



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr.Appeal No.2 of 2011.

Reserved on: 26/09/2014.

Date of Decision:10.10.2014.

Jagdev Ram

Versus

State of Himachal Pradesh.

Coram

.....Appellant.

...Respondent.

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes.

For the Appellant:

Mr.Satyen Vaidya & Mr Vivek Sharma,
Advocates.

For the respondent:

Mr.Ashok Chaudhary, Additional
Advocate General and Mr.Ramesh
Thakur, Assistant Advocate General.

Per Sureshwar Thakur, Judge

1. The instant appeal is directed against the judgement of conviction, rendered on 21.12.2010, by the learned Additional Sessions Judge, Fast Track Court, Chamba, District Chamba, H.P., in Sessions Trial No.1/2010, whereby the accused/appellant has been convicted for his having committed offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- and in default of payment of

fine, to further undergo rigorous imprisonment for a period of one year.

2. The prosecution story, in brief, is that on 27.8.2009, Dhruv Ram (since deceased) and his wife, namely, Dillo (complainant) were grazing cattle near Government Primary School, Sandhi and nearby to them, Amar Nath (brother of the deceased) was also grazing his cattle. Accused Jagdev Ram used to reside in a house at his Nautor land at Sandhi along with his family. At about 2.45 p.m., accused Jagdev Ram came with a gun in his hand and abused complainant Dillo and deceased. Thereafter, co-accused Shivo @ Sheela, Bhuvneshwar Dutt and Naresh Kumar also appeared there and in furtherance of common intention of each other, they also started abusing the complainant and deceased and also criminally intimated them with threats to their life. On their requesting the accused not to abuse them, the accused started pelting stones on complainant, as such, she rushed towards Government Primary School, Sandhi, whereas, deceased rushed towards maize fields in order to save themselves. Accused Jagdev Ram chased deceased with gun and when deceased saw back at about 3.00 p.m., accused Jagdev Ram shot him dead with the gun. On hearing the alarm of

High Court

complainant, Ward Member Piar Singh came there and she narrated the incident to him. Her brother-in-law Amar Nath also witnessed the occurrence. Said Piar Singh intimated Police Post, Surgani and pursuant thereto, report Ext.PW-9/A was made. A telephonic message was given by Constable Inder Singh No.206 M.C.P.P. Surgani at Police Station, Kihar and pursuant to the information, received from Piar Singh, daily dairy report comprised in Ext.PW-8/A was made and accordingly Inspector/SHO Pritam Singh and other officials rushed to the spot along with camera and other things. On reaching the spot at 9.00 p.m., the dead body was lying on the field and complainant (wife of the deceased) was present there and she made statement Ext.PW-1/A under Section 154 Cr.P.C. An endorsement in the said statement was made by SHO which was then sent to Police Station through Constable Hoshiar Singh where F.I.R. Ext.PW-11/E was registered. The photographs of the dead body Ext.PW-16/A-1 to Ext.PW-16/A-8 were clicked with the digital camera. Inquest reports Ext.PW-2/B and Ext.PW-2/C were prepared. A docket Ext.PW-7/A was prepared and the dead body was sent to Regional Hospital, Chamba for conducting post mortem. Dr.M.M.Marol and Dr.Ram Kamal conducted the post mortem on 28.8.2009 and a circular gun shot

High

wound 10 x 12 x 15 Cms on right side of chest below 4 inches from right clavicle bone corresponding to the hole of shirt of right side of chest was found. X-Rays were also taken. Margins of wound showed ~~singing~~ and were irregular. Multiple fractures of ribs were seen. Pallets were seen in the posterior chest wall. ~~Lungs~~ tissues were found damaged with pallets of gun shot. Pallets and red cork of the gun shot were extracted from the wound. The Medical Officer preserved viscera, pallets, cork and clothes of the deceased and ~~parceled~~ and sealed them and handed over the same to the Police for forensic examination. It was opined by the Medical Officer that the deceased had died due to a gun shot injury leading to massive intra thoracic hemorrhage leading to peripheral vesicular failure and respiratory failure but the final opinion was reserved till the receipt of report of Chemical Analyst. Post mortem report comprised in Ext.PW-7/E was procured. Spot map Ext.PW-16/B was prepared. Two blood stained sleepers, one blood stained Danda, three stones stained with blood, which were lying at the spot, along with blood stained earth, were taken into possession vide memo Ext.PW-2/A in presence of witnesses Piar Singh and Amar Nath which were separately wrapped in three parcels and sealed with seal H. Blood

High

stained stones and earth were parceled in one parcel.

Sample of seal H Ext.PW-3/A was taken separately on a piece of cloth and seal after use was handed over to witness Piar Singh. Accused Bhuvneshwar Dutt, Sheela Devi and Naresh Kumar were arrested on 28.8.2009 vide memo Ext.s.PW-6/C, D and E. The gun, used for killing the deceased, produced by Goutam Kumar, son of accused Jagdev, was taken into possession vide memo Ext.PW-4/A, which was parceled and sealed and three seals of seal A were affixed on the parcel. Khaka of gun Ext.PW-4/B was also prepared, sample seal was taken and the seal after use was handed over to witness Rajmal. Accused Jagdev Ram was arrested on 29.8.2009 vide memo Ext.PW-16/F. On 31.8.2009, accused Jagdev Ram made disclosure statement comprised in Ext.pW-5/A under Section 27 of the Indian Evidence Act that after gun shot, he had concealed the empty cartridge in the Ghala (grass field) and on the instance of the accused Jagdev Ram, empty cartridge Ext.P-11 was recovered, which was at a distance of 100-150 meters away from the dead body and was taken into possession vide memo Ext.PW-6/A in the presence of witnesses Laxman Kumar and Kanth Ram. Spot map of recovery of cartridge Ext.PW-16/G was prepared. The said

High

cartridge was parceled and sealed with seal T by applying six seals. Specimen sample seal Ext.PW-6/B was also taken.

Accused Jagdev also produced gun licence Ext.PW-16/J from his house which was taken into possession *vide* memo Ext.PW-6/C.

3. All the parcels were deposited with MHC in Police Station. Tatima and Jamabandi comprised in Exts.PW-10/A and B were procured from the Patwari. The MHC made entry in the Malkhana Register at Sr.No.123, the abstract whereof is Ext.PW-11/A after the parcels were deposited with him by SHO on 28.8.2009. On 29.8.2009, Constable Madan Kumar also deposited two parcels along with one envelope duly sealed with three seals RH. The parcel containing viscera was sealed with ten seals and another parcel containing clothes which too was sealed with ten seals and entry in the Malkhana Register was made, the abstract whereof is comprised in Ext.PW-11/B. On 31.8.2009, a parcel containing empty cartridge duly sealed with six seals of impression T was also deposited which was entered in the Malkhana Register at Sr.No.125. On 3.9.2009, all the parcels and envelopes were sent to FSL, Junga through HHC Subhash Kumar *vide* RC No.29/09 comprised in Ext.PW-11/D in safe condition. Report of FSL

High Court of
Uttaranchal

comprised in Ext.PX and Ext.PY were received. No contents of alcohol or poison were seen in the viscera.

4. After completion of the investigation, challan, under Section 173 of the Cr.P.C., was prepared and filed in the Court. The trial court charged the accused for theirs having committed an offence punishable under Section 302 IPC read with Section 34 IPC and accused Jagdev Ram was also charged for an offence under Section 25 of the Arms Act, 1959.

5. In order to prove its case, the prosecution examined as many as 16 witnesses. On closure of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded, in which they pleaded innocence. On closure of proceedings under Section 313 Cr.P.C. In defence, the accused examined one witness.

6. On appraisal of the evidence on record, the learned trial Court, returned findings of conviction against the accused/appellant.

7. The accused/appellant is aggrieved by the judgment of conviction, recorded by the learned trial Court. The learned counsel appearing for the accused/appellant has concertedly and vigorously contended that the findings of conviction, recorded by the learned trial Court, are not

based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of conviction be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of acquittal.

8. On the other hand, the learned Additional Advocate General appearing for the respondent-State has with considerable force and vigour, contended that the findings of conviction recorded by the Court below, are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. The first witness, who, stepped into the witness box to prove the prosecution case, is, PW-1 (Dillo Devi). She in her deposition has deposed a version, which is in square tandem with the genesis of the prosecution version, as referred to herein-above. During the course of her cross-examination, she admits the suggestion, put to her, that accused Jagdev has taken Nautor land at village Sandhi

about 33-34 years back and had also built up a four roomed house on the said Nautor land. She further deposes that the case regarding breaking of teeth of her husband is pending adjudication in a Court. She continues to ~~depose~~ that all the accused had come together and accused Jagdev kept on hurling abusive language for about 10-15 minutes. She proceeds to deposes that on their asking the accused not to abuse them, the accused ~~asked~~ his family members to pelt stones on her. ~~This witness further deposes that while running, her husband had covered a distance of 30 feet and she was at a distance of about 100-150 feet from her husband.~~ She further deposes that when her husband fell down, it was a sunny day. She further deposes that on raising an alarm, her brother-in-law Amar Nath came there. She has confronted with Ex.PW-1/A by deposing that she had disclosed to the police that they were grazing the cattle in a drabbad (ground) behind the temple and accused Jagdev had commanded the remaining accused to pelt stones.

11. PW-2 Amar Nath deposes that he was grazing cattle in Jungle at Sandhi. He deposes that at about 2.30-3.00 p.m., he heard a gun shot but he thought that the said fire might have been made in order to deter the crows etc.

He continues to depose that his sister-in-law Dillo Devi gave him a call that his brother was shot dead and he should come. On this, he rushed to the spot and found his brother lying dead with injury on his chest. He continues to depose that on his asking, Dillo Devi as to what had happened, she disposed to him that her husband was killed by accused Jagdev by gun shot. Thereafter, he shouted that a murder has been committed. He deputed a boy to summon ward member from the village, the ward member reached the spot and then he intimated the police telephonically about the incident. He proceeds to depose that at about 7 p.m., police also reached the spot. On insistence of the police, he arranged gas lighter of kerosene. He further deposes that police took into possession the blood stained soil, three stones, sothi and chappals from the spot and sealed the same in separate parcels and the seal after use was handed over to the ward Member. The seized articles were taken into possession under memo Ext.PW-2/A, which is deposed to be bearing his signatures. During his cross-examination, he deposes that he had seen the accused Jagdev going towards his house after the gun shot was fired and 2-3 other persons were also with accused Jagdev including one lady, however, he deposes to have seen their back as they were

High Court
Jharkhand

going towards their house. He deposes that he had not heard accused hurling abuses to his brother and sister-in-law. This witness admits the suggestion that he was not in talking terms with accused and his family for the last 5-6 years and that at one point of time, his deceased brother had uprooted the door of his house. He admits the suggestion, put to him, that his deceased brother had been facing several cases in the Court. However, he feigns ignorance that the said cases were criminal.

12. PW-3 Piar Singh deposes that on 27.8.2009, he was called to the spot by the daughter of Dillo and a small child and he visited the spot at Sandhi where the dead body of deceased was lying. He deposes that he informed the police telephonically and the police came to the spot at 9.30 p.m. After inspecting the spot, the police took into possession blood stained stones, soil, Sothi and blood stained Chappal vide memo Ext.PW-2/A which has been deposed to be bearing his signatures. He continues to depose that the articles were separately parceled and sealed and the seal after use was handed over to him and specimen of seal is comprised in Ext.PW-3/A which was taken on cloth and has also been deposed to be bearing his signatures. During his cross-examination, he denies the

High Court
of
Jharkhand
Civil
Court
Nagpur
Bihar
High Court
of
Jharkhand
Civil
Court
Nagpur
Bihar

suggestion, put to him, that the deceased had created a fear psychosis atmosphere in the village.

13. PW-4 Rajmal deposes that he joined the investigation on 28.8.2009. He further deposes that the gun was taken into possession by the police vide recovery memo Ex.PW4/A in his presence and in presence of Prem Lal.

14. PW-5 Baldev Ram deposes that on 31.8.2009 accused Jagdev had made a disclosure statement to the police pursuant to which he got recovered one empty cartridge from the Ghasni beneath the grass which was taken into possession vide recovery memo Ex.PW-5/A in his presence and in presence of Doom Ram.

15. PW-6 Kanth Ram proved the recovery of empty cartridge at the instance of the accused.

16. PW-7 Dr. Ramkamal deposes that on 18.8.2009 he had conducted the post-mortem of deceased. He further deposes that there was a circular gun shot wound about 10x12x15 cms on right side of chest and four inches below right clavicle. The wound was corresponding to a hole in the shirt and the shirt was soaked with dry blood. He further deposes that the long tissue damage was seen in the wound with pellets of gun shot and multiple fractures of anterior ribs of right side was also seen. He further deposes that

before conducting postmortem, the dead body was subjected to x-ray examination and films thereof have been deposited to be Ex.PW7/B and Ex.PW7/C. He further deposes that lung tissues were found burnt with pieces of ribs. The pellets and red-cork of the gun shot were extracted from the wound and sent to the forensic expert for analysis. He continues to depose that the viscera, cloths, pellets and cork were preserved and sealed in a parcel with seal of RH and handed over to the police for being taken to FSL. He deposes that in his opinion, the deceased had died due to gun shot injury leading to massive intra thoracic hemorrhage leading to peripheral vascular failure and respiratory failure.

He further deposes that he was assisted by Dr.M.M. Marol in conducting the post-mortem, who also signed the post mortem report Ex.PW7/E. The reports of the FSL have been deposited to be Exts.PW, PX and PY. He further deposes that the probable time, between the injury and death, was 30 minutes and between death and post mortem was 24 hours.

17. PW-8 Satish Kumar proved daily diary report No.19, dated 27.8.2009, Ex.PW8/A which has been deposited by this witness to be correct as per the original brought by him in the Court.

18. PW-9 Inder Singh proved report No.13, Ex.PW9/A which has been deposed to be correct as per the original brought by him in the Court.

19. PW-10 Ghinder Singh proved tatima Ex.PW10/A and Jamabandi of the spot comprised in Ext.PW-10/B.

20. PW-11 H.C. Rakesh Kumar proved the deposit of the case property with him in the Malkhana of Police Station and its further transmission on 3.9.2009 to the FSL through HHC Subhash Kumar vide R.C.No.29/09. He further proved FIR Ex.PW11/E, which has been deposed by this witness to be bearing the signatures of ASI Dhanu Ram.

21. PW-12 SI Dhanu Ram deposes that on 27.8.2009, he was officiating as SHO, P.S. Kihar. He continues to depose that on the said date, a ruqua Ex.PW1/A was received through Constable Hoshiar Singh No.234, on the basis of which FIR Ex.PW11/E was registered which has been deposed by this witness to be bearing his signatures.

22. PW-13 Hans Ram deposes that after perusal of the investigation and taking into consideration reports of FSL Ex. PX and PY, he prepared challan in the case and filed the same in the Court. The challan has been deposed by this witness to be bearing his signatures.

23. PW-14 HHC Subhash Kumar deposes that on 9.3.2009, six parcels and two envelopes duly sealed were handed over to him by MHC Rakesh Kumar along with other documents for being taken to FSL, Junga ~~vide R.C. No.69/09~~ and he deposited the aforesaid parcels at FSL, Junga on 4.9.2009. He further deposes that ~~on return, he handed over the receipt to the MHC.~~

24. PW-15 Hoshiar Singh deposes that on 27.8.2009, he had accompanied SHO to the spot at village Ladhwah. He continues to depose that SHO gave him ruqua at 09.30 p.m. and he brought the ruqua to P.S. Kihar and handed over the same to ASI Dhanu Ram. He further deposes that after registration of the case, the file was given to him, which he handed over to SHO at Ladhwah.

25. PW-16 Inspector Prittam Singh in his deposition has deposed a version which is in square tandem with the genesis of the prosecution version, as referred to hereinabove. In his cross-examination, he deposes that the telephonic message from Constable Inder Singh was received by him at 7.30 p.m. He further deposes that the gun shot was said to be fired at 3.00 p.m. He further deposes that the land of accused Jagdev was at a distance of 150-200 yards from the place where the dead body was

lying. He denied the suggestion that whatever recoveries were got effected by him pursuant to disclosure statements under Section 27 of the Indian Evidence Act. He further denied the suggestions that no blood stains were found by the Chemical Examiner on the said articles. He denied the suggestion that he intentionally omitted to take the darat in possession. He further denied the suggestion that he had recorded the statement of Amar Nath at his own.

26. The genesis of the prosecution story is encapsulated in the ocular version qua the incident rendered by PW-1 Dillo Devi, wife of the deceased. She has in her examination-in-chief forthrightly deposed the factum of, on the fateful day when she alongwith her husband had gone to graze cattle towards Primary School, Sandhi, then at about 1.30 p.m all the accused appeared and insisted for settling a dispute which had occurred about three years ago, arising from one of the accused Naresh having broken the teeth of the deceased husband of PW-1. The insistence of the accused upon the deceased to compromise the said dispute was not yielded to by the deceased and PW-1 which invoked the anger and wrath of the accused sequelling his hurling invectives upon the accused and of accused Bhuvneshwar Dutt, Naresh Kumar and Sheela Devi taking to

High Court of
Jharkhand
Civil Appeal
No. 1000
of 2022

pelt stones at PW-1 and her husband. However, this witness and her husband rushed towards the maize fields, yet she deposes that accused Jagdev chased her husband while wielding a gun and requests made by her to accused Jagdev not to kill her husband, bore no fruit, as during the course of chase, when her husband looked back accused Jagdev fired a gun shot with gun Ext. P-9 recovered under memo Ext. PW4/A. The testimony of PW-1, the ocular witness to the occurrence, has voiced a flawless and unblemished version qua the occurrence, which inspires both confidence as also is credible. Despite the fact that she has omitted to in her previous statement comprised in Ext. PW-1/A divulge the fact of accused Jagdev having commanded the remaining accused to pelt stones at her and her deceased husband, may render her version to be tainted as also when she omitted to record the factum of the accused while appearing at the site having insisted upon her and her deceased husband to compromise the previous dispute which had erupted inter se them and which had sequelled one of the accused Naresh breaking the teeth of her husband also, may ingrain with the vice of embellishment and improvement, the genesis of the prosecution story of it having commenced on the deceased

High Court of
Jharkhand
Civil Appeal
No. 1000
of 2022

and PW-1 having remained unyielding to the demand of the accused to compromise the previous dispute,. Moreover, even the factum of omission on the part of the prosecution to join as witnesses the students or teachers of the school in whose vicinity the occurrence took place, all also cumulatively do not lend any strength to the defence in its, hence, propagating the fact of the Investigating Officer having carried out a slanted and tainted investigation into the offence allegedly committed by the accused rather the effect, if any, of the aforesaid gets effaced in the face of the preeminent fact of the accused in his statement recorded under Section 313 Cr.P.C. having admitted the factum of his having killed the deceased with gun Ext. P9 recovered under recovery memo Ex. PW4/A. Even in the entire trend of cross-examination of the prosecution witnesses by the learned defence counsel, the moot suggestions which have been put to PW-1 and the other prosecution witnesses is of the deceased while wielding a darat/danda having perpetrated an assault on the accused which, however, was repulsed by the accused. On the score of the deceased wielding a danda/darat with which he purportedly perpetrated an assault on the accused which, however, he averted, is espoused to be giving ground or leverage to the

High Court of
Karnataka
Mysore

accused, to rear an impression in his mind or nurse an apprehension that in case the assault purportedly perpetrated on his person by the deceased, is not averted by his firing a shot from the gun, which he was wielding at the opposite time, grievous injury or even death would accrue. Sinew and succor to the aforesaid propagation would accrue to the defence in case it was established that there was a face to face duel inter se the accused and the deceased at the relevant stage/time. Besides forthright evidence ought to upsurge portraying the fact of both the accused and the deceased while being engaged in a duel were at a very short distance or in close proximity to each other, on score whereof it could be concluded that the danda or darat wielded by the deceased with which he purportedly struck the accused would have sequelled a grievous or lethal injury, which was avertable only by the user of the gun wielded by the accused, hence, rendering the penal act of the accused to be clothed with the protective cover of it having been prodded in exercise by the accused of his right of private defence of body. However, a close and incisive reading of the testimony of PW-1 omits to divulge the fact that both the accused and the deceased were either in close proximity to each other or were engaged in a duel.

High

Omission of portrayal by PW-1 in her deposition of the accused and the deceased being engaged in a duel in course whereof the deceased while wielding a danda/darat and his while being within striking distance of the accused, his having struck a blow with the danda/darat on the person of the accused which, however, was repulsed/averted by the accused. Omission of the above evidence, fosters the inferences of (a) the accused and deceased being not in proximity to each other and both being not engaged in a duel in course whereof the deceased while not wielding a danda or darat had not struck a blow with them on the person of the accused, hence, did not necessitate its being averted by the latter by his taking to fire a gun shot at the deceased from gun Ex. P-9 and (b) lack of portrayal by PW-1 in her deposition of both the accused and the deceased while being face to face or in close distance to each other, which proximity inter se both facilitated or gave leverage to the deceased while his wielding a danda or darat to concert to deliver a blow with them on the person of the deceased which was avertable by means none other than by the user of gun at the instance of the accused, fillips an inference that hence there is abysmal failure on the part of the defence to facilitate this Court to clinch a finding of either

High Court
Jharkhand
Civil Appeal
No. 1000 of 2022

there being a face to face duel inter se the deceased and the accused in which duel the deceased while being within striking distance of the accused had delivered a darat/danda blow on the person of the accused which had been averted by the accused by his firing a shot from gun Ex.P-9, hence, does not render vindicable the penal act of the accused, inasmuch as it does not acquire the protective shroud of it having been actuated in the exercise by him of the right of private defence, especially when his body remained un-endangered.

27. Accentuation to the inference hereinabove of both the accused and the deceased being not face to face nor also the deceased wielded a danda or darat, is lent by the factum of PW-1 in her examination-in-chief having unequivocally deposed of the accused having chased her husband and while he looked back, the gun shot at him having been fired by the accused. Now the said factum had remained un-torn or unshred during her inexorable cross-examination to which she was subjected. The consequent effect, is that the factum of the accused having fired gun shot with Ex.P-9 during the course of his having chased the deceased stands clinched and repulses the propagation of the defence of a purported duel having erupted inter se the

accused and the deceased with both being face to face or being in close proximity to each other which gave an opportunity to the deceased to strike a blow of darat/danda, purportedly wielded by him at the opposite stage, also it blunts the propagation by the defence of the deceased wielding a darat or danda for if, he assumingly wielded so and his being in close proximity of the accused, he would have either hurled/flung the danda at the accused or flung the darat at the person of the accused or would have struck a blow with the danda or the darat on the vital organs of the accused sequelling injuries on the person of the accused. However, when the accused remained uninjured or has received no injuries on his person purportedly in sequel to the deceased having concerted to strike his body with a danda or darat blow, the imminent conclusion which ensues that, hence, the deceased was not wielding a danda or darat, as a corollary, it has to be concluded that there was no imminent or grave threat emanating from the purported act of the deceased with his purportedly wielding a danda or darat and its being of such magnitude so as to cause any danger to the life of the accused, for prodding or constraining him while exercising his right of private defence, take to fire a gun shot with gun Ex.P-9 for averting

High

the purportedly imminent danger. As a further concomitant, it has to be deduced especially when the factum of the deceased being the initial aggressor stands belied that hence the right of private defence canvassed by the defence for extenuating or exculpating the guilt of the accused, is wholly prevaricated as well as invented, as such, it does not acquire any force or strength.

28. Moreover, the learned counsel appearing for the appellant canvases before this Court that the testimony of DW-1 while purportedly voicing and sustaining the propagation by the defence of the accused Jagdev having fired a gun shot with Ex.P-9 in exercise of his right of private defence emanating from the fact of deceased having delivered a danda blow on the person of the accused Jagdev, who yet averted it, thereafter the deceased having again attempted to deliver it has been contended to have been untenably overlooked by the learned trial Court. However, the said contention is rendered rudderless in the face of the fact of his veracity in his examination-in-chief having come to be impeached in his cross-examination wherein he deposed that village Ladhwah and Lakho are situated between the road opposite to which the grazing fields are situated and the distance of the road from the

place where the dead body was lying is one kilometer rendering him hence incapacitated to see the occurrence. ◇

The fact which further taints the credibility of his deposition is a further admission in his cross-examination of the dead body being not visible from the place where he was grazing his cattle. Obviously then when from the place where he was purportedly grazing the cattle at the relevant time, the dead body of the deceased was not visible, consequently too as a natural corollary the occurrence qua which he renders an eye witness account in sustaining the defence of the accused is too rendered incredible.

29. In view of the above, it is held that the learned trial Court has appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained. Records of the learned trial Court be sent down forthwith.

(Rajiv Sharma)
Judge.

10.10.2014.
(TM/JAI)

(Sureshwar Thakur)
Judge.