brother-in-law Karnail Singh son of Nar Singh Jat, resident of Lalaniya came to his house and informed him that accused-appellant Jale Singh, who is son of his mother Smt. Parmeshwari (PW-4) born with the union of her former husband Sukh Ram resident of Ghanoti Chhoti, was staying at Lalaniya for several days. In between 3rd and 4th May, 1987 father-in-law of Jale Singh namely Ganga Ram resident of Neziya also came at Lalaniya. Both of them, after consuming liquor with his father Nar Singh Ram were sleeping on separate cots in his house. He was also sleeping near them at Bakhal. The accused-appellant Jale Singh was also sleeping in the 'Bakhal' near him on a separate Cot. At about mid-night, he awakened all of a sudden on hearing the cries of his father and saw that accused Jale Singh was assaulting his father Nar Singh on his head. He exhorted him and on his exhortation, accused-appellant Jale Singh ran away leaving his father. Pajama of Jale Singh was found on his cot. After some time his father Nar Singh Ram expired. He informed his family members about the occurrence. After getting the aforesaid information from PW-3 Karnail Singh, the first information, PW-1 Chhotu Lal together with PW-3 went to village Lalaniya at the house of deceased Nar Singh Ram where he found Nar Singh Ram was lying dead on his cot and blood was spilled under his cot. On receipt of the aforesaid oral information from PW-1 Chhotu Lal, who is son-in-law of deceased Nar Singh Ram, first information report Ex.P/1 was registered on the same day at 11.00 AM at Police Station, Nohar for offence under Section 302, I.P.C. and investigation commenced.

3. After completion of the investigation, challan was filed against the accused-appellant under Section 302 I. P. C. in the Court of Additional Chief Judicial Magistrate, Nohar who committed the case to the Court of Additional District and Sessions Judge, Nohar.

4. Learned Additional District and Sessions Judge, Nohar framed charges against the accused-appellant for the offence under Section 302, I.P.C. At the trial, the accused-appellant pleaded not guilty and claimed for trial.

5. In support of the prosecution story, the prosecution agency examined as many as 11 witnesses and produced 20 documents from Ex. P/1 to Ex.P/ 20.

6. The accused-appellant gave his statement under Section 313 Cr. P. C. in which he admitted his presence at the time on the place of occurrence. He further admitted that after occurrence, he ran away from the scene of occurrence. According to the accused-appellant, deceased Nar Singh Ram was in his favour, therefore, PW-2 Ganga Ram, PW-3 Karnail Singh and PW-4 Smt. Parmeshwari, who were against him, had committed his murder. He thought that they may also kill him, therefore, he ran away from the place of occurrence. He denied his Payjama and turban found on the cot where he was sleeping. According to him, these clothes do not belong to him. In his statement under Section 313 Cr. P. C. he proposed to examine Dhanpat s/o Shri Badri Ram and Mohan s/o Shri Chanda Ram, both resident of village Ghanoti Chhoti in his defence but when opportunity to produce these defence witnesses, was given to him, he refrained to examine them.

7. The statements of PW-1 Chhotu Lal, PW-2 Ganga Ram, PW-3 Karnail Singh, PW-4 Smt. Parmeshwari and PW-5 Smt. Krishna are also on record as Ex.D/1, Ex.D/2, Ex./D3, Ex.D/4 and Ex.D/5 respectively.

8. Learned Additional District and Sessions Judge, Nohar after hearing the learned Public Prosecutor appearing on behalf of the State and learned Amicus Curiae appearing on behalf of the appellant and also after analytical discussion of oral and documentary evidence on record, recorded a finding of guilt against the accused-appellant and convicted and sentenced him under Section 302 I.P.C. as mentioned in paragraph No. 1 of this judgment.

9. We have heard learned Amicus Curiae Shri S. K. Mathur, appearing on behalf of the appellant and learned Public Prosecutor Mrs. Chandra Lekha Parihar appearing on behalf of the State at length and also carefully gone through the oral

and documentary evidence on record.

10. Mr. S. K. Mathur, learned Amicus Curiae appearing on behalf of the appellant questions the finding of guilt recorded by the Additional District and Sessions Judge, Nohar on the following grounds:-

(i) According to Mr. Mathur, learned counsel for the appellant, there is inordinate delay in lodging the FIR Ex. P/1 in a post-investigation document, hence, the learned Additional District and Sessions Judge had wrongly placed reliance on the said FIR.

(ii) Mr. Mathur, learned counsel for the appellant further submitted that there was no motive for the accused-appellant to commit murder of Nar Singh Ram.

(iii) According to learned Amicus Curiae Shri S. K. Mathur appearing on behalf of the appellant, it would not be safe to convict and sentence the accused-appellant on the basis of oral testimony of PW-1 Chhotu Lal, PW-2 Ganga Ram, PW-3 Karnail Singh, PW-4 Smt. Parmeshwari and PW-5 Smt. Krishna, who are guilty of making material improvement in their statements before the trial Court, which is evident from Ex.D/1 and Ex.D/2, Ex.D/3, Ex.D/4 and Ex.D/5 recorded by the Investigating Officer.

(iv) Mr. Mathur, learned Amicus Curiae appearing on behalf of the appellant further urged before us that the learned Additional District and Sessions Judge, Nohar has ignored the hypothesis consistent with the innocence of the accused-appellant which has resulted into miscarriage of justice.

11. Learned Public Prosecutor Smt. Chandra Lekha Parihar appearing on behalf of the State refuted the aforesaid arguments advanced on behalf of the accused-appellant and urged before us that the finding of guilt recorded by the learned Additional District and Sessions Judge, Nohar is based on proper appreciation of oral and documentary evidence on record, which does not suffer from any factual or legal infirmities as contended by Shri S. K. Mathur, learned counsel for the accused-appellant.

12. We have given our thoughtful consideration to the aforesaid rival contentions raised at the Bar and also made close scrutiny of finding of guilt recorded by the learned Additional District and Sessions Judge, Nohar.

13. First contention of Mr. S. K. Mahur, learned Amicus Curiae appearing on behalf of the accused-appellant is about inordinate delay in lodging the FIR and to the effect that FIR Ex.P/1 is a postinvestigation document. The aforesaid argument of Mr. Mathur is based on contradiction in depositions of PW-1 Chhotu Lal, PW-2 Ganga Ram, PW-3 Karnail Singh and PW-4 Smt. Parmeshwari where they have given contradictory statements about the time. Mr. Mathur, learned Amicus Curiae invited our attention towards the statement of PW-3 Karnail Singh, who deposed before the learned Additional District and Sessions Judge that he reached Sangthia at 7.00 AM on 4-5-87 while according to PW-1 Chhotu Lal, he reached to his village Sangthia at 8.00 AM from where both of them reached at Lalanja where the occurrence has taken place. The FIR was lodged by PW-1 Chhotu Lal at 11.00 AM. According to the statement of PW-2 Ganga Ram, the police reached at about 2 1/2 or 3 PM on the scene of occurrence on 4-5-87. According to PW-1 Chhotu Lal, he went to lodge the FIR at police Station Nohar in a truck at about 8.30 AM. He reached at village Lalanja along with police force at about 12.00 or 12.15 PM.

14. Learned counsel Mr. S. K. Mathur further invited our attention on the statement of PW-3 Karnail Singh that the occurrence took place at about 10.00 PM on 3-5-87 while according to PW2 Ganga Ram, the occurrence took place at about 12.00 in the night. According to learned counsel Mr. Mathur, no attempt was made to lodge the FIR soon after the occurrence. It has come in the evidence that PV/-4 Smt. Parmeshwari looking after the dead-body of her husband Nar Singh Ram, she became unconscious. PW-2 Ganga Ram is father-in-law of accused Jale Singh, who is resident of State of Haryana and as such, he was not acquainted with the people of village Lalanja. It is stated by PW-3 Karnail Singh that he is suffering from partial Paralysis. His deposition has been corroborated by PW-4 Smt. Parmeshwari. In view of the aforesaid facts and circumstances, it is natural that in the night PW-2 Ganga Ram, PW-3 Karnail Singh and PW-4 Smt. Parmeshwari were terrorised and they could not be able to muster courage to lodge the FIR in the night itself. The distance of village Lalanja to Police Station Nohar is 16 miles

from the place of occurrence.

15. In the morning of 4-5-87 PW-4 Smt. Parmeshwari sent PW-3 Karnail Singh to call PW-1 Chhotu Lal from village Sangthia. From village Sangthia, both PW-1 Chhotu Lal and PW-3 Karnail Singh reached on the place of occurrence and after making necessary enquiry, PW-1 Chhotu Lal proceeded to police station, Nohar to lodge the FIR and FIR was lodged at 11.00 AM on 4-5-87. PW-11 Om Prakash. Investigating Officer has deposed before the trial Court that after lodging the FIR, he reached on the place of occurrence at about 12.30 PM on 4-5-87. No suggestion has been put to the Investigating Officer on behalf of the accused-appellant that the Investigating Officer reached on the place of occurrence in the morning.

16. In our considered opinion. PW-1 Chholu Lal. PW-2 Ganga Ram. PW-3 Karnail Singh and PW-4 Smt. Parmeshwari are illiterate village rustic and they do not possess watches, therefore, they could not be expected to give accurate time in their depositions. It must be remembered that illiterate villagers are not very accurate about the time, hence merely on the basis of contradiction in their statements about accurate time, it cannot be held that there is no proper explanation about the delay in lodging the FIR. . .

17. As regards the FIR Ex.P/1 being post investigation document as argued by the learned Amicus Curiae is not acceptable to us. in as much as. a suggestion has been put to PW-1 Chhotu Lal on behalf of the accused-appellant to the effect that after making spot inspection, the investigating Officer instructed him to accompany at police station for lodging the FIR was denied by PW-1. Chholu Lal categorically stated that as he has already lodged the FIR. therefore, no question arises to accompany the Investigating Officer at police station. Nohar for lodging the FIR.

18. It is evident from perusal of FIR Ex.P/1 that distance of police station Nohar from place of occurrence is 16 miles and FIR was lodged at 11.00 AM on 4-5-87. According to the deposition of PW-11 Om Prakash. Investigating Officer, he reached at the place of occurrence at 12.30 PM on 4-5-87. It is also borne out from perusal of Ex. P/3 Post Mortem Report dated 4-5-87 that it was conducted by PW-6 Dr. Chandra Kumar at village Lalania on the same day at 5.00 PM. The

aforesaid oral and documentary evidence on record lead towards an irresistible conclusion that FIR Ex.P/1 was lodged at 11.00 AM on 4-5-87 at Police Station. Nohar and Investigation commenced by PW-11 Om Prakash. Investigating Officer, who reached at the place of occurrence in village Lalania at 12.30 PM and post-mortem report was prepared on the same day by PW-6 Dr. Chandra Kumar at 5.00 PM. It is a matter of common knowledge that after post-mortem at least one hour must have taken to perform the other formalities of handing-over the dead-body to the family members of deceased Nar Singh Ram and in recording the statement of some of the witnesses on the spot. In our considered opinion, in the present case, the FIR was lodged at 11.00 AM and thereafter investigation commenced and the Investigating Officer reached at the place of occurrence at 12.30 PM on the same day and in his presence. the post-mortem report was prepared in village Lalania at 5.00 PM by Dr. Chandra Kumar (PW-6) and as such, it is not acceptable to us that Ex.P/1 is a post investigation document as argued by the learned Amicus Curiae Mr. S. K. Mathur appearing on behalf of the accused-appellant. From the deposition made by PW-1 Chholu Lal. PW-2 Ganga Ram. PW-3 Karnail Singh and PW-4 Smt. Parmeshwari. we are fully satisfied that whatever delay has been caused in lodging the FIR a. 11.00 AM has been successfully explained by the prosecution witnesses and its testimonial value cannot be discredited merely on the ground that there are some contradictions about the time as slated by PW-1 Chholu Lal. PW-2 Ganga Ram. PW-3 Karnail Singh and PW-4 Smt. Parmeshwari about sending PW-3 Karnail Singh to call PW-1 Chholu Lal from village Lalania to village Sangthia which is about 1 mile away from the place of occurrence. The contradictions about accuracy of time slated by the aforesaid witnesses are of inconsequential nature. The aforesaid witnesses are illiterate rustic villagers of a remote village, hence, it cannot be held that delay in lodging the FIR Fx.P/1 has not been properly explained by the prosecution and FIR Ex.P/1 is a post investigation 'document.

19. The aforesaid argument about inordinate delay in lodging the FIR Ex.P/1 and treating it to be ;. post investigation document was also raised before the learned trial Judge who has negated the argument after analytical discussion of oral and documentary evidence on record and has recorded a categorical finding that the prosecution has successfully explained the delay in lodging the FIR Ex.P/1 and

FIR Ex.P/1 is not a post investigation document. Learned Additional District and Sessions Judge. Nohar has given cogent and convincing reasons to arrive at the aforesaid finding with which we agree.

20. Next contention of learned Amicus Curiae is that there was no motive for the accused-appellant who committed murder of deceased Nar Singh Ram. therefore the accused-appellant is entitled to be given benefit of doubt.

21. In our humble opinion the prosecution is not bound to prove motive of any offence in a criminal case inasmuch as. motive is known only to perpetrator of crime and may not be known to others. As a matter of fact the motive is not the sine qua non of prosecution's success.

22. It is well to remember that where there is a direct evidence of eye-witnesses regarding assault on the deceased by the accused-appellant which is worthy of credence and can be believed the question of proving motive becomes pure academic question. In the present case, since there are eye-witnesses account given by PW-2 Ganga Ram and PW-3 Karnail Singh, which are reliable and inspire our confidence, hence, whether there was motive for accused-appellant to commit murder of deceased Nar Singh Ram is wholly irrelevant. We propose to discuss the credibility of eye-witnesses account given by PW-2-Ganga Ram and PW-3 Karnail Singh a little later in this judgment.

23. Next contention of learned Amicus Curiae before us is that it would not be safe to convict and sentence the accused-appellant on the basis of oral evidence of PW-1 Chhotu Lal. PW-2 Ganga Ram. PW-3 Karnail Singh. PW-4 Smt. Parmeshwari and PW-5 Smt. Krishna, who are making improvements in their statements which is evident from Ex.D/1. Ex.D/2, Ex.D/3. Ex.D/4 and Ex.D/5 recorded under Section 161 Cr. P. C. In our considered opinion the contradictions and improvements made by PW-1 Chhotu Lal. PW-2 Ganga Ram. PW-3 Karnail Singh. PW-4 Smt. Parmeshwari and PW-5 Smt. Krishna are of inconsequential nature, hence, on such inconsequential and trivial contradictions the testimonial value of depositions of PW-1 Chhotu Lal. PW-2 Ganga Ram. PW-3 Karnail Singh, PW-4 Smt. Parmeshwari and PW-5 Smt. Krishna cannot be disbelieved. PW-2 Ganga Ram and PW-3 Karnail Singh are the eye-witnesses of the occurrence and

their presence is not disputed at the time of occurrence.

24. A close scrutiny of the site-plan Ex.P/8 and description memo of the place of incident Ex.P/17 prepared by the Investigating Officer PW-11 Om Prakash reveal that the place marked by Figure 3 and 4. two cots are lying. According to these Ex.P/8 and Ex.P/17. deceased Nar Singh Ram was sleeping on the cot shown at Place No. 4 and at place No. 3. Ganga Ram (PW-2) was sleeping. The distance between the two cots are shown to be 2 feels only. From the aforesaid Ex.P/8 and Ex.P/17. it is further evident that the cot shown at place No. 5 where the accused-appellant was sleeping and cot shown at place No. 6 where PW-3 Karnail Singh was sleeping the distance between the two costs lying at place No. 4 and 5 is shown to be 7 feels. Thus, it is evident from Ex.P/8 and Ex.P/17 that both the eye-witnesses were sleeping very close to the accused as well as the deceased, therefore, the distance shown in Ex.P/8 and Ex.P/17 are the places from where the two eyewitnesses viz. PW-2 Ganga Ram and PW-3 Karnail Singh had seen the occurrence. The place from where PW-2 Ganga Ram and PW-3 Karnail Singh have seen the occurrence is quite close to the place where deceased Narsingh Ram was assaulted by the accused-appellant, hence, in our humble opinion, both of them can easily identify the accused while assaulting the deceased and an argument contrary to it is not acceptable to us.

25. It is pertinent to mention here that, in his statement under Section 313 Cr. P. C. the accused-appellant himself has admitted the presence of these two eye-witnesses viz. PW-2 Ganga Ram and PW3 Karnail Singh at the place of occurrence at the relevant time, hence the depositions made by these two eye-witnesses inspire our confidence and their statements are trust-worthy.

26. Learned Amicus Curiae Mr. Mathur appearing on behalf of the accused-appellant invited our attention to the trivial improvements in the depositions made by PW-2 Ganga Ram and PW-3 Karnail Singh before the learned Additional district and Sessions Judge and the statements made by them before the Investigating Officer under Section 161 Cr. P. C. with the help of Ex. D/2 and Ex. D/3 which is not acceptable to us.

26A. It is a matter of common knowledge that invariably witnesses add embroidery to the prosecution story but that is no ground to throw the case to over-board if there is a ring of truth in the main.

27. A similar question arose before the Apex Court in the case of Uttar Pradesh v. Anil Singh, reported in : 1989 CriLJ88 where their Lordships after taking into account a catena of their previous judgments categorically ruled in paragraphs 13, 14 and 15 holding that in the Indian litigation, it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly untrue, since there is on some occasions, a tendency amongst litigants to back up a good case by false or exaggerated version. Their Lordships quoted with approval the observations of the then Hon'ble Mahajan. J. speaking for the Court from the case of Abdul Gani v. State of M.P. reported in : AIR 1954 SC31 deprecating the tendency of the Courts to take an easy course of holding the evidence discrepant and discarding the whole case as untrue.

28. In view of the aforesaid decision rendered by the Apex Court the argument raised on behalf of the accused-appellant about the contradictions, placed before us are not acceptable.

29. Lastly, learned Amicus Curiae Mr. Mathur appearing on behalf of the accused-appellant urged before us that the learned Additional District and Sessions Judge has ignored the hypothesis consistent with the innocence of the accused-appellant which has resulted into miscarriage of Justice. In support of his aforesaid argument, learned Amicus Curiae invited our attention towards the depositions of PW-2 Ganga Ram, PW-3 Karnail Singh, PW-4 Smt. Parmeshwari and according to him, since deceased Nar Singh Ram was in favour of the accused-appellant while these witnesses were interested to re-marry his wife Smt. Krishna (PW-5) with Karnail Singh (PW-3), therefore, they have motive to commit murder of deceased Nar Singh Ram who was creating hinderance in re-marriage of Smt. Krishna (PW-5) wife of the accused-appellant with PW-3 Karnail Singh. In order to remove hinderance in remarrying of Smt. Krishna (PW-5) with Karnail Singh (PW-3), PW-2 Ganga Ram, PW-3 Karnail Singh and PW-4 Smt. Parmeshwari have committed murder of deceased Narsingh Ram and not the accused-appellant.

According to Mr. Mathur, the accused-appellant has given correct statement under Section 313 Cr. P. C. though he absconded from the place of occurrence soon after the incident. PW-2 Ganga Ram, PW-3 Karnail Singh and PW-4 Smt. Parmeshwari committed the murder of deceased Narsingh Ram as he was apprehending that these witnesses, would kill him also hence, he absconded from the scene of occurrence. The aforesaid contention raised on behalf of the learned Amicus Curiae Mr. S. K. Mathur, appearing on behalf of the accused-appellant is not acceptable to us for the reason that if PW-2 Ganga Ram, PW-3 Karnail Singh and PW-4 Smt. Parmeshwari would have any intention to re-marry with the wife of the accused-appellant Smt. Krishna PW-5 with PW-3 Karnail Singh then instead of marrying Smt. Krishna (PW-5) with the accused-appellant they would have married PW-3 Karnail Singh with PW-5 Smt. Krishna.

30. The natural mother of accused-appellant Smt. Parmeshwari (PW 4) has clearly stated in her deposition before the learned Additional District and Sessions Judge that ten months before the murder of deceased Narsingh Ram, she and her husband Narsingh Ram got the accused-appellant married with daughter of PW 2 Ganga Ram with Smt. Krishna (PW 5). In lieu of marriage of the accused-appellant with Smt. Krishna d/o PW 2 Ganga Ram, she and her deceased-husband had married their daughter Narayani alias Rani born with their union with Brij Lal s/o PW 2 Ganga Ram. After 5-6 days of the marriage, the accused-appellant came with his wife Smt. Krishna (PW 5) along with PW 1 Chhotu Lal, who had gone with him at village Nezia Khera. The accused-appellant and his wife PW 5 Smt. Krishna stayed with her at village Lalanania in the night and on the next day, PW 4 Smt. Parmeshwari and PW 5 Smt. Krishna along with the accused-appellant went to village Dhanoti Chhoti, where she stayed with them for 5-6 days. PW 4 Smt. Parmeshwari has further deposed that on one night, her daughter-in-law PW 5 Krishna told her that accused Jale Singh was strangulating her to kill and with great difficulty on the pretext of making water, she left her husband and slept with PW 4 Smt. Parmeshwari. Next mornig brother of PW 5 Smt. Krishna namely, Ram Kumar came at village Dhanoti Chhoti took her sister PW 5 Krishna at Nezia Khera. Since then, Smt. Krishna was living at Nezia Khera with her father PW 2 Ganga Ram. PW 4 Smt. Parmeshwari further deposed before the learned Additional District and Sessions Judge that the accused-appellant came at Village

Lalania 6-7 days earlier from the date of occurrence and asked her and her husband that they were intending to re-marry his wife Smt. Krishna (PW 5) with PW 3 Karnail Singh and for this reason PW 2 Ganga Ram is not sending his daughter PW 5 Krishna to his house at Dhanoti Chhoti. When the accused-appellant asked the aforesaid question to her and her husband Nar Singh Ram then she told the accused-appellant that they are not interested to re-marry his wife Smt. Krishna (PW 5) with Karnail Singh (PW 3) who is suffering from Paralysis.

31. According to PW 4 Smt. Parmeshwari, who is natural mother of the accused-appellant due to the aforesaid enmity the accused appellant has committed murder of her husband. In our considered opinion, PW 4 Smt. Parmeshwari who is natural mother of the accused-appellant is a truthful witness and her deposition inspires our confidence that she and her deceased husband Narsingh Ram were not intending to re-marry Krishna (PW 5) wife of accused-appellant Jale Singh with their son PW 3 Karnail Singh, who was suffering from paralysis. A man can speak lie but circumstances do not. Accused-appellant Jale Singh was born to PW 4 Smt. Parmeshwari with the union of her former husband Sukh Ram r/o Dhanoti Chhoti and after death of Sukh Ram, father of Jale Singh, PW 4 Smt. Parmeshwari who was real mother persuaded her deceased husband Narsingh Ram to interpose as a father of accused-appellant as after death of Sukh Ram there was no one to look after accused-appellant Jale Singh. It has further come on record from deposition of PW 4 Smt. Parmeshwari that on her persuasion, deceased Narsingh Ram had done 'Pairvi' on behalf of the accused-appellant in a murder case in which accused-appellant Jale Singh was involved for committing murder of her first wife Smt. Roshni d/o Magha Ram r/o Village Katwar Ki Dhani. It is also come in the deposition of PW 4 Smt. Parmeshwari that on her persuasion, her deceased husband Narsingh Ram spent Rs. 20,000/- in doing 'Pairvi' on behalf of the accused-appellant and saved his life in the murder case. Not only this, since PW 4 Smt. Parmeshwari was natural mother of the accused-appellant, therefore, after acquittal of accused-appellant Jale Singh; from the case of murder of his previous wife Smt. Roshni, she immediately got the accused-appellant married with Smt. Krishna (PW 5) daughter of PW 2 Ganga Ram and in lieu of marriage of Jale Singh, PW 4 Smt. Parmeshwari and her deceased husband Narsingh Ram

married their real daughter Narayani alias Rani with Brij Lal son of Ganga Ram (PW 2). If deceased Narsingh Ram and PW 4 Smt. Parmeshwari would have intention to re-marry Smt. Krishna (PW 5) wife of Jale Singh with their real son PW 3 Kamail Singh born with their union then they ought to have married PW 3 Karnail Singh with Smt. Krishna (PW 5) daughter of Ganga Ram at initial stage and it is highly improbable to think that firstly they managed to marry accused-appellant Jale Singh with daughter of PW 2 Ganga Ram and in lieu of the said marriage, married their own daughter Narayani alias Rani with Brij Lal son of PW 2 Ganga Ram and after solemnizing the aforesaid two marriages, they intended to re-marry Smt. Krishna (PW 5) wife of Jale Singh with their natural son PW 3 Karnail Singh.

32. An identical question came up for consideration before a Division Bench of this Court in which one of us was a member in the case of Hans Raj v. State of Rajasthan reported in 1995 Cri LJ 1004 (Raj) and it was ruled in para 18 of the said judgment, which reads thus:-

'18. In our considered opinion, while appreciating the circumstantial evidence, the mere fact that there is only a remote possibility in favour of the accused, it would not be legally justified to allow the accused to escape punishment. It is true that the principle of innocence of an accused must be kept in view while appreciating the circumstantial evidence but simultaneously, it must also be kept in view that guilty person should not be allowed to escape punishment only on a remote possibility of innocence in his favour. In such cases, the judicial conscience of the court must be tested on the anvil of rational thinking man, who could reasonably, honestly and conscientiously arrived on the same conclusion. This Court cannot afford to give a long rope to the Sub-ordinate Courts to entertain untenable doubts about innocence of an accused on fanciful conjectures in a brutal crime committed in broad day-light. If this is permitted the law and law courts, will not be able to protect the society from anti-social elements for whom society has developed the concept of law and law courts from time immemorable'.

33. It is easily deducible from the emphasis given by the learned Amicus Curiae Mr. S.K. Mathur appearing on behalf of the accused-appellant, in support of his last argument as if it was necessary for the learned Additional District and

Sessions Judge merely to remember that no innocent person is punished. The aforesaid thrust of argument of learned Amicus Curiae is not acceptable to us, inasmuch as, a Judge is also required to see that guilty person does not escape punishment. The former principle of Criminal Jurisprudence to the effect that no innocent person should be punished, is as important as a latter principle according to which, the guilty person should not be allowed to escape punishment on flimsy grounds and on inconsequential contradictions. As a matter of fact, both the principles of Criminal Jurisprudence are public duties which a Judge has to perform religiously.

34. Apart from the aforesaid argument raised in the instant case by the learned Amicus Curiae Mr. S.K. Mathur, a little deeper probe of the material on record throws a flood of light that in the present case, the accused-appellant is real culprit and as such this Court cannot afford to allow the accused-appellant to escape punishment on flimsy grounds.

35. It is true that in the instant case, the death of deceased Narsingh Ram is homicidal and he died due to injuries Nos. 1 and 2. According to deposition made by PW 6 Dr. Chandra Kumar, Medical Jurist, who conducted Autopsy of the dead-body of Narsingh Ram and prepared Post-mortem Report Ex. P/3 on 4-5-87, injuries Nos. 1 and 2 individually as well as collectively were sufficient in the ordinary course of nature to cause death of the deceased. According to PW 6-Dr. Chandra Kumar, the deceased died due to shock and haemorrhage. The accused-appellant in his statement under Section 313 Cr.P.C. has admitted his presence at the scene of occurrence at the relevant time. It is further admitted by the accused-appellant in his statement under Section 313 Cr. P.C. that soon after the occurrence, he absconded from the scene of occurrence. The conduct of the accused-appellant absconding from the place of occurrence is relevant under Section 8 of the Indian Evidence Act. The fact of absconding From the place of occurrence soon after the incident was put to the accused-appellant under Section 313 Cr.P.C. and he has admitted to have absconded from the place of occurrence. The fact of absconding of the accused-appellant from the scene of occurrence is a most relevant and his subsequent conduct which falls within the meaning of Section 8 of the Indian Evidence Act.

36. There is yet another conduct of the accused-appellant about bringing of an Axe (Art. 1) from the room and keeping the said axe beside his cot where he was sleeping before the occurrence took place. The aforesaid conduct of bringing the axe from the room and keeping the same beside his cot. in this case, would fall within the meaning of his previous conduct as contemplated under Section 8 of the Indian Evidence Act. PW 4 Smt. Parmeshwari has clearly deposed before the learned Additional District and Sessions Judge that on the fateful night before going to bed. the accused-appellant brought the axe (Art. 1) from the room and when it was asked by PW 4 Smt. Parmeshwari from the accused-appellant that what he was about to do with the axe. the accused-appellant replied her that from the said axe, he would cut the wood and would prepare the tea for himself. According to her deposition, the accused-appellant cut the wood and prepared the tea for himself and drunk the same. PW 4 Smt. Parmeshwari was informed by PW 3 Karnail Singh at about 12.00 in the night that Jale Singh accused has caused two injuries on the head of her husband Narsingh Ram from the said axe and after causing injuries to her husband he ran away with the axe (Art. 1). The statement made by PW 4 Smt. Parmeshwari is fully corroborated by the statement of PW 3 Karnail Singh. The aforesaid previous and subsequent conduct of the accused-appellant within the meaning of Section 8 of the Indian Evidence Act is most relevant factor, which strengthened the eyewitnesses account given by PW 2 Ganga Ram and PW 3 Karnail Singh who have categorically deposed before the learned trial Judge that both of them have seen the accused-appellant causing injuries Nos. 1 and 2 by axe (Article 1) and when they exhorted the accused-appellant ran away from the place of occurrence.

37. The axe (Article 1) was recovered at the instance of the accused-appellant on the basis of the information given by him to the investigating officer. Information Memo regarding (Article 1) a weapon of offence by accused Jale Singh was prepared as Ex.P/19 and description memo of the place from where the said axe was recovered, was prepared as Ex. P/20. The recovery memo of axe (Article 1) was prepared which is Ex.P/15 and site-plan of the place from where the axe (Article 1) was recovered, is Ex. P/16. The recovery memo Ex.P/15 and site-plan Ex. P/16 were duly proved by PW 10 Rawat Ram which was prepared in presence of another witness PW 8 Tikun Ram. It is categorically deposed by PW 10 Rawat

Ram that blood stained axe (Article 1) was recovered at the instance of the accused-appellant, in his presence and in presence of PW 8 Tikuram Sarpanch of Village Lalania from the field of Laxman Ram Jat under a 'Ker tree'.

38. In our considered opinion the depositions made by PW 8 Tikuram and PW 10 Rawat Ram before the trial court about recovery of blood-stained axe (Article 1) at the instance of the accused-appellant from the field of Laxman Ram Jat under a 'Ker tree' is trust-worthy and both these witnesses are witnesses of truth. No contradiction has been brought to our notice in the statements of PW 8 and PW 10.

39. PW 6-Dr. Chandra Kumar. Medical Jurist, who conducted the autopsy of the dead-body of deceased Nar Singh Ram and prepared post-mortem report Ex.P/3 has categorically deposed before the learned trial Judge that injuries Nos. 1 and 2 can be caused by an axe.

40. The axe (Article I) was sent to the State Forensic Science Laboratory. Jaipur where it was examined by the Serologist and it was found that the axe was found with 'A' Group Blood. 'A' Group Blood was also found on the shirt and turban of the deceased, which he was wearing on the fateful night of occurrence. 'A' Group blood was also found by the Serologist on the 'Gudri' and 'Kambal' of the deceased, which was used by the deceased on his col on that fateful night. These clothes of the deceased were seized and sealed on the spot in the presence of PW 8 Tikuram Sarpanch of village Lalania. who has proved the seizure memo of blood-stained clothes of deceased Nar Singh Ram. Ex.P/12.

41. A close scrutiny of statements of PW 11 Om Prakash Investigating Officer, statement of PW 9 Mangtu Khan. Ex.P/14 copy of Malkhana Register of Police Station. Nohar and forwarding letter of Superintendent of Police. Sri Ganganagar to Forensic Science Laboratory. Jaipur Ex.P/5 lead towards an irresistible conclusion that the prosecution has successfully proved by adducing the aforesaid link evidence to the effect that the blood-stained axe (Article 1) recovered at the instance of the accused-appellant and clothes of the deceased were properly sealed on the spot in the presence of Motbir witnesses and these sealed articles remained intact upto F.S.L. Jaipur where these articles were found properly sealed

bearing impression which tallied with the specimen seal impression forwarded by the prosecution agency.

42. From perusal and close scrutiny of the judgment passed by the learned trial judge, we are fully satisfied that the learned Additional District and Sessions Judge has recorded the finding of guilt against the accused-appellant after analytical discussion of oral and documentary evidence on record. The learned trial Judge has given cogent and convincing reason in support of the finding of guilt recorded against the accused-appellant with which we are in full agreement and in our humble opinion, the finding of guilt recorded by the learned trial Judge does not suffer from any legal infirmity and is based on proper appreciation of oral and documentary evidence on record.

43. As a result of the aforesaid discussion, the instant appeal is dismissed. The conviction and sentence passed by the learned Additional District and Sessions Judge, Nohar for the offence under Section 302, IPC are hereby affirmed. Accused Jale Singh is in jail, therefore, he is directed to serve but the remaining sentence awarded by the learned Additional District and Sessions Judge, Nohar.