



2026:CGHC:12617-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 430 of 2025

- 1** - Parmeshwar Kanwar S/o Shri Balbhadra Singh Kanwar Aged About 27 Years R/o Fattedganj, Police Station - Kartala, District - Korba (C.G.)
- 2** - Ram Prasad Mannewar S/o Ghurwa Ram Mannewar Aged About 27 Years R/o Ghuichua, Police Station - Nagarda, District - Janjgir-Champa (C.G.)
- 3** - Surendra Singh Kanwar S/o Late Balbhadra Singh Kanwar Aged About 30 Years R/o Fattedganj, Police Station - Kartala, District - Korba (C.G.)

--- Appellants

versus

- 1** - State of Chhattisgarh Through Station House Officer, Police Station-Urga, District - Korba (C.G.)

--- Respondent(s)

CRA No. 724 of 2025

- 1** - Harbhajan Singh Kanwar S/o Late Pyarelal Kanwar Aged About 48 Years R/o Near Bhaisma Market, Police Station Urga, District- Korba (C.G.)
- 2** - Dhankunwar W/o Harbhajan Singh Aged About 35 Years R/o Near Bhaisma Market, Police Station Urga, District- Korba (C.G.)

---Appellants

Versus

- 1** - State of Chhattisgarh Through Police Station Urga, District Korba (C.G.)

--- Respondent(s)

For Appellants	:	Shri Abhishek Sinha, Sr. Advocate, Shri Ghanshyam Patel, Shri Rajeev Kumar Dubey and Ms.Maya Chaturvijani, Advocates
For State	:	Shri Priyank Rathi, Govt. Advocate.

Hon'ble Shri Justice Ramesh Sinha, CJ

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Judgment on Board

17.03.2026

Per, Ramesh Sinha, CJ.

- 1 These two appeals are arising out of same sessions trial and common judgment, therefore they are being heard and decided together by this common judgment.
- 2 The appellants Parmeshwar Kanwar, Ram Prasad Mannewar and Surendra Singh Kanwar (in CRA No.430 of 2025) and appellants Harbhajan Singh Kanwar and Dhankunwar (in CRA No.724 of 2025) have challenged the impugned judgment of conviction and order of sentence dated 29.01.2025 passed by 3rd Additional Sessions Judge, Korba in Sessions Case No.67 of 2021 whereby the appellants have been convicted and sentenced in the following manner:

Name of accused	Conviction	Sentence
Parmeshwar Singh Kanwar, Ram Prasad Mannewar, Harbhajan Singh Kanwar, Dhankunwar and Surendra Singh Kanwar	302/120-B/34 IPC	Life imprisonment (3 times) and fine of Rs.100/- to each, in default of payment of fine, additional RI for 1 month
	201 IPC	RI for three years (3 times) and fine of 100 to each, in default of payment of fine, additional RI for 1 month
Parmeshwar Singh Kanwar and Ram Prasad Mannewar,	25(1B)(b) of Arms Act.	RI for three years and fine of Rs.100/- to each, in default of payment of fine, additional RI for 1 month

- 3 Brief facts of the case are that, the accused Harbhajan Singh Kanwar gave a Merg intimation Ex.P/50,51&52 to the police on 21.04.2021 at about 6:50 AM that his younger brother Harish Kanwar, sister in law

Sumitra Kanwar and his niece Yashika have been murdered in their house by some unknown person and their dead body are lying inside their house. The police reached on the spot and recorded Dehati Nalis Ex.P/53. Inquest of dead body of deceased Harish Kanwar, Sumitra Kanwar and Yashika were prepared vide Ex.P/20,22 &21 in presence of witnesses and their dead body were sent for postmortem to Government Hospital, Korba. Dr. Madhu Anand, PW-15 conducted the postmortem of dead bodies of deceased persons and gave the postmortem report Ex.P/42 (Harish Kanwar), P/43 (Sumitra Kanwar) and P/44 (Yashika Kanwar).

- 4 While conducting the postmortem of deceased Harish Kanwar, the doctor noticed crush injury on head with fracture of Skull and ruptured brain material, incised wound on face left angle at mouth upper left ear level, incised wound on left side of neck and little finger of left hand is amputated. Injuries were grievous in nature and caused by hard and sharp object and opined that cause of death is shock due to head injury and massive hemorrhage from injured part, seems to be homicidal in nature.
- 5 While conducting the postmortem of deceased Sumitra Kanwar, the doctor noticed a non measurable irregular crush injury on right side of forehead with fracture of Skull and ruptured brain material and crush injury on right side of face with fracture of mandible, maxillary, nasal and orbital bones. The other injuries are incised wound on neck extended from in front of neck up to below right ear, incised wound on chest below neck and it was caused by hard and sharp object and

opined that cause of death is shock due to head injury and massive bleeding from injured part, seems to be homicidal in nature.

- 6 While conducting the postmortem of deceased Yashika Kanwar, the doctor noticed non measurable crush injury on middle of head with and face with fracture of Skull, facial bone and ruptured brain material caused by hard and blunt object and incised wound below chest caused by hard and sharp object which were grievous of nature and opined that cause of death is shock due to head injury and massive hemorrhage from injured part, seems to be homicidal in nature.
- 7 FIR Ex.P/58 was registered under Section 302 IPC against unknown person. Spot map Ex.P/23 was prepared by the police and P/2 by the Patwari. During investigation CCTV footage was collected by the police from the shop of witness Mohd. Junaid in which two suspected persons were seen entering into the house of the deceased and coming out from there at the relevant point of time i.e. 4-5 AM and the said CCTV footage collected through memo Ex.P/15. Certificate under Section 65-B of the Evidence Act was also obtained from Mohd. Junaid with respect to the authenticity of the said CCTV footage which Ex.P/16. The Inspection report of the spot was also submitted by the office of Scene of Crime Mobile Unit, Korba to the investigating officer which is Ex.P/70. During investigation and from the statement of witnesses, the police came to know that there was a dispute between the deceased Harish Kanwar and his brother Harbhajan. He also came to know that suspect Parmeshwar Singh Kanwar is also involved in the incident who was taking treatment at Kartala Hospital. The police took Parmeshwar Singh Kanwar into custody and interrogated.

In his memorandum statement Ex.P/4 recorded by the police, he disclosed about the conspiracy, plan and involvement of the accused persons in the alleged offence of murder of deceased persons and also disclosed the manner in which they committed the offence. On the basis of memorandum statement of accused Parmeshwar Singh, two sword like sharp edged weapon (Katta), one half burnt full pant of accused Parmeshwar, one half burnt T-shirt of accused Parmeshwar and one half burnt T-shirt of accused Ram Prasad have been seized from Dam vide seizure memo Ex.P/5. From the accused Parmeshwar, his mobile phone was also seized vide seizure memo Ex.P/5-A. The accused Ram Prasad was also taken into custody and his memorandum statement was recorded vide Ex.P/6. From Ram Prasad one leather purse having Rs.10,000/- cash in it and Adhar Card of the deceased Harish Kanwar, passport size photograph of Harish Kanwar and his mobile phone have been seized vide seizure memo Ex.P/7. The memorandum statement of accused Surendra Kanwar Ex.P/8 was also recorded and one motorcycle and one piece of stone was seized from his house at village Salihabhata vide seizure memo Ex.P/9. From the daughter of accused Harbhajan Singh, one mobile phone have been seized vide Ex.P/10. Other two mobile phones have been seized from accused Dhankunwar and one from accused Harbhajan Singh Kanwar vide Ex.P/11&12 respectively. One bloodstained doormat, bloodstained bedsheet, bloodstains taken out from floor, piece of cement floor, bloodstained Gamchha, bloodstained mattress cover, another bloodstained bedsheet, one wooden bat, bloodstains scratched from the wall, plain paint of wall, one sword like iron

weapon, two broken mobile phones and broken piece of bloodstained floor have been seized from the spot vide seizure memo Ex.P/24. The CDR and CAF profile of the seized mobile phones from the accused persons were also obtained by the police from the concerned service provider company through Ex.P/32. CDR and CAF are Ex.P/33 to 40. Further CDR and CAF of mobile phones 8959776845, 6263794465 and 8072733591 have also been obtained through memo Ex.P/41. The seized articles from the accused persons were sent for its query report to the doctor who gave his query report Ex.P/45 & 46 and opined that the injuries found on the body of the deceased persons could have been caused by said sword like sharp edged weapons and for confirmation of blood on the seized articles, he referred the articles for chemical examination to FSL. The MLC report of the accused Parmeshwar Kanwar was also obtained by the police which is Ex.P/47 and while medically examining Parmeshwar Kanwar, the doctor noticed stitched wound over left side of forehead, stitched wound over left eyebrow, incised wound over below left eye to left side of nose, swelling on left eye and partial amputated left hand index finger and part of distal interphalangeal finger and opined that injuries may be caused by hard and sharp object. The nature of injuries seems simple till review in Orthopedic and Ophthalmologist.

- 8 While medically examining accused Ram Prasad Mannewar, the doctor noticed incised wound over right wrist and opined that nature of injury seems simple and caused by hard and sharp object and gave his report Ex.P/48. The accused Ram Prasad Mannewar was put to Test Identification Parade (in short, TIP) conducted by the Executive

Magistrate on 27.06.2021 at District Jail Korba and he has been duly identified by witness Jeevan Bai Kanwar and TIP memo Ex.P/59 was prepared. The accused Rameshwar was also put to TIP conducted on 27.06.2021 itself at the same place where the witness Jeevan Bai Kanwar identified the accused Parmeshwar also and TIP memo Ex.P/58 was prepared. The seized articles either from the spot or from the accused persons were sent for its chemical examination to regional FSL Bilaspur from where report Ex.P/67 was received, according to which, blood was found on the sent articles except the plain piece of floor, plain paint scratched from the wall and piece of floor seized from the spot. Human blood was also detected. In Article-A,F,H & I, "B" group of blood was found and in Article-C,L&N, "O" group of blood was found.

- 9 Statement of witnesses were recorded under Section 161 of CrPC and after completion of usual investigation the charge sheet for the offence under Sections 302, 201,120-B and 404 IPC and 25 of Arms Act was filed against five accused persons before the Judicial Magistrate First Class, Korba, whereas charge sheet against another accused who was juvenile in conflict with law, were filed before the concerned Juvenile Justice Board. The case was committed to Sessions Judge Korba from where it has been transferred to trial court for its trial.
- 10 The trial court has framed charge against the accused Parmeshwar Kanwar and Ram Prasad Mannewar for the offence under Sections 120-B,201,302/34,404 IPC and Section 25(1B)(b) of Arms Act. The charge against accused Harbhajan Singh Kanwar, Smt. Dhankunwar and Surendra Singh Kanwar have been framed under Sections 120-

B/34, 201,302/34 and 404 IPC. The accused denied the charge and claimed trial.

- 11** In order to prove charge against the accused persons, the prosecution has examined as many as 19 witnesses. The statement of accused persons were recorded under Section 313 CrPC in which they denied the circumstances appears against them and pleaded innocence.
- 12** The accused Parmeshwar Kanwar has submitted at the relevant point of time he was in his own house and since he is the brother in law of accused Harbhajan, he has been falsely implicated in the offence. The accused Ram Prasad Mannewar gave his explanation that on 21.04.2021 he had gone to his brother Shyam Lal's house at village Laber. The accused Harbhajan Singh Kanwar explained that at the time of incident he had gone for morning walk along with his wife and daughters Gitanjali and Rupali. When he came back he came to know that his brother, sister in law and niece have been murdered by some unknown person and then he immediately informed the incident to the police at Police Station Urga and he has been falsely implicated in the offence. The accused Dhankunwar has explained that at the relevant point of time she went for morning walk along with her husband and daughters. She has not asked her daughter Gitanjali for messaging to her brother Parmeshwar and she has not send any message to accused Parmeshwar through mobile phone. The accused Surendra Singh Kanwar have also explained that on 21.04.2021 at about 7-7:30 AM his brother Parmeshwar informed him through mobile phone that he met with an accident at Salihabhat road and went to Kartala hospital. He went on the spot where he found his brother's motorcycle

which was being taken by Sevak Khairwar to his house. He too have been falsely implicated in the offence.

- 13** One defence witness Jagdish Prasad, DW-1, have been examined by the accused persons in their defence.
- 14** After appreciation of oral as well documentary evidence led by the prosecution, the trial court has convicted and sentenced the accused persons as has been mentioned in the earlier paragraph of this judgment. Hence these appeals.
- 15** Shri Abhishek Sinha, learned Senior counsel appearing for the appellants Harbhajan Singh Kanwar and Dhankunwar (CRA No.724 of 2025) would submit that there is no evidence on record against them that they were present on the spot and actively participated in committing murder of the deceased persons. They have been made accused only on the basis of telephonic conversation which is inadmissible in evidence. The allegation against the appellant Harbhajan and Dhankunwar are that Harbhajan is the brother of deceased Harish Kanwar and there was dispute exists with respect to property of family as well as the amount of pension receiving by their mother. There is no evidence of conspiracy to commit murder of the deceased persons except the telephonic call. There is no other evidence with respect to the nature of conversation in telephonic call made between them. On the date of incident, the appellant Harbhajan, his wife Dhankunwar and their daughter had gone for morning walk in usual course of their routine and when they returned from walk, they saw that door of the house of the deceased person was open. When he entered into their house, he came to know about the incident. He

immediately informed the police and then only the police started investigation. Even in CCTV footage or the evidence of eyewitness PW-10, his presence was not stated by the witnesses. No any weapon of asault was seized from them. Merely connecting the present appellants with the offence in question through their mobile call would not be sufficient to hold them guilty in the offence. There is material omissions and contradictions in the evidence of prosecution witnesses and under such inconsistent evidence, their appeal is liable to be allowed and they are entitled for acquittal.

- 16** He would reply upon the judgment passed by this court in case of Vikas Jain & Another Vs. State of Chhattisgarh (CRA No.717 of 2021) and other connected appeals.
- 17** Shri Rajeev Dubey, learned counsel appearing for the the appellants Parmeshwar, Ram Prasad and Surendra (in CRA No.430 of 2025) would submit that prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses. The prosecution has projected PW-10, Jeewan Bai, as eyewitness to the incident who is the mother of deceased, but her 161 CrPC statement have not been recorded and she has not disclosed about the incident for a considerable time. One cannot expect that witness was kept silent for a considerable period when her son was being murdered and she allegedly saw the incident. Her conduct is against normal behavior of a witness and hence on this ground alone her evidence can be discarded. So far TIP is concerned, the TIP of accused persons Parmeshwar and Ram Prasad are full of inconsistencies and proper procedure has not been drawn during their

TIP. The witnesses were having ample opportunity to see the accused persons and the said TIP is not reliable. The CDR of the mobile phones and CCTV footage are not sufficient to connect the accused persons with offence in question as the nature of their conversation has not been produced by the prosecution. At the relevant point of time there may be some conversation with respect to incident as all the accused persons are closely related with each other. The injury found on the body of accused persons have been duly explained by them that they met with an accident and received injuries. He would further submit that seizure of weapon of offence from Parmeshwar was also tainted and planted by the police persons only to implicate them in the offence in question. The evidence of motive is also not sufficient as circumstances to commit the murder. Though the evidence of property dispute and amount of pension receiving by their mother is projected as motive to commit murder, but that dispute was not so serious for which the accused persons took the extreme step of committing murder of the deceased, his wife and child. Further, the FSL report is also not sufficient to connect the accused persons with the murder of the deceased persons as there is no blood group in the blood found on the seized articles and the seizure of clothes and other articles from the accused persons have not been proved by any independent witnesses. There is no evidence on record to establish conspiracy of the present appellants with the other accused persons. Therefore, the present appellants are also entitled for their acquittal.

- 18** On the other hand, learned counsel for the State vehemently opposes the submissions made by the counsel for the respective appellants

and submits that prosecution has proved its case beyond reasonable doubts. There are ample and overwhelming evidence against the accused persons that they conspired together to commit murder of deceased persons and in furtherance thereof they committed the murder. PW-10, Jeewan Bai is eyewitness to the incident who duly supported the prosecution's case. Parmeshwar and Ram Prasad were put to TIP and they were identified by the witnesses in TIP conducted by the Executive Magistrate. From CCTV footage, CDR and their location details clearly connects them with the offence in question as they were having connected through mobile phone on the relevant date and time of incident. The accused Parmeshwar and Ram Prasad were also injured, however, they could not explain their injuries as to how and in what manner they received injuries. Their defence that they met with an accident is based on false explanation without any basis as his motorcycle was not found damaged as has been claimed by the accused persons. On the memorandum statement of accused Parmeshwar two sword like weapon have been seized under the water of Dam which can only be within the knowledge of accused Parmeshwar. In the FSL reports, blood stains were found on the seized articles and clothes of the accused persons. Thus, all these evidences make a complete chain of circumstances including the witness of eyewitness and there is no suspicion over the prosecution's case. Conspiracy always hatch in secrecy and there is no need of any direct evidence. It is the meeting of mind between the accused persons for which there is sufficient evidence of call details and CDR which clearly demonstrate that they were connected with each other

which is the part of their conspiracy. The relation between the accused and deceased is also one of the considerable point of conspiracy to commit murder of the deceased persons. The trial court after appreciating the entire evidence available on record passed the well reasoned judgment and convicted and sentenced the accused persons which does not require any interference.

19 We have heard the counsel for the parties and perused the records of the case with utmost circumspection.

20 The first and foremost question arises for consideration would be the nature of death of deceased persons. In the present case there are three deceased persons Harish Kanwar, Sumitra Kanwar and Yashika. Their dead bodies were found inside their house in injured condition which was first seen by accused Harbhajan who lodged the Merg intimation Ex.P/50,51&52. In the merg intimation, he informed the police that the body of deceased persons were having numerous injuries caused by sharp edged weapon and blood was spread all over the room. The witnesses to the inquest Jaswant Singh Kanwar, PW-12 also proved the inquest report and condition of dead bodies found inside the room. PW-15, Dr. Madhu Anand Banjare conducted the postmortem of dead bodies. While conducting postmortem of all the deceased persons, he found various injuries as has been mentioned in the earlier part of this judgment and opined that the cause of death of all the deceased were shock due to head injury and massive hemorrhage from injured part, seem to homicidal in nature. From the evidence of doctor, it transpires that deceased persons were brutally murdered by assaulting with sharp edged weapon and their death was

homicidal in nature. There is nothing in cross examination of the doctor to raise any doubt that death of deceased persons were not homicidal, but for any other reason. Though he opined that the nature of death seems to be homicidal, but in view of injuries and the manner in which the dead bodies were found, it cannot be said that their death was due to any other reason except for homicidal death. Homicidal death of deceased persons were found proved by their postmortem report Ex.P/42,43 & 44.

21 So far as involvement of accused persons in the offence in question is concerned, the case of the prosecution is based on the evidence of eyewitness PW-10 and other circumstantial evidence i.e. motive to commit murder; TIP of accused Ram Prasad & Harbhajan; injury found in the body of accused persons Parmeshwar and Ram Prasad; seizure of weapon of offence from Parmeshwar; seizure of mobile phones from accused persons Surendra, Dhankunwar and Harbhajan; CCTV footage from the shop of Mohd. Junaid; CDR and CAF of the mobile phones seized from accused and also the FSL report.

22 We are firstly examining the evidence of eyewitness PW-10, Jeevan Bai, PW-10. She has stated in her evidence that the accused Harbhajan is her son and his wife Dhankunwar is her daughter in law. She also identified Parmeshwar and Surendra who are brother in law of her son Harbhajan. She also identified the accused Ram Prasad by his face, but she did not know his name. She further states that incident is of morning time. She was in her house and was sleeping. When she heard noise, she saw that accused persons firstly assaulted her son Harish by weapon, thereafter they assaulted his wife and child.

She had seen the accused persons assaulting the deceased persons. She asked them not to do so. After committing their murder, they fled away.

In cross examination, she stated that on the date of incident her both sons, daughter in laws and three grandchildren were there in the house. On the date of incident, Harbhajan @ Chhotu, his wife and child went outside for morning walk, however, at the time when they had gone for morning walk, she was sleeping. She could not see the persons who entered into the house, but she denied that she had seen the incident after its occurrence. She specifically stated in para 5 of her cross examination that two persons have assaulted the deceased persons. She clearly denied that she has not seen the incident and vehemently stated that she had seen the incident. She also explained that her son Harish was being taken near the door by accused by assaulting him and thereafter they committed murder of her daughter in law and granddaughter. In further cross examination, she clarified that the persons who assaulted the deceased persons were two brother in laws of her son Chhotu @ Harbhajan. She tried to stop them not to assault the deceased and saw both brother in laws of Harbhajan at the time of incident and identified them. She also denied that she is a tutored witness.

23 From the evidence of this witness, it clearly transpires that she is an eyewitness to the incident and have seen the incident from very close distance as she herself was in the same house at the time of incident and tried to stop the accused not to assault the deceased persons. There is nothing in her cross examination to discredit her evidence and

she is being treated as sterling witness with respect to two accused persons i.e. Parmeshwar and Ram Prasad who are brother in law of accused Harbhajan.

24 From perusal of record it transpires that she is cited witness in the charge sheet and her 161 CrPC statement was also recorded by the prosecution on 20.06.2021. The submission of learned counsel for the appellants Ram Prasad, Harbhajan and Surendra that her 161 CrPC statement was not recorded, does not appear to be correct position as her 161 CrPC statement was recorded and she was cited as eyewitness to the incident. Even if it is considered that her evidence is recorded after sometime, that itself would not be sufficient to discard or disbelieve her evidence for the reason that delayed recording her 161 statement have not been cross examined by her and also that all the other accused persons are her family members and she is aged about 80-85 years. She is the mother of deceased Harish Kanwar and her pension amount was one of the motive to commit murder of deceased persons. When she depends upon deceased Harish Kanwar and residing with him, there was no other family members alive and the accused persons were other relatives, it cannot be said merely delayed recording of her 161 statement would defeat the entire case of prosecution. In her evidence, she clearly supported the prosecution case that two accused persons Parmeshwar and Ram Prasad, who are brother in laws of accused Harbhajan, have committed the murder of deceased persons and she tried to stop them, but could not succeed. The involvement of two accused persons Parmeshwar and

Ram Prasad in the offence and assailant have been established by the evidence of PW-10.

25 The other piece of evidence in the case is TIP conducted by the Executive Magistrate Manharan Singh Rathia, PW-18. He stated in his evidence that on 27.06.2021 at about 12:15 hours he conducted TIP of the accused Parmeshwar Singh Kanwar at District Jail, Korba. The accused Parmeshwar Singh was identified by witness Jeewan Bai and he prepared TIP memo Ex.P/58. At the same time he also conducted TIP of accused Ram Prasad Mannewar at same place and he was also identified by witness Jeewan Bai and his TIP memo is Ex.P/59. He followed all the relevant provisions for conducting TIP and mixed up sufficient number of persons with the accused persons. In cross examination, he stated that person who were mixed up with the accused persons were the prisoners of jail. He admits that mixed persons were of similar physic and age. He denied any deficiency in conducting TIP. From the evidence of this witness, conduction of TIP and identification of accused persons Parmeshwar and Ram Prasad by witness Jeewan Bai is clearly established by the prosecution that they are the two accused persons who committed the offence. From the evidence of Jeewan Bai when it has been established that she had seen these two accused persons on spot committing murder of deceased persons and she tried to stop them and further they have been identified by her in TIP, involvement of these two accused persons in the offence in question have been duly established.

26 Further piece of evidence available on record is the MLC report Ex.P/47 of the accused Parmeshwar & Ex.P/48 of accused Ram

Prasad who were allegedly injured at the time of commission of offence. In the present case, the allegation is that the accused persons have committed the murder of three deceased persons by sword like sharp edged weapon. On the same day, these accused persons Parmeshwar and Ram Prasad were examined by the doctor. Injuries were found on their body which has been proved by PW-15, Dr. Madhu Anand Banjare. He stated in his evidence that on 21.04.2021 the injured Parmeshwar Kanwar was brought before him for his medical examination and found stitched wound on forehead, stitched wound on left eyebrow, incised wound below left eye to left side of nose and swelling on left eye and amputated of left and index finger partial part of distal interphalangeal finger. His MLC report is Ex.P/47. He also stated that on the same day i.e. on 21.04.2021 the accused Ram Prasad Mannewar was also brought before him for his medical examination and he found incised wound over right wrist and gave his report Ex.P/48.

27 With respect to injuries to these two accused persons, they have taken a defence that they met with an accident by which they received injuries, however, in their 313 CrPC statement, the accused Parmeshwar have not stated anything that he received injury on his body by any accident. Accused Ram Prasad have only stated that on the date of incident he had gone to his brother's house by his motorcycle. He has not stated that they met with any accident by which they received injuries. There is no explanation about their injuries. In question No.236 of their 313 CrPC statement, the accused Parmeshwar stated that due to accident he was admitted at Kartala

Hospital whereas in question No.236 of 313 CrPC statement of accused Ram Prasad, he shown his ignorance about the accident.

28 From the evidence of Doctor PW-15 who medically examined the accused Parmeshwar and Ram Prasad, there is no cross examination on this point that injuries found on the body of these two accused could were caused by accident and there is no cross examination on the point of injuries found on the body of accused persons. Thus, the explanation given by the accused Parmeshwar that he met with road accident and received injuries is falsified, the benefit of which goes in favour of prosecution that during commission of offence of murder of deceased persons the accused persons received injuries. Further, the time of alleged incident of murder of deceased person is about 4:15 AM whereas the accused persons were medically examined by doctor at 11 PM and 11.10 PM respectively. Therefore, in such circumstances it can be held that accused Parmeshwar have taken a false defence that in a road accident he received the injuries and non explanation of injury by the accused Ram Prasad goes against them.

29 So far as the motive to commit murder is concerned, it has been proved by PW-3, Smt. Haresh Kanwar, PW-4, Ganga Bai Kanwar, PW-6 Rekha Singh, PW-8, Gulab Singh Kanwar and PW-9 Heera Thakur.

30 PW-3, Smt. Haresh Kanwar, is the sister of accused Harbhajan Singh Kanwar. She also disclosed about relationship between accused persons and the deceased persons. She has stated that on 21.04.2021 due to Covid she was admitted at NTPC Hospital Darri. On the same day at about 5 AM Driver Ballu Khan informed her about murder of her brother Harish Kanwar, his wife Sumitra and their

daughter Yashika. When she took information from her son Jaswant, then he informed about the incident. She further stated that there was dispute exists with respect to partition of land of the family and apportionment of amount of pension of their mother Jeewan Bai. They received compensation of Rs.27,00,000/- which was deposited in the bank account of their mother for her treatment and the said amount was the root cause of the incident. Harbhajan was incarcerated since 8-9 years back on the charge of illegal transportation of wood and huge amount were spent for releasing him on bail. There was no talking terms between both the brothers and Harbhajan regularly used to tease Harish that he will see him.

In cross examination she states that 3-4 days back from the date of incident Harish informed her that Harbhajan is regularly raising quarrel with him. After death of her father Pyare Lal, the name of all his brother and sisters were recorded in the revenue records and partition proceeding was pending. Some land was acquired by the Power Grid Company and compensation was awarded in the name of all brother and sisters and mother jointly. Daily expenses of family were managed from the pension amount of her mother.

31 PW-4, Ganga Bai Kanwar, is the Aunt in law of accused Harbhajan and mother of deceased Sumitra Kanwar. She also disclosed about relationship between the accused and deceased persons. She also disclosed about the dispute with respect to family property in the family of the deceased Harish Kanwar and Harbhajan. The dispute of family become aggravated which resulted in to frequent quarrel between them and threatening. She further states that her daughter Sumitra

informed her at the time of Mahashivratri that Harbhajan and his wife Dhankunwar threatened them that they will see them, however, they ignored as it was in routine manner she was under impression that accused persons will not take any extreme step to that extent.

In cross examination, she stuck about the family affairs and information given by her daughter to her about threatening given by the accused Harbhajan and his wife Dhankunwar and also the dispute between the family with respect to partition of property.

32 PW-6, Rekha Singh, is the Sister of accused Harbhajan. She too have stated about the fact that when they received information about the accident she went to the place and saw their dead bodies. Her mother informed that she had seen the assailants and also tried to stop them, but they brutally assaulted the deceased persons. She further states that there was frequent quarrel between Harbhajan, Dhankunwar and deceased Harish Kanwar. The deceased Harish informed that with respect to amount of Rs.27,00,000/- received from Power Grid Company, the accused Harbhajan and his wife Dhankunwar regularly threatening him that they will see him. A months before the date of incident, the accused Harbhajan tried to throw him out from his house.

In cross examination, the evidence with respect to family dispute between deceased Harish and accused Harbhajan would not be demolished by the defence and she remain firm about quarrel between accused Harbhajan and deceased Harish with respect to family property.

33 PW-8, Gulab Singh Kanwar, is the father of the deceased Sumitra who too have stated about quarrel between deceased Harish and

accused Harbhajan which were informed to him by her daughter Sumitra (since deceased).

34 PW-9, Hira Thakur, is another sister of deceased Harish. She too have stated that on 21.12.2020 when she came to her maternal house at Bhaisma, there was a quarrel between Dhankunwar and Sumitra and at that time Harbhajan and Harish also came there and their quarrel become aggravated. The quarrel was with respect to partition of property and amount of compensation received by them from Power Grid. There was altercation between them and Harbhajan threatened Harish that he will see him. She intervened in the quarrel and asked to get the matter resolved by their own.

In cross examination also the defence could not extract any material to disbelieve her evidence that there was no quarrel between accused and deceased Harish, or there was no altercation between them.

35 All these evidences supported the prosecution case that accused Harbhajan was having motive to commit murder of the deceased.

36 With respect to other evidence regarding seizure of weapon of assault from the accused Parmeshwar, seizure of their mobile phones and CDR and CCTV footage are concerned, we consider the evidences of other witnesses.

37 PW-1, Narhari Patel is the Constable at Kartala Police Station. He stated in his evidence that on 21.04.2021 at about 7:04 AM he received an intimation of accident between Nonbirra and Salihabhata and when he called back, the person who met with accident informed him that he had received injuries and then he asked him to remain

their. When they reached on the spot, the accused Parmeshwar was standing near Dhaba and informed him that he met with an accident near Salihabhata and informed that his motorcycle has been taken by his brother. When he raised suspicion that injuries were not appearing to be accidental injuries, then he stated that he received injuries by the accident. When he was being taken to hospital, on the way, they met with 108 Ambulance and accused Parmeshwar was shifted in Ambulance.

In cross examination, though he stated that he could not brought the entry register to prove that he received a message on 07:04 AM, but it is not specifically disputed by the defence as it is the defence of accused himself that he met with an accident and informed Dial 112 Police. The evidence of this witness goes against accused Parmeshwar that when this witness went on the spot, he did not find any vehicle there; the accused Parmeshwar did not inform about the offending vehicle and further that he observed that injuries found on the body of accused Parmeshwar does not appear to be received on accident. Had he actually been met with an accident, the vehicle must have been found on spot itself in damaged condition instead of taking the vehicle by his brother. When this witness asked the accused Parmeshwar to remain present on the spot and immediately rushed to the place of incident, in a short span of time coming of brother of accused Parmeshwar and taking the vehicle with him itself is a suspicious circumstances that he actually met with an accident or not? The said motorcycle was seized from Surendra Singh Kanwar vide seizure memo Ex.P/9. It has been mentioned in the seizure memo

Ex.P/9 that the motorcycle was kept hiding by the accused in his house and it was not found damaged. Thus, the defence taken by the accused Parmeshwar that he met with an accident on the date of incident was a false defence

PW-1 has further stated that at about 07:04 AM he received intimation about accident whereas the accused Parmeshwar was medically examined at 11:10 PM. All these circumstances clearly demonstrate that false defence was taken by the accused Parmeshwar to discard his involvement in the offence in question.

38 PW-2, Sevak Khairwar is the person who accompanied the accused Surendra. He has stated in his evidence that on the date of incident the accused Surendra came to him and asked to accompany disclosing that his brother met with an accident and they are required to go there to take his motorcycle. He accompanied him and brought his motorcycle to the house of accused Surendra and kept the motorcycle in his house. After about one hour the police came there and seized the motorcycle. This witness has turned hostile and not supported the case of prosecution and denied his police statement Ex.P/1.

In cross examination, he admits that the said motorcycle was brought by its driver which was being driven by Surendra.

39 PW-5, Anubhav Kaushik is the witness of memorandum of accused Parmeshwar Ex.P/4. On the basis of memorandum of accused Parmeshwar, two sword like weapons and burnt cloths have been seized from Dam vide seizure memo Ex.P/5 and Ex.P/5-A. The memorandum statement of accused Ram Prasad Ex.P/6 was also

recorded in his presence and from the accused Ram Prasad, a leather purse having Rs.10000/-, Adhar Card of deceased Harish and one mobile phone was seized. He is witness of memorandum statement Ex.P/8 of accused Surendra and seizure of motorcycle and one stone vide seizure memo Ex.P/9. He is also the witness of seizure of mobile phone from the daughter of accused Harbhajan vide seizure memo Ex.P/10,11&12.

In cross examination, he remain firm in recording memorandum statement and seizures of article from the accused persons. He supported the prosecution's case. Though some difference in timing appears in his evidence, but that itself cannot make his evidence doubtful as he duly supported recording of memorandum statement of accused persons and seizure of articles made from them. He accompanied the police persons through out the seizure proceeding.

40 PW-7, Raghav Prasad Sahu, is another witness of memorandum and seizure Ex.P/4 to P/11. Though he turned hostile, but he supported the prosecutions case that he signed all the documents.

41 PW-11, Mohd. Junaid, is the owner of electronic shop at Bazar Chowk Bhaisma. CCTV Camera was installed in his shop. On 21.04.2021 the police asked for CCTV footage of that camera to which he provided in Pen Drive. He also gave his certificate under Section 65-B of the Evidence Act which is Ex.P/16 and Pen Drive along with the memo which is Ex.P/15. The defence could not cross examine him with respect to contents of CCTV footage, however, he was cross examined about the certificate of Section 65-B. Extraction of CCTV

footage from CCTV in its original form and submitting same to police in Pen Drive could not be rebutted by defence in his cross examination.

42 PW-12, Jaswant Singh Kanwar is the witness of inquest, spot map and arrest memo. PW-13 Firoz Alam is the Patwari who prepared the spot map.

43 PW-14, Peman Ogre is the Constable posted at Cyber Cell Korba. He received a request letter Ex.P/32 for CDR and CAF profile of mobile numbers 7611191022, 8120811110, 8959776845 and 8817774569 for the period between 14.04.2021 to 21.04.2021. The mobile number 7611191022 was registered in the name of Harbhajan Singh and its CAF is Ex.P/33 & CDR is Ex.P/34. Mobile No. 8120811110 was registered in the name of Harish Kanwar and its CAF is Ex.P/35 & CDR is Ex.P/36. The mobile No. 8959776845 was registered in the name of Harbhajan Singh Kanwar and its CAF is Ex.P/37 & CDR is Ex.P/38. Mobile No.8959776845 is registered in the name of Surendra Singh Kanwar and its CAF is Ex.P/39 & CDR is Ex.P/40. Another request letter for call detail and CAF profile is Ex.P/41 and CDR of mobile numbers 8959776845, 6263794465 and 8072733591 is Article A which is in the form of CD.

In cross examination, he reiterated that mobile No.7611191022 is registered in the name of Harbhajan Singh and in that mobile number, on 21.04.2021 there was a call at 4:10 AM from mobile No.8120811110 which is registered in the name of Harish Kanwar. On 21.04.2021, there was no conversation with Parmeshwar, Ram Prasad and Surendra from the mobile number of Harbhajan i.e. 7611191022.

44 PW-16, Chandra Bhan Singh Chandra, is the Driver of 108 Ambulance. He stated in his evidence that in the month of April, 2021 at about 7:30 AM he received an intimation about accidental case and they proceeded with Ambulance from Kartala, Near Nonbirra Dam the injured was being taken by 112 vehicle and they shifted the injured to his 108 Ambulance and they took the injured to Kartala Hospital where he was being treated. With respect to identification of the person, he turned hostile.

In cross examination he stated that he received a telephonic call about the accident and then he proceeded with his 108 vehicle. The evidence of this witness is corroborated with the evidence of PW-1, Narhari Patel, Constable, attached with 112 vehicle and on the way he shifted the injured to 108 Ambulance.

45 PW-17, Lakhan Lal Patel, is the Investigating Officer. He proved the entire process of investigating which he carried out after receiving merg intimation from accused Harbhajan Singh. In his cross examination, he admits that he received information through telephone about the incident on 21.04.2021 at about 5:10 AM. His departure from Police Station was recorded in Rojnamcha. When they reached on the spot, they found the family members of the deceased persons including accused Harbhajan Singh, his wife and his daughters present there. At that time, Jeewan Bai was not present there. During investigation, he inspected CCTV footage of the shop of Mohd. Junaid. Harbhajan gave merg intimation and on that basis he recorded Dehati Nalisi against unknown person. During investigation, he received secret information that accused Parmeshwar is taking treatment at

Kartala hospital and he is also involved in the incident. On the basis of memorandum statement of Parmeshwar two sword like weapon was seized at Salihabhata Dam in presence of witnesses. The accused Parmeshwar took out the weapon kept under the water of Dam and then he made seizure of said weapon. He also received secret information that accused Ram Prasad is at village Labed and he proceeded along with accused Parmeshwar to village Labed and he pointed towards accused Ram Prasad and seized motorcycle from his possession. He also admits that another sword like weapon was seized from the spot vide seizure memo Ex.P/24. He admits that he has not sent the soil found on the wheel of the motorcycle as well as soil seized from spot for its chemical examination to FSL.

In detailed cross examination, this witness remain firm in investigating proceeding which he carried out in presence of witnesses.

- 46** PW-19, Vijay Chelak, is the Inspector of Police, who conducted part of investigation and seized the entry register of Dial 112 vehicle which is Ex.P/64. He wrote a memo to the Doctor for query report of the seized weapons of assault which is Ex.P/46 and sent the seized articles for its FSL examination along with memo. He also proved FSL report Ex.P/67 obtained from FSL Bilaspur and wrote a letter to Judicial Magistrate Korba for permission to conduct TIP of accused Parmeshwar and Ram Prasad which is Ex.P/68 and thereafter wrote a letter to Executive Magistrate, Korba for conducting TIP which is Ex.P/69. He also received spot inspection report from Scene of Crime Mobile Unit, Korba which is Ex.P/70. He recorded statement of witnesses and filed

charge sheet. He too remain firm in saying that he conducted part of investigation and prepared the document. No question have been asked with respect to delayed recording of evidence of eyewitness Jeewan Bai, PW-10 though he has been cross examined on the point of statement of witnesses Ganga Bai and Gulab Singh Kanwar.

- 47** From all these evidences, there is sufficient evidence on record against the accused Parmeshwar and Ram Prasad that on the date of incident they committed murder of the deceased persons by assaulting them by sword like weapon. The incident was witnessed by PW-10, Jeewan Bai and her evidence does not suffer from any infirmity. She being sterling witness tried to stop the accused persons not to assault the deceased persons, but she could not succeed. No discrepancy is detected in her evidence with respect to commission of offence by the accused Parmeshwar and Ram Prasad. She duly identified them in TIP. Further, these two accused persons have been found injured and they could not successfully explained their injuries, but they had taken a false defence that accused Parmeshwar met with an accident by which he received injuries, thereafter he called PW-1 Narhari Patel who was engaged in Dial 112 Vehicle and when he reached on the spot, he did not find any motorcycle there and informed that his motorcycle was being taken by his brother. Further, he suspected that the injuries found on the body of the injured Parmeshwar could not appear to be caused by accidental injury. Further, he received intimation at about 7-7:30 AM in the morning whereas his MLC was done at 11-11:10 PM (night). In FSL report Ex.P/67, blood was found on the clothes of accused Parmeshwar and Ram Prasad for which

there is no explanation by these accused persons. These two accused persons Parmeshwar and Ram Prasad are the brother in law of accused Harbhajan and Harbhajan was having motive to commit murder of his brother Harish as there was property dispute exist between them and also dispute with respect to amount of pension receiving by their mother Jeewan Bai for which there was regular and frequent quarrel and incident of threatening was also made by accused Harbhajan to deceased Harish Kanwar.

- 48** So far as the offence of conspiracy and murder against the other accused persons Harbhajan, Dhankunwar and Surendra are concerned, from the evidence available on record it is not proved by the prosecution that these three accused persons were also present on the spot. Although, Harbhajan is the brother of deceased Harish and motive against him has been proved by the prosecution that he was having property dispute and amount of pension of their mother and Harbhajan threatened the deceased Harish on various occasions, however, on the date of incident he was not found present on the spot. From the evidence of witnesses as well as from merged intimation Ex.P/50,51&52 lodged by Harbhajan it reflects that when he came back after morning walk, he saw the house of deceased persons in open condition and when he went inside the house he saw their dead bodies and then he immediately informed it to the police. The prosecution connected these three accused persons Harbhajan, Dhankunwar and Surendra by their call details and CAF report which duly connected them each other at the relevant point of time. Except CDR and CAF, there appears no evidence against them to conspire

commission of alleged offence. The CDR can only draw an inference that at the relevant point of time they made conversation with each other. What conversation they made have not been proved by the prosecution. In view of the fact that all the accused persons are close relative, it cannot be inferred that through their mobile conversation they conspired for commission of offence of murder of three deceased persons.

49 The Hon'ble Supreme Court in case of ***Kiriti Pal Vs. State of West Bengal, 2015(11)SCC 178***, while considering the issue of admissibility and relevancy of telephonic conversation made between the persons, as evidence, in paragraph 30 to 33 has observed as under :

"30. Apart from telephonic conversation, no other evidence was adduced by the prosecution to bring home that first accused hatched a conspiracy. There is no evidence to prove as to how the appellants 2 and 3 (Siddique Mia and Mustaque Mia) had gone to the place of occurrence and what was their subsequent conduct. Their presence near the scene of occurrence could have been established by the prosecution either by examining some witnesses near and around the place of occurrence or by proving the location of the calls so as to establish the proximity of the accused with the scene of occurrence. Apart from the extract of the call records, no other evidence was adduced by the prosecution to establish the conspiracy.

31. Apart from telephonic conversation, prosecution also relied upon recoveries made pursuant to the confessional statement of the appellants 2 and 3 (Siddique Mia and Mustaque Mia). Pursuant to the statement of Siddique Mia one TVS Fiero red colour motor cycle bearing No. WB-54B/8245 with its key and nokia mobile handset (phone No.9932345230) were seized under Ext.17/3. Pursuant to the statement of Mustaque Mia nokia mobile handset having connection No. 9932705533, one gold finger ring in the shape of a flower with inscription of letter 'Anjali', and silver made chain with one Amethyst and red coral fitted with it were seized under Ext. 18/3. Recoveries made and seizure list were sought to be proved by examination of PW17- Uttam Mondal. PW17 had deposed that he knew deceased Anjali. PW17 was then employed in the hotel run by Bhagyadhar Dhibar which was owned by Anjali. In his evidence PW17 stated that in January 2009, two or three gentlemen came to his hotel and took his signature and that he did not know why his

signatures were being taken. Though PW17 identified his signatures in the seizure list, evidence of PW17 no way establishes recoveries being made at the instance of the accused 2 and 3. Evidence of PW17 is far from convincing and is not of much assistance to the prosecution as he has not clearly spoken about the recoveries and the seizure list. The gold ring and silver made chain recovered were also not shown to the other witnesses for being identified as that of Anjali. No other evidence was adduced by the prosecution to substantiate the recovery of objects and the seizure list.

32. So far as the complicity of fourth accused-Durga Sutradhar, the court of Chhatosecution mainly relied upon the call record and judicial confession of Durga recorded by Judicial Magistrate, 2nd Court, Suri, Birbhum (Ext.26). Prosecution relied upon the recovery a notebook seized from the possession of appellant Durga Sutradhar where she has written Kirit's phone number clandestinely coded as 'Dadu'. Ext. 30 call records of Kiriti Pal phone also revealed that there were number of calls from Kiriti Pal to fourth appellant. Like in the case of appellants No. 2 and 3 (Siddique Mia and Mustaque Mia) apart from telephone calls, no other evidence was adduced by the prosecution to bring home the guilt of fourth accused-Durga Sutradhar. Insofar as the judicial confessional statement recorded under Section 164 Cr.P.C., it is not an inculpatory statement, but it is only to the effect of showing the subsequent conduct of A-1 Kiriti Pal in threatening Durga Sutradhar-fourth appellant not to disclose anything to the police. In our view, neither the telephone calls between the first appellant-Kiriti Pal and Durga Sutradhar-fourth appellant nor her confessional statement by themselves would be sufficient to establish the guilt of fourth appellant.

33. In a case based on circumstantial evidence, the court must adopt a very conscious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. All the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however farfetched it may be. As discussed earlier, the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion itself cannot take the place of proof. In our view, evidence adduced by the prosecution against appellants 2 and 3 (Siddique Mia and Mustaque Mia) do not form a complete chain connecting the accused with the crime and the conviction of the appellants under Section 302 IPC read with Section 1208 IPC cannot be sustained and deserves to be set aside. Likewise, conviction of fourth appellant-Durga Sutradhar under Section 120B cannot be sustained and is liable to be set aside."

- 50** In the present case though the motive has been found proved but that itself is not sufficient to hold that accused Harbhajan conspired with other accused persons to commit murder of these three deceased persons. Their close relationship cannot be a ground to consider conspiracy to commit murder. From perusal of impugned judgment it transpires that the trial court has considered that since all the accused persons were closely related to each other and their location and call details supported their presence in a close proximity and exchanged messages. Further, at the relevant point of time the accused Harbhajan and Dhankunwar along with their children had gone for morning walk prior to 4 AM which demonstrate conspiracy between them to commit the offence. However, this cannot be sufficient evidence with respect to their meeting of mind of conspiracy.
- 51** True it is that conspiracy always hatched in secrecy, but something more is required to prove conspiracy between the accused persons. Their conduct were not so unnatural which can be considered for conspiracy as they have taken the defence that they regularly go for morning walk which could not be rebutted by the prosecution that on that particular date the accused Harbhajan and his family members had gone for morning walk to facilitate the other accused persons to commit the offence.
- 52** Further, taking motorcycle by accused Surendra from the accused Parmeshwar is also not sufficient to hold him involved in conspiracy with the murder of deceased persons. There is evidence that accused Parmeshwar made a telephonic call to Surendra from Salihabhata that

he met with an accident and then Surendra went there where Parmeshwar asked him to take his motorcycle and then Surendra took his motorcycle and kept it in his house. That itself would not be sufficient to hold conspiracy in the alleged offence. The chain of circumstances against these three accused persons Harbhajan, Dhankunwar and Surendra is not complete and not sufficient to hold them guilty for the alleged offence of commission of murder of deceased persons.

53 In the matter of *Nagendra Sah Vs. State of Bihar, 2021 (10) SCC 725* in paragraphs 17 and 18 replying upon the golden principles enumerated in case *Sharad Birdhichand Sarda Vs. State of Maharashtra, 1984 (4) SCC 116*, the Hon'ble Supreme Court has held as under:

“17. As the entire case is based on circumstantial evidence, we may make a useful reference to a leading decision of this Court on the subject. In the case of *Sharad Birdhichand Sarda v. State of Maharashtra*², in paragraph 153, this Court has laid down five golden principles (Panchsheel) which govern a case based only on circumstantial evidence. Paragraph 153 reads thus : -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra* where the following observations were made:

19.....Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.

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

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

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

18. Paragraphs 158 to 160 of the said decision are also relevant which read thus :

"158. It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra v. State of Bihar, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor-General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

9.....But in a case like this where the various links as started above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, . . . such absence of explanation or false explanation would itself be an additional link which completes the chain."

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied :

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal case where this Court observed thus:

30.....Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused." (emphasis added)"

54 It is settled principles of law that prosecution has Burden to prove its case beyond reasonable doubt and where two views are possible, arising based on the same evidence, the view which is favourable to

the accused should be taken into consideration and the accused should be given benefit of doubt. In the matter of ***Digambar Vaishnav and Another Vs. State of Chhattisgarh, 2019 (4) SCC 522*** it has been held as under :

“19. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence [See *Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808*].”

- 55** From consideration of entire evidence available on record, this court is of the considered opinion that the prosecution has proved its case beyond reasonable doubt against two accused persons i.e. Parmeshwar and Ram Prasad whereas there is lack of sufficient evidence with respect to three accused persons namely Harbhajan, Dhankunwar and Surendra and chain of circumstances have not been completed against these three accused persons to convict them for the alleged offences. Considering the well reasoned and settled principle of law that suspicion howsoever strong cannot and must not be permitted to take place of proof, we are of the view that appellant Harbhajan Singh Kanwar, Dhankunwar and Surendra are entitled for benefit of doubt.
- 56** Accordingly, the appeal filed by the appellants **Rameshwar Kanwar and Ram Prasad Mannewar** are **dismissed**. They shall serve the entire sentence as awarded by the Trial Court.
- 57** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants Rameshwar Kanwar and Ram Prasad Mannewar are undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the

present judgment passed by this court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee

58 Further, by giving the benefit of doubt, the appeal filed by the appellants **Harbhajan Singh Kanwar, Dhankunwar and Surendra Singh Kanwar** is **allowed**. The impugned judgment of conviction and sentences of appellants Harbhajan Singh Kanwar, Dhankunwar and Surendra Singh Kanwar for the offence under Sections 302/120-B/34 IPC and 201 IPC is set aside. The appellants **Harbhajan Singh Kanwar, Dhankunwar and Surendra Singh Kanwar** are **acquitted** from all the charges. The appellants Harbhajan Singh Kanwar, Dhankunwar and Surendra Singh Kanwar are reported to be in jail since 22.04.2021. They be released forthwith, if not required in any other case.

59 Keeping in view the provisions of section 481 of BNSS, 2023, the appellants **Harbhajan Singh Kanwar, Dhankunwar and Surendra Singh Kanwar** are directed to forthwith furnish a personal bond of sum of Rs. 25,000/- each with one reliable surety in the like amount before the court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

60 The records of the case along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice