RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 301/2018
CNR: RJHC020845602018 | URN: CRLAD / 536U / 2018

Rajasthan High Court
सत्यमेव जयते
Web Copy - Not Official

1. Kripal Singh S/o Sardar Singh, R/o Sakatpura, Police Station Dug, District Jhalawar, Raj. (at present in District Jail, Jhalawar).
2. Umrao Singh S/o Sardar Singh, R/o Sakatpura, Police Station Dug, District Jhalawar, Raj. (at present in District Jail, Jhalawar).

----Accused/Appellants

Versus

State of Rajasthan through PP

----Respondent

For Appellant(s)	:	Mr. Ajay Singh Yaduvanshi with Mr. Vivek Singh and Mr. Ayush Bamboriya
For Respondent(s)	:	Mr. Amit Kumar Punia, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

29/10/2026

Date of Conclusion of Arguments : 29.10.2026
Date on which judgement is reserved : 29.10.2026

Whether the full judgment or only the

operative part is pronounced : Full Judgement

Date of pronouncement : 06.11.2026

PER HON'BLE MAHENDAR KUMAR GOYAL, J.

This criminal appeal has been preferred by the accused-appellants (for brevity, 'appellants') aggrieved by the judgement of conviction and the order of sentence dated 12.07.2018 passed

---

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

by the learned Additional District and Sessions Judge, Bhawanimandi, District Jhalawar (for brevity, 'the learned trial Court') in Sessions Case No.18/2014 CIS No.21/2016 (Murder Case) whereby they have been convicted and sentenced as under seeking:-

Rajasthan High Court Web Copy - Not Official

Section 302/34 IPC:- Life imprisonment and a fine of Rs.10,000/-; in default whereof, one year's additional simple imprisonment.

Section 3/25 Arms Act:- Three years' rigorous imprisonment and a fine of Rs.1,000/-; in default whereof, one month's additional simple imprisonment.

Both the sentences were directed to run concurrently.

Succinctly stated, the relevant facts are that Shri Guman Singh (PW3) submitted a written report (Ex.P5) on 23.11.2013 at 8:15 am with Police Station Dug, District Jhalawar, stating therein that on 22.11.2013, his younger brother-Rameshwar Singh had gone on a motorcycle to Dug at about 10-11:00 am with Shankar Singh and did not return till evening. It was averred that when he telephoned Rameshwar Singh at about 7-7:30 pm, his brother informed him that they had come to Padasali and said that he would be coming home soon, but he neither returned nor telephoned. It was further stated that at midnight, Narayan Singh informed him telephonically that Shankar Singh had informed him that Rameshwar Singh was shot dead near 'bageecha wala kuan'

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

Rajasthan High Court Web Copy - Not Official

by Umrao Singh, Kripal Singh and others. It was stated that when he, along with some other villagers, reached the 'bageecha wala kuan', the dead body of Rameshwar Singh was found lying on the motorcycle. It was alleged that about two days earlier, when his brother and Tufan Singh had quarrelled, Tufan Singh had telephoned his brother-Umrao Singh asking him to murder Rameshwar Singh. Based thereon, FIR No.185 dated 23.11.2013 was lodged for the offence under Section 302/34 IPC. The police after investigation charge-sheeted the appellants under Sections 302/34 IPC and 3/25, Arms Act, 1959 (for brevity, 'the Act of 1959') and the co-accused-Tufan Singh was charge-sheeted under Section 302/34 IPC. On account of the death of co-accused-Tufan Singh on 14.07.2014, proceeding against him stood abated. Charges under Section 302, or in the alternative under Sections 302/34 IPC, and 3/25 of the Act of 1959 were framed against the appellants who claimed trial. After trial, they have been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgement, Shri Ajay Singh Yaduvanshi, learned counsel for the appellants, submitted that the findings of the learned trial Court are based on conjectures and surmises and are not supported by any legally admissible evidence. He contended that while recording a finding of their guilt, the learned trial Court did not appreciate that the testimony of the sole eye witness, namely, Shri Shankar Singh (PW1) was full of contradictions and improvements on material aspects of the case rendering it unreliable. Shri Yaduvanshi asserted that though the PW1 has shown presence of Bhairu Patel, along with him, at the time of commission of the offence, but the prosecution did not

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

examine Bhairu Patel rather, he appeared for the defence as DW1 and categorically denied having seen the incident.

Learned counsel submitted that as per the prosecution story, the deceased-Rameshwar Singh and PW1 left Padasali at about 7-7:30 pm for Sakatpur which is situated at a distance of about four kilometres from Padasali and the deceased was murdered by the appellants at a place about half a kilometre away from Padasali meaning thereby, the incident must have happened within five to ten minutes of leaving Padasali, but the informant-Shri Guman Singh (PW3) asserted that he received the information about the murder at midnight from Narayan Singh who, as PW6 stated that he had received the telephonic message from Shankar Singh regarding the incident between 11 pm and midnight. He argued that the prosecution story is silent as to what happened in the meanwhile. Learned counsel-Shri Yaduvanshi canvassed that Shankar Singh (PW1) also stated that they had reached Padasali from Dug in the evening, had a meal there at the residence of Lal Singh and left Padasali at about 7-7:30 pm, but the prosecution did not produce Lal Singh in the witness box to lend credibility to its case which raises a doubt as to the veracity of the prosecution case. Learned counsel further contended that the PW1 stated in his cross-examination that the appellants shot the deceased with the guns pressed against his head but the allegation is not medically corroborated. He contended that Dr. Jagdish Prasad (PW20), the Medical Officer who had conducted the autopsy of the deceased-Rameshwar Singh, categorically stated that the gunshots must have been fired from a distance of more than a metre and

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

RAJASTHAN HIGH COURT

also admitted that there were no marks of blackening or burning or wear and tear around any of the four gunshot wounds.

Drawing the attention of this Court to the seizure memos of the weapons of offence, i.e., a gun (Ex.P11) based on the disclosure statement of Umrao Singh and a country-made *katta* (Ex.P13) pursuant to the disclosure statement of the Kripal Singh, learned counsel contended that while the gun was recovered from the house of Umrao Singh in village Salriya, the country-made pistol was recovered from the house in village Sakatpur, but Daulatram (PW17), one of the motbir witnesses to the seizure memos, categorically stated in his cross-examination that the distance between the places of recovery was 10-11 feet which raises a doubt as to the genuineness of the recoveries. He also argued that in the State Forensic Science Laboratory Report dated 30.04.2014 (Ex.P34), it was not opined that the two plastic wads and the four damaged lead pieces recovered from the body of the deceased, were fired from the recovered weapons of offence.

Rajasthan High Court Web Copy - Not Official

In view of the aforesaid, learned counsel for the appellants prayed that the criminal appeal be allowed, the impugned judgement of conviction and the order of sentence dated 12.07.2018 be quashed and set aside and the appellants be acquitted of the charges framed against them.

Per contra, learned Public Prosecutor, Shri Amit Kumar Punia, opposing the submissions and supporting the findings recorded by the learned trial Court, contended that the judgement is well-reasoned and is based on sound legal principles, and the cogent evidence available on record. He argued that from the testimony of the eye witness, namely, Shri Shankar Singh (PW1),

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

Rajasthan High Court Web Copy - Not Official

it was proved that the appellants shot dead Rameshwar Singh which was medically corroborated. He canvassed that the weapons of offence were recovered from the residential houses of the appellants based on their disclosure statements and the prosecution had proved the chain of custody. He, therefore, prayed for dismissal of the criminal appeal.

Heard. Considered.

As per the prosecution case, the appellants murdered the deceased-Rameshwar Singh with gunshot injuries.

The Postmortem Report of the body of the deceased (Ex.P20) reveals that the deceased had received four gunshot injuries. First injury was on the head resulting into fractures of the skull bones and protrusion of the brain matter through the wound. The remaining three gunshot injuries were in the thoracic cavity. Some plastic wads and multiple pellets were recovered from the body. The cause of death, as opined, was shock due to injury to the brain and both the lungs. The Autopsy Report was proved by Dr. Jagdish Prasad (PW20).

In view of the aforesaid, it stands established that it was a case of homicidal death.

To drive home the charges against the appellants, the prosecution has relied upon the testimony of sole eye witness, namely, Shri Shankar Singh (PW1). In his examination-in-chief, he stated that he and the deceased-Shri Rameshwar Singh had gone to Dug on a motorcycle at about 11:00 am and from Dug, they reached Padasali at about 5-6:00 pm where they had a meal at the house of Shri Lal Singh. He further stated that they left Padasali for their village at about 7-7:30 pm and when they were

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

RAJASTHAN HIGH COURT

near to 'bapu ka kuan', a motorcycle came from the opposite direction which overtook their motorcycle. Thereafter, they fired. He averred that the appellants, the co-accused-Tufan Singh (since deceased) and Bhairu Patel were also standing there and they lifted him. Shri Umrao Singh threatened to murder him if raised an alarm. The witness alleged that Kripal Singh shot Rameshwar Singh in the head with a gun and Umrao Singh also fired upon the deceased. He also stated that he could not see the weapon with the third person. The witness further stated that he went to the house of Shri Bheru Singh at Luhariya and informed Shri Narayan Singh of the incident over the telephone. He also stated that on the following day, he telephoned Shri Bane Singh. In his cross-examination, he stated that his village was two kilometres away from Sakatpur which was about 4-5 kilometres from Padasali. He further stated that five minutes after the motorcycle coming from opposite side had overtaken them, a gunshot was fired which hit the motorcycle damaging its front wheel. He stated that they and Bhairu Patel had gone together and Bhairu Patel stayed there for 5-7 minutes and witnessed the incident. He alleged that both the appellants had fired point blank and at that time, Bhairu Patel had grabbed him by the collar. He stated that when the motorcycle fell down, his hand was also injured and he had reported the incident that happened with him to Dug Police Station. He also stated that he mentioned the names of all the four persons in his report and also that the appellants had threatened of meeting the same treatment to him. He averred that when he reached the police station, he did not find any family member of Shri Rameshwar Singh and after lodging the report, he returned to his village

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

RAJASTHAN HIGH COURT

Naharghanti. He stated that he was kept at the police station for three days and thereafter, he returned to his home. He averred that in the report lodged by him at the police station, he had mentioned that his mobile phone, as also that of Shri Rameshwar Singh, had fallen down at the scene of crime. He also admitted that the Sarpanch of Talawali had got him released from the police station.

Rajasthan High Court Web Copy - Not Official सत्यमेव जयते

Thus, in his examination-in-chief, PW1 had stated that the persons on the motorcycle that had overtaken theirs, fired from gun(s), but, in the same breath, he stated that the appellants, the co-accused-Tufan Singh (since deceased) and Bhairu Patel were also standing there. He did not explain how these four persons reached the scene of crime. Further, instead of informing the family members of the deceased-Rameshwar Singh or the police of the incident, he went to Luhariya where he informed Shri Narayan Singh of the incident. Shri Narayan Singh (PW6) stated in his cross-examination that he received a telephone call from Shri Shankar between 11 pm and midnight and the informant-Shri Guman Singh (PW3), brother of the deceased, also stated that he received a telephone call from Shri Narayan Singh at about midnight that his brother had been murdered by the appellants. However, Shri Shankar Singh did not offer any explanation as to the inordinate delay in giving information to Shri Narayan Singh. The aforesaid omissions raise a doubt as to the veracity of the prosecution case.

Further, Shri Shankar Singh had stated that at the time the appellants shot the deceased, Bhairu Patel had caught hold of him by the collar. It shows complicity of Bhairu Patel in the crime but

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

the prosecution did not offer any explanation as to why he was not charge-sheeted. Further, he was also not produced as a prosecution witness despite the fact that the sole eye witness Shri Shankar Singh had categorically shown his presence at the scene of crime at the time of incident; rather, he had appeared as DW1 and denied that the murder was committed in their presence.

It is also worth noting here that Shri Shankar Singh had admitted having been detained in the police station for three days and only on the intervention of Sarpanch of Talawali, he was permitted to go. This leads to the irresistible inference that initially the police had suspected him as well.

Furthermore, we have noticed that as per the testimony of Shri Shankar Singh, he and Rameshwar Singh had reached Padasali from Dug at about 5-6:00 pm and had a meal at the residence of Shri Lal Singh before leaving for Sakatpur at about 7-7:30 pm. However, Shri Lal Singh was not examined by the prosecution to lend credibility to the testimony of the PW1 which assumes significance in view of the fact that, as per the PW1, the incident happened at a distance of about half a kilometre from Padasali which they left at about 7-7:30 pm, but the incident was reported by the PW1 to Shri Narayan Singh between 11 pm and midnight and no explanation was furnished for this inordinate delay in giving the information about such ghastly crime. It was contrary to natural human conduct. Shri Lal Singh, if produced in the witness box, could have vouched for the testimony of Shri Shankar Singh as to when he left Padasali and with whom.

Moreover, Shri Shankar Singh had categorically stated that on account of the motorcycle falling, he also received an injury in

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

his hand, but no injury report was produced. He further stated that he had reported the incident to the Police Station Dug wherein he had mentioned the names of all the four persons. He further stated that in the report, he also mentioned that he was threatened by the appellants with the same fate; but, conspicuously, this report did not see the light of day raising a grave suspicion as to the prosecution story inasmuch as, it might have been the First Information Report and not the Ex.P5.

We have also noticed that although, it was stated by Shri Shankar Singh (PW1) that persons on a motorcycle coming from opposite direction fired a gunshot which hit the motorcycle which was being driven by the deceased Rameshwar Singh breaking its front wheel; however, the motorcycle was not recovered. Further, he also stated that his mobile phone as also the mobile phone of the deceased had fallen at the scene of crime but conspicuously, the Investigating Officer admitted that no such mobile phones were recovered. It was obligatory upon the prosecution to have recovered and seized the motorcycle as also the mobile phones from the scene of crime to lend credibility to the testimony of the sole eye-witness.

Further, the testimony of Shri Shankar Singh reveals an important aspect. In his cross-examination, he had emphatically stated that both the appellants shot the deceased with guns pressed against his head, but the allegation is not medically corroborated. As per the Autopsy Report (Ex.P20), the deceased received only one gunshot wound on his head and remaining three gunshot wounds were in the thoracic region. Moreover, Dr. Jagdish Prasad (PW20) categorically stated that the gunshots were fired

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

from a distance of more than a metre from the deceased. He further stated that there was neither blackening nor any sign of burning and of wear and tear around any of the four gunshot wounds.

Rajasthan High Court Web Copy - Not Official

The Hon'ble Supreme Court of India in **Suresh Singhal Vs. State (Delhi Administration): MANU/SC/0110/2017**, dealing with a similar situation and relying upon Modi's Medical Jurisprudence, held as under:-

NOT A CLOSE SHOT

> **"16.** The shot in question was obviously not a close shot. There was no blackening, tattooing or charring around the bullet entry wound. In fact, the doctors specifically stated that the shot was fired from a distant range. It is well known that the shooting from close quarters chars or blackens the body. It would be germane to quote from "Modi's Textbook of Medical Jurisprudence and Toxicology (25th Edition). p. 631" with reference to the above:-
>
> > "When there is a close shot that is in the range of powder blast and the flame is within one to three inches, for small arms there is a collar of soot and grease (if present on the bullet) around the circular wound of entry. Singed hairs may be seen if the body is not covered with clothing. Partially burnt and unburnt grains of powder are blasted into the skin causing a tattooing which cannot be easily wiped off. Wadding, pieces of clothing or other debris may be found lodged in the wound. The entry wound of a revolver fired very near or in contact with the skin is generally stellate or cruciform in shape instead of being circular. When it is fired beyond a distance of 12 inches, there are no powder marks of soot or heat effects around the wound. If the revolver is fired close to the skin but held at an angle, the smudging and

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

> tattooing is limited only to one side of the bullet hole. The wound of exit is often larger than the wound of entrance, and its edges are irregular and everted, but free from scorching and tattooing."

17. The statement of the doctor that it was shot from a distant range has not been challenged in the cross-examination. There is another reason which lends credence to the assumption that the shot was not fired from close quarters, and that is the fact that the bullet did not exit the body. Indeed this happens when the bullet being fired from a distance loses its velocity. We have made these observations to support the inference that there is no reliable evidence to show that the appellant shot the deceased at close quarters when he was being strangulated. The shot was in all probability fired when the deceased released the appellant during the scuffle, and on seeing him reach for his gun moved away to escape after turning around."

Thus, in the aforesaid judgment it was held, relying on the Modi's Medical Jurisprudence, that if gun is fired at the close range, there has to be blackening, tattooing or charring around the bullet entry wound. However, in the instant case, no such mark existed. Therefore, in the backdrop of the aforesaid precedential law, we are unable to reconcile the allegations levelled by Shri Shankar Singh with the nature of the injuries found on the body of the deceased in the Autopsy Report.

We are conscious of the settled legal principle that in case of a variance between the ocular testimony and the medical evidence, the ocular evidence should ordinarily prevail provided it is trustworthy and wholly reliable. However, in the instant case, we do not find the position to be so; rather, we find the deposition of

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

Rajasthan High Court Web Copy - Not Official

Shri Shankar Singh to be suffering from contradictions on material aspects of the case and his conduct to be dubious. Further, it is trite law that where the ocular testimony is such that it is not possible to relate the injuries to the circumstances in which they were said to have been inflicted, the Court would be justified in discarding the ocular testimony. Our view is fortified from the following precedents.

Their Lordships, in **Khambam Raja Reddy and Another Vs. Public Prosecutor, High Court of Andhra Pradesh: (2006) 11 SCC 239**, while appreciating the reliability of the ocular testimony vis-a-vis the medical opinion in case of grave contradiction, held as under:-

> **"19.** The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of State of M.P. vs. Dharkole, reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:40 PM)

the discretion not to accept the ocular evidence. The principle enunciated in Dharkole's case (supra) may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts."

Rajasthan High Court Web Copy - Not Official

In **Abdul Sayeed Vs. State of Madhya Pradesh: (2010) 10 SCC 259** and other connected appeals, the Hon'ble Supreme Court of India, after appreciating a number of precedents, held as under:-

"**39.** Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

In the aforesaid legal and factual context, we are of the considered view that it was not safe for the learned trial Court to rely upon the sole testimony of Shri Shankar Singh to record a finding of conviction against the appellants.

The next incriminating piece of evidence relied upon by the prosecution against the appellants was the recovery of the weapons of offence at their instance.

In his information (Ex.P27) under Section 27 of the Indian Evidence Act, 1872, the appellant-Umrao Singh stated as under:-

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)

"मैने एक बन्दूक एक नाली को मेरे वर्तमान निवास ग्रम सालरिया के कमरा के छपरे के ऊपर पड़े घास में छिपा रखी है जिसको चलकर बरामद कराना चाहता हूं।"

"I have hidden a single barrel gun in the grass lying on the chhapra over the room at my present residence at village Salriya, which I want to get recovered going there." (English translation)

Rajasthan High Court Web Copy - Not Official

However, Khuman Singh (PW22), the Investigating Officer, in his Court deposition, stated as under:-

"मुल्जिम उमरावसिंह ने मुझ आई ओ को स्वेच्छा से सूचना दी **मैने एक बन्दूक एक नाली मेरे वर्तमान निवास ग्राम सालरिया के छपरे में घास में छुपाने की सूचना प्रदर्श पी–27 है।**"

"Accused Umrao Singh voluntarily informed me-the IO, that I had hidden a single barrel gun in the grass in the chhapra of my present residence at village Salriya. The information is Exhibit P-27." (English translation)

From the aforesaid, it is apparent that in his Court statement, the Investigating Officer did not utter the exact words stated by the appellant in his disclosure statement.

Similarly, the appellant-Kripal Singh stated in his Section 27 information (Ex.P28) as under:-

"मैने एक कट्टा देसी को मेरे निवास स्थान सकतपुर के कमरे की और छपरे के आगे की दीवार के ऊपर खुड़ेस कर छिपा रखा है जिसमें कारतूस भरा हुआ है जिसको चलकर बरामद करवाना चाहता हूं।"

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)

"I have hidden a country made pistol which is loaded with cartridges by inserting it above the wall in front of the room and roof in my residence at Sakatpur and I want to get it recovered by going there." (English translation)

Rajasthan High Court Web Copy - Not Official

However, in his Court deposition, the Investigating Officer stated as under:-

"मुल्जिम कृपालसिंह ने मुझ आई को अनुसंधान के दौरान स्वेच्छा से सूचना दी कि **मैने एक देसी कटटा मेरे मकान के कमरे की दीवार के उपर छिपा रखी है। जो प्रदर्श पी–28 है।**"

"During the investigation, accused Kripal Singh voluntarily informed me that I have hidden a country made pistol on the wall of a room in my residence which is Exhibit P-28." (English translation)

From the aforesaid also, it is established that in his Court deposition, the Investigating Officer did not reproduce the exact words stated by the appellant-Kripal Singh in his disclosure statement.

Their Lordships have, in **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh : (2023) 16 SCC 510**, refused to accept the evidence of discovery on the premise that the Investigating Officer, in his oral evidence, did not state the exact words uttered by the accused at the police station. It was specifically held as under:

"59. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)

Rajasthan High Court Web Copy - Not Official

investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

73. Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)

> also without proving the contents of the panchnama (Exh.5), the trial court as well as the High Court was not justified in placing reliance upon the circumstance of discovery of weapon."

Rajasthan High Court Web Copy - Not Official

In view thereof, the discoveries of the weapons of offence did not advance the prosecution case.

Furthermore, on the disclosure statement of the appellant-Umrao Singh, a single barrel gun was seized by the Investigating Agency vide memo (Ex.P11) from the house of the appellant situated in village Salriya which stood corroborated by the site plan of the place of recovery (Ex.P12). Pursuant to the disclosure statement of the appellant-Kripal Singh, a country-made pistol was seized vide memo (Ex.P13) and as per its site plan (Ex.P14), it was recovered from the house of the appellant situated in village Sakatpur. However, Daulatram (PW17), one of the motbir witnesses to the seizure memos and the site plans, categorically stated in his cross-examination that recoveries of the country-made pistol and the 12 bore gun were from different places 10-11 feet apart. However, from the seizure memos and site plans of the weapons of offence, it was established that the places of recovery were situated in two different villages. This fact also renders the recoveries doubtful.

Further, although, in the armourer's report (Ex.P15), which was proved by its author-Yashwant Singh (PW15), the weapons of offence recovered were in a working condition, but the FSL Report (Ex.P34) did not say that the plastic wads and the four damaged lead pieces recovered from the body of the deceased, were fired from these weapons.

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)

Rajasthan High Court Web Copy - Not Official

Moreover, as per the letter dated 24.02.2014 (Ex.P17) issued by the Superintendent of Police, District Jhalawar to the Director State Forensic Science Laboratory, Rajasthan, the two rubber items and four metallic pellets in the packet marked 'Y' were collected by the Medical Officer Dug from the body of the deceased at the time of the postmortem and were sealed; however, in his cross-examination, Dr. Jagdish Prasad (PW20), admitted that he had prepared a memo of seizure of the aforesaid articles but it was not mentioned in the Postmortem Report (Ex.P20). As a matter of fact, we find that no such memo of seizure is available on record.

In view of the above, in our considered opinion, the prosecution was not able to connect the appellants with the crime through the recoveries of the weapons of offence.

In the conspectus of the aforesaid analysis, we are unable to concur with the findings of conviction recorded by the learned trial Court against the appellants and, therefore, the appeal deserves to be allowed.

Resultantly, the appeal is allowed. The judgment of conviction and the order of sentence dated 12.07.2018 passed by the learned Additional District and Sessions Judge, Bhawanimandi, District Jhalawar in Sessions Case No.18/2014 CIS No.21/2016 (Murder Case) are quashed and set aside. The appellants are acquitted of the charges framed against them. Since the appellant no.2-Umrao Singh is already on bail, his bail bond stands discharged. The appellant no.1-Kripal Singh is in Jail. He be set at liberty forthwith if not required to be detained in any other case.

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants namely **1. Kripal Singh** and **2. Umrao Singh** are directed to furnish a personal bond in the sum of Rs.25,000/- each and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of a Special Leave Petition being filed against the judgement or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(BHUWAN GOYAL),J (MAHENDAR KUMAR GOYAL),J

Crt_3/D-B/2/PRAGATI

(Uploaded on 06/11/2026 at 04:42:41 PM)
(Downloaded on 06/11/2026 at 10:31:41 PM)