CASE NO.:
Appeal (crl.) 78 of 1999

PETITIONER:
STATE OF HARYANA

RESPONDENT:
RAM SINGH

DATE OF JUDGMENT: 15/01/2002

BENCH:
UMESH C. BANERJEE & N. SANTOSH HEGDE

JUDGMENT:
JUDGMENT

2002 (1) SCR 208

The Judgment of the Court was delivered by

BANERJEE, J. While it is true that the postmortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the postmortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis-a-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefor and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses.

These two criminal appeals being Crl. Appeal No. 78 of 1999 and Crl. Appeal No. 79 of 1999 arising from the same Judgment of the High Court against that of the learned Additional Sessions Judge, Hissar in Sessions Case No. 80 of 1992 in which (1) Bhajan Lal (2) Rai Sahab, (3) Ram Singh and (4) Ram Kumar faced trial. All the accused faced charge under Section 302 IPC read with Section 201 and the learned Additional Sessions Judge, Hissar by his Judgment dated 9th/10th August, 1995 convicted Bhajan Lai under Section 302 IPC and sentenced him to imprisonment for life, whereas the accused Rai Sahab, Ram Singh and Ram Kumar were convicted under Section 302/149 IPC and sentenced in the manner alike. The learned Additional Sessions Judge did not convict any of the accused under Section 201 IPC by reason of the conviction under Section 302 IPC read with Section 149 IPC. The case of the prosecution however, runs as below:-

Complainant-Budh Ram is the brother of Manphool (deceased). They are residents of village Chinder. On 22.1.1992, Budh Ram and Manphool went to the temple at about 6 a.m. and returned at about 6.15 a.m. When Manphool was ahead of Budh Ram by about 10 paces and had reached near the house of Kishan Lal, a jeep RJl-3407 was there and Rich Pal, a resident of Chinder and Appellant Bhajan Lal were standing near it, armed with guns. Appellant Rai Sahab was sitting on the driver seat, while Appellant Ram Kumar and Ram Singh alias Singha were also sitting by his side on the front seat. Accused Ram Kumar and Ram Singh, on seeing Manphool, stated that Manphool had won money in gambling dishonestly from Ram Singh, and that he should be taught a lesson for dishonesty. Rich Pal and Bhajan Lal fired a shot each from their respective guns, and as a result of receiving the shots, Manphool fell down. Complainant-Budh Ram took shelter in the temple out of fear. Dholu Ram, son of Manphool on hearing the report of the gunshot, reached there. Prosecution case further has been that immediately thereafter Ram Kumar and Singha alighted from the jeep and all four of them tied the body in a blanket and put the same in the jeep and then went away in their jeep after threatening the persons present at site. Complainant-Budh Ram informed his brother -Ranjit and thereafter chased the jeep in a truck. They made a thorough search on the canals and roads at Badopal and Bhola etc. but did not find any clue. Therefore, Complainant-Budh Ram along with

Dholu Ram went to Agroha Police Station, to lodge the report. The statement of Budh Ram was recorded at 3.05 p.m., which formed the basis of the FIR (Ex. PF).

The Station House Officer SI Kishan Dutt being PW-12 in the examination-in-chief, inter alia, stated as below :

"On 22.1.1992 I was posted as SHO P.S. Agroha. On that day, Budh Ram came to me in the police station. He was accompanied by Dholu Ram, He made statement before me upon which I recorded FIR Ex.PF which was read over and explained to him to which he signed in token of its correctness. I recorded police proceedings on it, handed over one copy of FIR to him and obtained his signature. Then I left for the post and reached the place of occurrence alongwith Budh Ram and Dholu Ram. I lifted blood stained earth, 2-3 pieces of bones from the spot, which were converted into separate sealed parcels, Seal of KD was used, Seal after use was given to Dholu Ram PW. I lifted blood stained earth Ex.P. 12 and three pieces of bones Exs. P.13/1-3 vide recovery memo Ex.PG, attested by Dholu Ram and Budh Ram. I prepared rough site plan of the place of occurrence Ex.PR, recorded statements of Dholu and Budh Ram. I raided the houses of the accused but they were found absconding. I searched for the dead-body in the canal, I stayed for the night in village Budha Khera. On 23.1.92 I deposited the case property with the MHC. On 26.1.92 I along with Ranjit and Dholu Ram was going in search of the accused and dead body. At Chable minor (Mori) Yad Ram met me and told me that he along with Atma Ram has recovered dead body of Manphool from the Chuli Bagrian minor near the field of Ram Pat. Then I reached there I held inquest proceedings on the dead body of Manphool and prepared inquest report Exs.PD/1.1 recorded statements of Dholu, Ranjit, Yad Ram and Atma Ram in the inquest proceedings I hand over the dead body along with application for post-mortem examination Ex.PD to constable Sadhu Ram and HC Jagdish."

It is at this stage it would be convenient to note the postmortem report which reads as below :-

"It was a dead-body of a man, moderately built and nourished, necked without any belongings with mouth and eyes closed. Rigor mortis was absent in all the limbs. The body was wet and smeared with mud, frass and leaves. The skin of the hands was swollen and was sodden. The nails and the hair could be pulled out easily. A tattooed mark "Manphool" was present on the anterior aspect of the right fore-arm and also found the following injuries. The height of the dead-body was 5 feet 11 inches :-

1. A crushed wound posterio and right lateral aspect of skull of irregular shape and size was 10 cms anterio posteriorly and 12 cms side to side involving the skin, sub cutaneous tissues and underlying bones which were right and left parietal bone, right temporal and occipital. Most of the brain matter was absent except a few brain matter left in the posterior oranial fosse. Pieces of bones involved were absent.

2. An oval punctured would in the left scapular area of the chest (However I have written abdomen by mistake). Measuring 1.5. cms x 1 cm with a collar of abrasion all around the wound. The direction of the wound was oblique going downward and forward. On dissection and 4th rib was fractured in the middle. The left lung was lacerated and congested. Clotted blood was present in left pleural cavity. Few pellet and foreign body were recovered. Anterior wall of pleural cavity was also congested and there was sub contaneous harmorrhage in the left memory area.

3. A punctured would on left side of abdomen 8 cms away towards left from the umbilicus. Omentum and few lops of intenstines were coming out of the wound. The wound was showing a collar of abrasion along the whole margins of the wound. Black tattooing was present around the wound. On dissection there was congestion in the skin Sub Coetaneous tissue and huge blood was present in the peritoneum cavity. Omentum was congested and loop

of small intestines were showing the congestion. Spleen was ruptured. Few pellets of fire-arm and foreign body was recovered. Small intestines showed semi digested small amount of food which was semi liquid/semi-digested."

The facts shortly put thus reveal the date of occurrence being 22.1.1992 at 6.15 a.m. and the body was recovered on 26.1.1992 by one Atma Ram and Yad Ram. Atma Ram stated :

"On 26/27 of January, 1993 i.e. about two years and two months ago, I and Yad Ram were searching for the dead-body of Manphool. We reached Chuli minor near the field of Raipat. There we saw a dead-body floating in the Chuli Minor. That dead-body was that of Manphool. We took out that dead-body from Chuli minor (a canal). Name of Manphool was tattooed on he hand of the dead-body. I had also identified the dead-body by seeing the face. The skull was empty (khokhli), as the skull was in torn condition. Yad Ram then left to the Police Station for giving intimation. 1 stayed at the spot near the dead-body. Yad Ram brought the Police. Dholu and Ranjeet also accompanied the police. Police prepared the inquest report of the dead-body and then recorded my statement.

On 13.2.92 I and Ranjeet were going to the P.S. Agroha to enquire if Singha alias Ram Singh had been arrested or not. Dead-body was found 18/19 days prior to our going to the police station. Thanedar had met us at the Bus Stand of village Khara Kheri. There a secret information was received by Sub Inspector (Thanedar) that accused Ram Singh was coming from the side of village Chinder. In the meantime a four-wheeler came there from which accused Ram Singh had alighted. On our pointing out SI apprehended Ram Singh now present in the court. Upon interrogation by the police he (Ram Singh) disclosed that 18/19 days ago he along with four other persons after committing the murder of Manphool Singh had thrown his dead-body in the canal and before throwing the same he had removed a golden ring from the finger of the dead-body of Manphool and the same was conceded by him at his house in the Niwar (strings) of the Palang (bed) and could get the same recovered. In this regard his statement Ex.PQ was recorded which was thumb marked by Singh accused and attested by me and Ranjeet Singh. Thereafter accused led the Police party in his house situated at village Chinder and then got recovered the ring. (At this stage, a sealed Parcel bearing seals of SS has been broken open and ring taken out there-from). The ring is Ex.P. 12. It is the same ring which was got recovered from the palang as stated above and the same was made into a sealed parcel and taken into possession vide recovery memo. Ex.PQ/1, attested by me and Ranjeet."

It is on this state of evidence, the High Court has passed an Order of acquittal so far as Ram Singh is concerned and as such partly allowed the appeal. In its Judgment, the High Court recorded the reasoning for such an Order of acquittal of one of the accused persons as below :

".....The evidence of PW-12 Kishan Dutt shows that accused-Ram Singh alias Singha was arrested only on 13.2.1992. But Ex.PL/2 also shows that Ram Singh alias Singha had allegedly thumb-marked the disclosure statement on 29.1.1992. If accused-Ran Singh alias Singha was arrested only on 13.2.1992, then he could not have made a disclosure statement on 29.1.1992. Further Ex.PQ is the alleged disclosure statement of Ram Singh alias Singha made on 13.2.1992. Atma Ram (PW-11) also stated in his evidence that Ram Singh alias Singha was arrested on 13.2.1992 and that he made the disclosure statement (EX.PQ) in pursuance of which the ring (Ex. P.12) was recovered. This inconsistency casts a lot of doubt as the involvement of accused-Ram Singh. Even according to prosecution, he was only sitting in the jeep and had raised a lalkara that Manphool should be taught a lesson. It is further alleged that he along with 3 of the accused wrapped Manphool in a blanket and put him in the jeep. But in view of that we have pointed out above, we are of the view that it is wholly unsafe to convict this accused on the basis of the available material and therefore, we are of the view that he (Ram Singh alias Singha) should be acquitted, giving him the benefit of doubt....."

Incidentally, the factual score depicts that Rich Pal had expired during the course of trial before the learned Additional Sessions Judge and having regard to the death of Rich Pal, the conviction and sentence pertaining to two other accused persons were maintained by the High Court and the present appeal by the accused persons pertain thereto. The State Government, also however, being aggrieved by the Order of acquittal moved this Court in appeal. Since these appeals arise out of the same Judgment, appeals were consolidated and were heard together.

The principal contention raised in support of the appeal filed on behalf of the accused persons has been that medical evidence as is available on record completely demolished the prosecution case. Let us, therefore, have a look at the medical evidence as is available on record. The postmortem report has already been noticed above and as such we need not dilate on the injuries inflicted on the body of the deceased what is required presently for our purpose herein. Dr. R.K. Kataria conducted the postmortem examination on the body of the deceased on 27.1.1992. In his evidence he has been rather specific that injuries No. 1,2 and 3 were the result of three independent shots though, however, possibility of injury No. 1 being caused by some heavy weapon cannot be ruled out. As regards direction of injury No. 2 Dr. Kataria explained that the nature of the injury itself indicates that it was caused by weapon from above to downward and injuries Nos. 2 and 3 were possible by a firearm weapon within a range of 3 ft. : whereas injury No. 2 Dr. Kataria stated could be caused by a firearm from behind, injury No. 3 is possible by firearm only from the front side. Dr. Kataria, however, went on to depose :

"Since I had X-rayed injury No. 1, therefore, I did not think it proper to give any details about nature of injury being ante mortem or post or whether is attributed in causing the death. 1 also did not mention the nature of weapon as no such column was there in the Performa prepared for post-mortem report. Therefore, 1 also did not give the nature of weapon used for injuries no. 2 and 3 also. In fact I had referred the dead-body for X-ray examination of injury no. 1 in order to ascertain the weapon used. It is correct that X-ray report was not shown the pieces of bones in this case. It is correct that my opinion given in the post-mortem report the injuries nos. 2 and 3 were sufficient to cause death due to shock and hemorrhage is wrong. Volunteered in fact mentioning of injury no. 1 omitted I had referred the X-ray examination of injury no. 1. It is incorrect to suggest that I did not mention about injury no. 1 while giving opinion about the cause of death as I wanted to toe the line of police."

A bare perusal of the evidence of the doctor depicts three specific features, namely, (i) Dr. Kataria had referred to have injury No. 1 X-rayed; (ii) nature of the weapon used by the accused persons has not been mentioned, as no such column was there in the Performa prepared for postmortem report and as such Dr. Kataria did not given the nature of the weapon used for injuries. As a matter of fact only for the ascertainment of the weapon used, the body of the deceased was referred for X-ray. The X-ray report, however, was not shown to the doctor till the date of examination, or even produced before the court; (iii) Dr. Kataria was also not shown the pieces of bones in the case. These three factors go a long way in support of the defence contention that it was a blind murder and thus a false implication.

The state of evidence available on record has been quoted extensively in this Judgment, which could otherwise be also avoided but has been so done so as to appreciate the trustworthiness or the credibility of the prosecution case. Medical evidence points out an injury having a downward stint : medical evidence points out two several gun shots injuries one from the front and one from the back -the eye-witnesses account does not, however, obtain any support from the medical evidence rather runs counter thereto. A definite evidence of availability of some bones at the place of occurrence was admittedly not shown to the postmortem doctor. Eye-

witnesses' account (PW-8) Budh Ram records that after giving the lalkara accused Bhajan Lai fired upon his brother Manphool and Rich Pal accused had fired one shot upon his brother. Rich Pal accused had since died and the brother on receiving the firearm injuries fell down on the spot. Immediately, thereafter an alarm was raised by the eye-witness upon which accused Bhajan Lai and Rich Pal threatened him that in case of any alaram they would also kill the PW-8 by reason wherefore the latter took the shelter by the side of the Mandir. The witness went on to record that after Manphool, his brother, fell down and all the accused except Rai Sahab wrapped him in a blanket and put in the jeep and the accused Rai Sahab then drove the jeep. The witness thereafter stated that :-

".....We then i.e. Dholu Ram, Ranjit and myself followed the accused in a truck. We went to the canal of Badopal. We also saw the accused on the roads but they were not visible. We went on the bank of canal of Badopal. We also went to Bhoda, Sarangpur, Kherampur. Kohli and other roads and then on the canal but could not find the accused and the jeep and Manphool. Ultimately, I lodged report Ex.PF in P.S. Agroha. In this regard my signature are there on FIR Ex.PF. The contents of the FIR were read over to me and after admitting the same to be correct put my signatures.

Police then came to the place of occurrence and lifted three pieces of bones, blood stained earth. Both were made into parcel and then sealed. Both were sealed separately seal after use was handed over to me. Both the parcels were taken into possession vide recovery memo Ex.PG." (Emphasis supplied)

Significantly, the prosecutor produced the bundle containing three pieces of bones, which are identified by PW-8 as the same pieces of bones, which were under seizure by the police authorities at the place of occurrence - these bones, however, were not produced and placed for examination before the postmortem doctor as to whether they can be co-related with that of the deceased person. The Serological Report of these bones did not see the light neither the Ballistic Experts' Report as to the nature of the weapons used. It is a duty cast on the prosecution to prove the guilt of the accused persons beyond all reasonable doubts. High Court has dealt with the issue that the thumb marked disclosure statement of Ram Singh dated 29.1.1992 casts a lot of doubt as to the involvement of accused Ram Singh since Ram Singh was arrested only on 13.2.1992 as such disclosure statement of 29.1.1992 cannot be had - it is this inconsistency which was noticed by the High Court and Ram Singh, at whose instance the ring was supposed to have been recovered, stands acquitted on the ground of benefit of doubt. The High Court, however, has not considered the medical evidical vis-a-vis the eye-witnesses' account - the conflict and inconsistency between the two also raises a very great suspicion in the mind of the Court : credibility of the prosecution case stands at zero level by reason of the conclusion of the High Court and accordingly benefit of doubt to Ram Singh. It is the same prosecutor, which has recovered the pieces of bones, had it exhibited but not produced before the postmortem doctor, who would otherwise be able to identify the bones as that of the deceased. This failure of the prosecution, in our view, cannot be taken as a mere omission but a failure, which would go a long way in the matter of reposing confidence thereon.

While it is true that the law is well settled in regard to the issue that in an appeal against conviction for the offence of murder Supreme Court would be rather slow to intervene in the event of there being a concurrent finding of fact but it is equally settled that in the event the finding, which suffers from the vice of perversity of any fundamental rules or even a definite procedural injustice going to the root of the prosecution case question of the Apex Court being slow in intervention would not arise. In this context, reference may be made to the decision of this Court in Arjun Marik and Ors. v. State of Bihar, [1994] Supp. 2 SCC 372 wherein this Court in paragraph 15 stated as below :-

"15. We are also aware of the fact that as a rule of practice, in appeal

against conviction for offence of murder Supreme Court is slow to disturb a concurrent finding of fact unless it is shown that the finding is manifestly erroneous, clearly unreasonable, unjust or illegal or violative of some fundamental rule of procedure or natural justice. Further it has also to be remembered that in a murder case which is cruel and revolting it becomes all the more necessary for the Court to scrutinise the evidence with more than ordinary care lest the shocking nature of the crime might induct instinctive reaction against a dispassionate judicial scrutiny of the evidence in law."

The Judgment under appeal admittedly does not contain a whisper even pertaining to the contradictions between eye-witnesses' account and the medical evidence. In the contextual facts and as noticed above, medical evidence runs positively counter to the eye-witnesses' account rendering the ocular testimony not being dependable or trustworthy. There is no credible evidence on record. It is significant that all the so-called eye-witnesses were produced in Court by the police from its custody in handcuff condition and it is only on the witness box that the handcuffs were released and taken up from the body of the person. All of them are under-trail prisoners being involved in a murder trail. The Court thus has to scrutinise its evidence with a little bit of caution and scrutiny so as to judge their veracity. Admittedly all the supposed eye-witnesses are relations of the deceased. As such they fall within a category of interested witness. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the Court will be rather strict in its scrutiny as to the acceptability of such an evidence. High Court has principally relied on the 161 statements and the contradictions available on the record have not been taken note of. In our view this is a clear error on the part of the High Court. Some weapons have been seized alongwith the cartridges and it has been stated that such recovery was effected in terms of the disclosure statements. Before this Court it has been strongly urged that the same is in contravention of Section 27 of the Evidence Act. Undoubtedly, Section 27, though provides an exception, but the Court should always be vigilant about the circumvention of its provision - "Sarkar on Evidence (15th Edition)" has the following to state on Section 27:-

".....The protection afforded by the wholesome provisions of ss. 25 and 26 is sought to be whittled down by the police by their ingenuity in manipulating the record of the information given by the accused in the case-diary in such a manner as to make it appear that it led to the discovery of some facts although the police might have made such discovery from other sources. When a fact is once discovered from information received from another source, there can be no discovery again even if any information relating thereto is subsequently extracted from the accused. A devise sometimes adopted by the police is to stage a scene and take the accused to the place where the things discovered lay buried or hidden and require him to make a search for them at the spot indicated to the accused, or sometimes the articles are first produced before the accused and thereafter statements purporting to have been made by him about the so-called discovery are recorded. Court should be watchful that the protection afforded by ss. 25 and 26 should not be dependent on the ingenuity of the police officer in composing the narrative conveying the information relating to the alleged recovery of a fact."

In Pulukuri Kotayya v. Emperor, 74 Ind. App 65 : AIR (1947) PC 67, the Privy Council considered the provision of Section 27 of Evidence Act and observed :-

"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must related distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.

Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife : knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant." (p. 77 of Ind App): (at p. 70 of AIR)."

The observations stand accepted by this Court in Prabhoo v. State of Uttar Pradesh, AIR (1963) SC 1113.

Let us however, at this stage, analyse the evidentiary value of such discoveries.

(i) Licensed double barrel 12 bore gun bearing No. 70002-1978 along with license No. 240-VII/Fatehabad (valid upto 2.8.1992) along with three .12 bore cartridges and one fired cartridge case of .12 bore - this recovery memo stands witnessed by Dholu Ram (PW-10) and Budh Ram (PW-8).

(ii) Recovery memo of Jeep No. RJI-3407 - this recovery stands witnessed by Dholu Ram and Budh Ram, PWs 10 and 8.

(iii) Pointing out memo - Rai Sahib, Ram Kanwar, Rich Pal and Bhajan Lal led the police party to Badipal Canal, at Chable Mori and pointed out the place where on the left bank of the canal the jeep had been parked and thereafter the dead body was put into the canal : this pointing out memo also stands witnesses by Dholu Ram and Budh Ram.

(iv) Four discloure statements of Bhajan Lal, Ram Kanwar, Rich Pal and Rai Sahab accused persons and all the four statements stand witnessed by Dholu Ram and Budh Ram, PWs 10 and 8.

(v) Recovery memo of blood stained earth lifted from left bank of Badipal Canal near the bridge of Chable Mori stands witnessed by Dholu Ram and Budh Ram.

(vi) Disclosure statement/memo of the accused Ram Singh : while in the process of throwing the dead body of Manphool in the canal, a golden ring was removed from his person and that ring has been kept concealed though led to the subsequent recovery of the same. This statement however stands witnessed by Ranjit and Atma Ram (PW-11).

(vii) Recovery memo of golden ring in terms of the disclosure statement witnessed by Ranjit and Atma Ram (PW-11).

Ranjit happens to be the brother of Manphool, the deceased : the memos mentioned in Nos. 1 -5 are all dated 29.1.1992 whereas 6th and 7th memos are dated 13.2.1992".

Two of the recoveries, as noticed above, thus stood witnessed by Atma Ram : let us briefly, at this stage, refer to the deposition of Atma Ram noticed herein before to the extent that on 26/27.1.1992 when Atma Ram was searching for the dead body of Manphool, he reached Chable more and saw a dead body floating - the dead body was then lifted to the bank of the canal and whereas Atma Ram was keeping a watch, Yad Ram was sent to inform the police. The police came along with Dholu and Ranjit. On the second occasion again Atma Ram and Ranjit enquired, after having discovered that though the dead body was recovered some time back, whether Ram Singh had been arrested or not -when Thanedar met them and in the meantime a four wheeler came from which the accused Ram Singh had alighted and on the pointing out by Atma Ram, Ram Singh was arrested and thereupon interrogation started by the police, which made Ram Singh to disclose the commission of the offence and throwing up of the dead body in the canal as also removal of the golden

ring from the finger of the dead body and subsequent recovery thereof, as noticed herein before. The ring was identified. The High Court, however, thought it fit to acquit Ram Singh by reason of discrepancy in the records.

These are, however, the evidence available on record for the recoveries effected upon disclosure being made. The High Court obviously did not place any reliance on the evidence of Atma Ram as otherwise no acquittal could have been ordered for Ram Singh.

Significantly all disclosures, and even arrests have been made in the presence of three specific persons, namely, Budh Ram, Dholu Ram and Atma Ram - no independent witness could be found in the aforesaid context - is it deliberate or is it sheer coincidence - this is where the relevance of the passage from Sarkar on Evidence comes on. The ingenuity devised by the prosecutor knew no bounds - Can it be attributed to be sheer coincidence ? Without any further consideration of the matter, one thing can be more or less with certain amount of conclusiveness be stated these at least create a doubt or suspicion as to whether the same has been tailor-made or not and in the even of there being such a doubt, the benefit must and ought to be transposed to the accused persons. The trial Court addressed itself on scrutiny of evidence and came to a conclusion that the evidence available on record is trustworthy but the High Court acquitted one of the accused persons on the basis of some discrepancy between the oral testimony and the documentary evidence as noticed fully herein before. The oral testimony thus stands tainted with suspicion. If that be the case, then there is no other evidence apart from the omni present Budh Ram and Dholu Ram, who however are totally interested witnesses. While it is true that legitimacy of interested witnesses cannot be discredited in any way nor termed to be a suspect witness but the evidence before being ascribed to be trustworthy or being capable of creating confidence, the Court has to consider the same upon proper scrutiny. In our view, the High Court was wholly in error in not considering the evidence available on record in its proper perspective. The other aspect of the matter is in regard to the defence contention that Manphool was missing from village for about 2/3 days and is murdered on 21.1.1992 itself. There is defence evidence on record by DW-3 Raja Ram that Manphool was murdered on 21.1.1992. The High Court rejected the defence contention by reason of the fact that it was not suggested to Budh Ram or Dholu Ram that the murder had taken place on 21.1.1992 itself and DW-3 Raja Ram had even come to attend the condolence and it is by reason therefor Raja Ram’s evidence was not accepted. Incidentally be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by defence witness has been effected rather casually by the High Court. Suggestion was there to the prosecution’s witnesses in particular PW-10 Dholu Ram that his father Manphool was missing for about 2/3 days prior to the day of the occurrence itself - what more is expected of the defence case : a doubt or a certainty - jurisprudentially a doubt would be enough : when such a suggestion has been made prosecution has to bring on record the availability of the deceased during those 2/3 days with some independent evidence. Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet - it is prosecutor’s duty to prove beyond all reasonable doubts and not the defence to prove its innocence - this itself is a circumstance, which cannot but be termed to be suspicious in nature.

Considering the aforesaid, we do feel it expedient to record that the High Court fell into a manifest error in coming to a conclusion as reflected in the Judgment under appeal and which thus cannot be sustained. The appeal (Criminal Appeal No. 79/1999), therefore, succeeds and is allowed and the appellants be released from the custody, if not required in any other proceeding.

In view of the decision above, Criminal Appeal No. 78/1999 (State of Haryana v. Ram Singh) fails and stands dismissed.

C.A. No. 78/99 dismissed.

C.A. No. 79/99 allowed.