

Ram Lal and anr Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jan-29-2014

Appellant : Ram Lal and anr

Respondent : State

Judgement :

D.B.Cr.Appeal No.936/2005 1 IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR

JUDGMENT

Ram Lal and anr.

versus The State of Rajasthan D.B.Criminal Appeal No.936/2005 under Section
374(2) , Criminal Procedure Code against the judgment dated 28.10.2005 passed
by Additional Sessions Judge(Fast Track) No.2, Bikaner in Sessions Case
No.30/2004.

Date of Judgment : 29.1.2014.

PRESENT HON'BLE Mr.GOVIND MATHUR,J.

HON'BLE Mr.ATUL KUMAR JAIN, J.

Mr.HSS Kharlia, Sr.Advocate with Mr.S.S.Dhillon for the appellants.

Mr.K.R.Bishnoi, Public Prosecutor for the State.

Mr.Gaurav Singh for Mr.Vineet Jain, for the complainant.

BY THE COURT(Per Hon'ble Mr.Jain,J.).This appeal has been filed by accused-appellants (1) Ram Lal s/o Harji Ram Meghwal and (2) Poonam Chand @ Munni Ram s/o Megha Ram against the judgment dated 28.10.2005 passed by Addl.

Sessions Judge(Fast Track) No.2, Bikaner in Sessions Case D.B.Cr.Appeal No.936/2005 2 No.30.2004(relating to FIR No.11/2004 of Police Station, Deshnok, District Bikaner, whereby each of the accused- appellants were convicted and sentenced under Section 302/34 Indian Penal Code by life imprisonment and a fine of Rs.1000/- and in default of payment of fine, one month's simple imprisonment was also ordered against them.

The trial court has convicted both the accused-persons mainly on the basis of 'last seen evidence' and recovery of blood stained clothes of accused-persons as well as of deceased Ram Lal s/o Chetan Ram Jat from the possession of the accused-persons and on the basis of the recovery of weapon of offence (knife) and other articles of deceased from the possession of the accused-persons.

In the appeal, it has been argued that the judgment of the trial court is against the facts as well as against the law, the trial court has ignored the material contradictions and improvements in the statements of the witnesses, the trial court has convicted the accused-persons, though there was no direct evidence of the offence of murder against them, the 'last seen evidence' of Badaruddin(PW-19).Kalu Ram (PW-2) and Moola Ram (PW-8) was D.B.Cr.Appeal No.936/2005 3 not reliable, footprints evidence was also not trust-worthy, Dr.

Vijay Soni (PW-12) does not say anything that which of the injuries was sufficient in the ordinary couRs.of nature to cause death of Ram Lal Jat, there was no enmity or motive to commit murder on the part of the accused-persons, recovery memo of knife(Ex.P.12) does not carry a date and seized articles while being sent to FSL were not kept 'seal intact' and so it is a case of false implication in which both the accused-persons have claimed acquittal.

As against these arguments of the accused-appellants, the learned Public Prosecutor has argued that 'last seen evidence' in this case is perfectly reliable.

It has also been argued by the learned Public Prosecutor that the evidence of footprints may not have been proved to be foolproof but other evidence of recovery of blood stained clothes and knife used in the offence along with other articles of deceased from the possession of accused-appellants proved the case beyond doubt and so it has been requested on behalf of the prosecution that the appeal of the accused-appellants should be dismissed.

D.B.Cr.Appeal No.936/2005 4 The appellants rely upon the following rulings:- (1) Mohd.

Aman & anr.v.State of Rajasthan 1997 SCC (Cri) 777.

In this case, it was held that science of identification of footprints is not a fully developed science and it may be used only to reinforce the conclusions already arrived at on the basis of other evidence.

In this case it was also held that specimen of finger prints of the accused should be taken before or under the order of a Magistrate.

It was also held in this case that mere recovery of blood stained knife after fifteen days of the incident cannot be a conclusive inference of the guilt of the accused.

In this case seized articles were kept in police station for five days without any justifiable reason and the letter forwarding the seized articles to FSL was also found to contain an overwriting as regards the date of despatch, so this circumstance was also held sufficient to create doubt in the prosecution story.

(2) Gopal Ram v.

The State of Rajasthan, 1989 Cr.L.R.(Raj.) 68 In this case it was found that moulds of shoe prints were not sealed while being sent to Finger Print Expert.

It was held that in such situation, comparison of unsealed shoe prints is useless.

It was also held in this case that it should be proved that D.B.Cr.Appeal No.936/2005 5 the articles remained intact during the custody of the police till they reached to the Chemical Examibner.

(3) Surjit Singh and anr.v.State of Punjab AIR 1994 SC110 In this case it was held that recovery of weapon by itself does not connect the accused with the offence of murder and recovery of watch of deceased from the accused also cannot connect him with the offence of murder by invoking Section 114 of the Evidence Act and by help of Section 114 of the Evidence Act, at the most he can be convicted for being in possession of stolen property only.

(4) Musheer Khan @ Badshah Khan and anr.

AIR 2010 SC762 In this case, while explaining the principle of circumstantial evidence, it was held that conviction on the basis of circumstantial evidence can be upheld only when the circumstantial evidence is such as not to admit of any inference except that of guilt of the accused.

It was also held in this case that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused.

It was further held in this case that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of D.B.Cr.Appeal No.936/2005 6 the accused and is incapable of explanation upon any other reasonable hypothesis except his guilt.

It was also held in this case that when a murder charge is to be proved solely on the circumstantial evidence even then presumption of innocence of the accused must have a dominant role.

It was further held that chain of evidence must be so complete as not to leave any reasonable doubt for a conclusion consistent with the innocence of the accused and it must be shown that within all human probability the act must have been committed by the accused.

We have perused the aforesaid rulings with respect.

PW-2 Moola Ram is a teacher, who states that in the evening of the incident, he had seen both the accused-appellants along with his cousin brother Ram Lal Jat at Bus Stand, Palana, when all three of them were going on foot towards village Deshnok through railway crossing.

He says that next day morning, he was informed that dead body of his cousin brother Ram Lal Jat was found lying near the same railway crossing.

He says that when he reached the site, he found the dead body of his cousin brother Ram Lal, whose legs were tied down by a Dushala(Bardi) and the whole body was stained with blood.

He says D.B.Cr.Appeal No.936/2005 7 that footprints of two persons were also there and some 200 yards away, there were marks of sitting of three persons.

One water bottle, two empty pouches of liquor and a few roasted grams (Chane) were also found scattered there.

One key along with key-ring and one Omex watch was also found there with scattered blood, as per his statement.

PW-2 Kalu Ram states that he is an employee of a hotel at Palana Bus Stand.

The hotel is situated near a liquor shop.

He states that Ram Lal Meghwal, Ram Lal Jat and Poonam Meghwal had come in the night of the incident at his shop and they had purchased 100 gMs.of roasted grams and then they had moved towards Deshnok Phatak.

PW-3 Ram Baksh states that in the said night at about 1.00 a.m.he and Gopal Ram were also with Moola Ram and they had also seen both the accused-persons along with deceased Ram Lal Jat, who were going to Deshnok by road.

He also states that in the next morning, he came to know about the fact of murder of Ram Lal Jat.

PW-5 Het Ram states that in the said night at about 1.30 D.B.Cr.Appeal No.936/2005 8 a.m., he had also seen two accused-appellants Ram Lal Meghwal and Poonam Chand running behind Ram Lal Jat and in the next morning, he came to know about the murder of Ram Lal Jat.

He states that he had also visited the site and he also found footprints of three persons on the site, where blood was scattered here and there and two empty pouches of liquor along with scattered roasted grams were also there.

He had identified the dead body as that of Ram Lal Jat.

PW-13 Badaruddin is an employee of liquor vending shop situated at Palana.

He states that both the accused-appellants had purchased two pouches of liquor in the fiRs. round from his shop in the mid-night and thereafter, they had come again with one more person and again they had purchased two pouches of liquor from his shop and then they had gone to the hotel of Kalu Ram and there also, they had purchased some thing and then they had gone towards Palana railway crossing.

In court, he has identified both the accused-appellants, though he admits that police identification parade was not done in this regard.

PW-1 Moola Ram, PW-2 Kalu Ram, PW-3 Ram Baksh ,PW-5 Het Ram and PW-19 Badaruddin have been cross-examined at D.B.Cr.Appeal No.936/2005 9 length but they have not been shattered in their cross- examination and the 'last seen evidence' given by them appears to be fully reliable in the circumstances of the case.

Presence of all these witnesses that evening or in the mid-night at the place narrated in their story also appears to be natural and they do not appear to be tutored witnesses.

These witnesses are perfectly reliable.

If we look into the statement of PW-12 Dr.

Vijay Soni, he states that as an Medical Officer posted at Government Hospital, Palana, he had examined the dead-body of Ram Lal Jat aged 35 years on 6.2.2004 at 12.10 in the noon, with Dr.

Jai Singh Punia and Dr.

Chandra Shekhar Modi, who were also members of the Medical Board.

Following injuries were found on the dead body as per the statement of Dr.

Vijay Soni:- 1- 2 . .

x .5 . .

, 6 . .

2- 2 . .x .5 . .x 5 . .

11 . .

3- 2 . .x .5 . .x 5 . .

-- 12 . .

4- 2 . .x .5 . .x 5 . .

-- 13 . .

D.B.Cr.Appeal No.936/2005 10 5- 2 . .x .5 . .x 5 . .

-- 3 . .

" %) + % 1 %) 2 3 +) : + , = % + : , 1.5 . .x .3 . .

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O. ..

) N) N " Looking to the statement of Dr.

Vijay Soni, apparently it was a case of homicide or say murder.

All the injuries were incised stab wounds.

In his cross-examination, Dr.

Vijay Soni has not deviated from his examination-in-chief and he appears to be a reliable witness.

In the circumstances of the case, when 'last seen evidence' D.B.Cr.Appeal No.936/2005 11 is quite reliable and soon after the time when the deceased was seen in the company of two accused-appellants, he was found murdered, then it was the duty of the accused-appellants to explain that how and when they departed from the company of the deceased, but they have not given any explanation in this regard.

In his statement under Section 313 Code of Criminal Procedure, accused Poonam Chand states that he is innocent and he has been falsely implicated.

He says that there was no motive for which he would have murdered Ram Lal Jat.

Similarly, accused-appellant Ram Lal Meghwal has stated in his statement under Section 313 Code of Criminal Procedure that he also has been falsely implicated and there is no motive against him to commit murder.

It is pertinent to note here that none of the accused-appellants has given any explanation regarding the 'last seen evidence'.

It appears to be an undisputed fact that two accused-appellants in company of deceased Ram Lal Jat had consumed liquor and eaten snacks(roasted graMs.and thereafter, for one reason or the other, there might have a quarrel against three, two accused-appellants were found running behind Ram Lal Jat, as has been stated by Het Ram (PW-5).Although, motive to cause death has not been well proved but there is evidence in the file that some money was due against both the accused- D.B.Cr.Appeal No.936/2005 12 appellants in favour of deceased Ram Lal Jat and it is quite possible that Ram Lal Jat had asked for the payment of that money and in that connection both the accused-appellants had murdered Ram Lal

Jat.

Recently, the Bombay High Court has decided Criminal Appeal No.383/2011 on 27.11.2013 titled as Sonali Santosh Giri v.

the State of Maharashtra, in which it has reiterated the principle laid down under Section 106 of the Indian Evidence Act, 1872.

That Section 106 of the Indian Evidence Act reads: when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

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The court upheld the conviction of a lady who strangled her husband to death.

The court, relying upon the latest judgment of the Apex Court, observed that if the accused fails to offer any explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Indian Evidence Act.

The court was of the opinion that in a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him, that itself provides an additional link in the chain of circumstances proved against him.

D.B.Cr.Appeal No.936/2005 13 Now, we will examine some more witnesses.

PW-15 Jitendra Singh, the then S.H.O. of Police Station, Deshnok, states that on 6.2.2004 at 9.25 a.m. he got a telephonic information from one unknown person that a dead body is lying near national high-way in Palana village.

He states that he rushed to the spot where Moola Ram (PW-1) was found near the dead body, who had given written report (Ex.P.1) to him.

He says that on the basis of written report, FIR No.11/2004 (Ex.P.20) under Section 302 Indian Penal Code read with Section 34 Indian Penal Code was registered at Police Station Deshnok.

He states that he took the dead body in his custody, prepared description memo of dead body, which is Ex.P.3.

Then he prepared Panchnama of dead body in presence of the witnesses, which is Ex.P.4.

He states that description of site plan Ex.P.2A was also prepared by him, the dushala (Bardi) was seized by him through Ex.P.5.

Clothes worn by deceased were taken in custody and a memo Ex.P.6 was made for this purpose.

Clothes of deceased and Bardi were sealed on the spot in presence of the witnesses and memo Ex.P.7 was prepared for this purpose, moulds of footprints available at the place of occurrence, were also taken and one key-ring, one wrist watch, two empty pouches of liquor, one empty bottle of plastic and few items of roasted grams were also D.B.Cr.Appeal No.936/2005 14 seized from the place which were hardly 200 yards away from the place from which the dead body was recovered and were sealed on the spot.

PW-15 Jitendra Singh further states that then he had sent the dead body for post-mortem to Government Hospital, Deshnok.

Accused Poonam Chand is said to have been arrested by him under memo of arrest Ex.P.25, pair of shoes of Poonam Chand were seized and sealed under seizure memo Ex.P.27 in presence of the witnesses by him.

Accused Ram Lal Meghwal was arrested under memo of arrest Ex.P.26.

His pair of shoes were seized and sealed under seizure memo Ex.P.28 and then seized articles were deposited in Malkhana of Police Station Deshnok in sealed condition.

PW-15 further states that, while in custody, accused Poonam Chand had given him the information about recovery of knife used by him in the offence and a memo Ex.P.30 was prepared by him, memo Ex.P.31 was also prepared as per the information of accused Poonam Chand in which he had stated that he wants to get

his clothes recovered.

Similarly, accused Ram Lal had also given information to get his clothes recovered and this memo of information is said to be Ex.P.32.

D.B.Cr.Appeal No.936/2005 15 PW-15 further states that as per the information given by accused Poonam Chand, he had recovered, in presence of Poonam Chand, from his house one knife used in the commission of the offence and clothes which had been worn by accused Poonam Chand at the time of offence.

PW-15 states that from the pocket of the clothes seized by him, one black cover diary, one driving licence of deceased Ram Lal Jat, one PuRs.of Ram Lal Jat having photo of Ram Lal Jat were also seized.

He states that knife, clothes and PuRs.were found stained with blood.

He states that he had sealed all the seized articles and a memo Ex.P.12 was prepared by him.

PW-15 further states that thereafter, on the information given by accused Ram Lal Meghwal, he had recovered from the house of accused Ram Lal Meghwal, his blood stained clothes which he had worn at the time of offence.

He says that by preparing seizure memo Ex.P.14 he had seized and sealed blood stained clothes of Ram Lal Meghwal also.

PW-15 Jitendra Singh further states that all the seized articles, in sealed condition, were deposited by him in the Malkhana of Police Station Deshnok.

He further states that specimen footprints of accused-persons were taken by him.

He got it compared with moulds of footprints which were taken by D.B.Cr.Appeal No.936/2005 16 him from the place where the dead body was found.

The prosecution relies upon the report of FSL, which is Ex.45, in which it has been mentioned that foot wear impression present on moulds F1 and S4 tally with the sole of the shoe exhibit F/R, Foot-wear impression present on the mound F2 and

S3 tally with the sole of the shoe exhibit F/L. Foot-wear impression present on the mound F3 and S2 tally with the sole of the shoe exhibit G/R and foot-wear impression present on the mound F4 and S1 tally with the sole of the shoe exhibit G/L.

It is pertinent to mention here that since specimen foot-wear impression of accused- appellants were not taken in presence of the Magistrate, so the FSL report of comparison of foot-wear impression may not give any help to the prosecution, otherwise also science of comparison of foot-wear impression is not a fully developed science and it may be used only to reinforce the conclusions already arrived at by evidence.

PW-15 Jitendra Singh, S.H.O. further states that Ex.P.16 is the letter by which the Superintendent of Police had requested the FSL to examine the seized articles which have been signed by P.A. to Superintendent of Police.

It has been argued that P.A. to Superintendent of Police was not authorised to sign such type of letters but from the perusal of Ex.P.16 it cannot be said that D.B.Cr.Appeal No.936/2005 17 original letter was not signed by the Superintendent of Police because Ex.P.16 is only a copy of the letter which was sent to the S.H.O., Police Station, Deshnok and generally copies of such type of letters are signed by P.A. to Superintendent of Police because Superintendent of Police of the District Head Quarters might have been busy in other urgent duties and so if copy of the letter is sent by his P.A. then it cannot be called an illegality.

Ex.P.17 has been exhibited by PW-15 as receipt of FSL, Jodhpur.

PW-15 Jitendra Singh, S.H.O. had been cross-examined at length but nothing important has come out in his cross-examination in favour of the accused-appellants.

Thus, PW-15 Jitendra Singh appears to be an un-shattered witness.

Ex.P.12 is the important seizure memo by which knife, allegedly, used in commission of offence, blood stained clothes of Poonam Chand, purse, diary and driving license of deceased were recovered by Jitendra Singh, S.H.O. in presence

of witnesses Ram Kishan and Bhanwar Lal from possession of accused Poonam Chand.

This seizure memo is undated but no question has been asked to PW-15 Jitendra Singh, S.H.O.in his cross-examination by accused-persons in this regard.

Only at the stage of arguments, this omission has been brought to the notice D.B.Cr.Appeal No.936/2005 18 of the court and on the basis of this omission , it has been argued that the prosecution story regarding recovery made by Ex.P.12 is doubtful.

This Court does not agree with the argument submitted in this regard.

Ram Kishan (PW-8).who is Motbir of this recovery, has also duly proved seizure memo Ex.P.12.

Ram Kishan (PW-8) has specifically stated that the seizure memo Ex.P.12 was prepared on the date of recovery in his presence.

Not a single question has been asked to this witness also about omission of date on seizure memo Ex.P.12.

Ram Kishan (PW-8) has proved beyond reasonable doubt genuineness of recovery which was made by S.H.O., Deshnok through Ex.P.12 from the possession of accused-appellant Poonam Chand.

Apparently, when memo of information of recovery of knife Ex.P.30 was prepared by S.H.O., Jitendra Singh on 8.2.2004, then seizure memo Ex.P.12 must have also been prepared on 8.2.2004, though the date has been inadvertently been omitted while preparing the memo.

We are of the view that this omission is not so material which may create a doubt in the prosecution story.

Another important seizure memo is Ex.P.14, which specifically mentions the date of seizure as 8.2.2004.

This seizure memo was prepared in response to memo of information Ex.P.32, which had been given by accused-appellant Ram Lal D.B.Cr.Appeal No.936/2005 19 Meghwal and in furtherance of that information, blood stained clothes of accused-appellant Ram Lal Meghwal had been seized in presence of witnesses Ram Kishan and Bhanwar Lal, by S.H.O.Jitendra Singh.

Ram Kishan (PW-8) duly proved this seizure memo also through his statement.

Ram Kishan states that Ex.P.12 and Ex.P.14 were prepared at one and the same date and recoveries through both these seizure memos were also made on the same date, but one after one.

PW-8 Ram Kishan has not been shattered in his cross-examination.

Thus, the recovery of blood stained clothes from possession of accused Ram Lal Meghwal as per his own information which was given under Section 27 of the Indian Evidence Act, is also well proved in the case.

FSL report Ex.P.44 reads as under:- The packets seven in numbers marked as below enclosed within cloth cover which were properly sealed bearing impressions which tallied with the specimen seal impression forwarded as well as were intact.

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The	description	of	Articles	reads	as	under:-
						S.No.Packet

Exhibit No.	Details of Exhibit
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A1	Bardi(Dushala)	2.
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B2	Sweater	3	Kamij(Chola)	D.B.Cr.Appeal No.936/2005	20	4	Pajama	3.
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C5	Blood smeared soil	4.
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D6	control soil	5.
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H7	Chaku	6.
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J8PuRs.9 Sweater 10 Pant 11 Kamij 7.

K12Jacket	13	Kamij	14	Pant
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On serological examination, the blood stains on the following exhibits were found to be of Human origin:- 1(from A).2,3,4(From B).5(from C).7 (from H).8,9,10,11(from J.and 12,13,14(from K).

The following exhibits were found to be stained with 'A' Group:- 1(from A).3,4(from B).7(from H).10,11 (from J.and 13,14 (from K).

Thus, it appears that the seized articles had reached in a sealed intact position and out of these articles, Baradi(Dushala).Kamij(chola).Pajama(from packet B).Chaku(knife).Kamij(from packet J).kamij and pant(from packet K) were proved to have stains of blood Group-'A'.

D.B.Cr.Appeal No.936/2005 21 During the arguments, much stress has been laid regarding the fact that the seized articles did not remain 'seal intact' because copy of Malkhana Register (Ex.P.5) states that articles in 'seal intact' condition were handed over to Purna Ram, FC No.924 on 19.2.2004 and he had deposited articles on 23.2.2004 at FSL, Jodhpur and other articles were deposited by Jai Chand, FC No.1133 on 24.2.2004 in FSL, Jaipur, but when we examine the statements of PW-9 Purna Ram and PW-10 Jai Chand in this regard, then it appears that Purna Ram had received seven 'seal intact' packets on 23.2.2004 and he had deposited the same in 'seal intact' condition on the same day in the FSL, Jodhpur and similarly Jai Chand, FC had also received ten packets in 'seal intact' condition on 23.2.2004 from Head Moharir Kumbh Singh and on the next date, he had deposited the sealed packets in FSL, Jaipur.

FSL receipts Ex.P.17 and Ex.P.18 and forwarding letter of Superintendent of Police,Bikaner have been exhibited in support of un-rebutted statements of PW-9 Purna Ram and PW-10 Jai Chand.

PW-16 Kumbh Singh also states that seized articles had remained intact in Malkhana of Police Station Deshnok.

Thus, there appears no irregularity in keeping the articles 'seal intact' up till they were examined by FSL.

Ex.P.44 in itself is a proof of the fact that the articles remained in seal D.B.Cr.Appeal No.936/2005 22 intact position up till they were examined by the FSL.

Report of FSL is admissible as such by virtue of Section 293(4)(a) of Code of Criminal Procedure.

If the accused-persons had any doubt regarding 'seal intact' position of seized articles up till their examination by the FSL, then they could have called the Director of FSL in rebuttal, but they have not done so, further more, no question has been asked to PW-9 Purna Ram and PW-10 Jai Chand.

Meaning thereby, the accused-persons were fully satisfied regarding 'seal intact' position of seized articles.

PW-4 Sohan Lal has stated that in the morning of 6.2.2004, he had gone for his natural call in the open land of Electricity Department, where he found the dead body of Ram Lal Jat (Kadwasara).He states that he immediately informed Moola Ram about the dead body because Moola Ram was cousin brother of Ram Lal Jat.

He states that Moola Ram had called for Arjun Ram and then three of them had again gone back towards the dead body where footprints of three persons were found and two empty pouches of liquor and a few items of roasted grams were also found there.

In cross-examination, Sohan Lal has not deviated from examination-in-chief and so he also appears to be fully reliable witness.

D.B.Cr.Appeal No.936/2005 23 PW-6 Chetan Ram, father of deceased Ram Lal Jat, states that his son Ram Lal had advanced some money to accused-

appellants and he had gone with the accused-appellants to recover that amount but in the next morning his son Ram Lal did not come back that day and even in the night he did not come back and in the next morning, his nephew Arjun Ram came and told him about the murder of his son Ram Lal.

He has not given any specific details of advancement of money by his son to accused-appellants and that way, it can be said that motive behind murder is not so clear.

PW-7 Gordhan Ram is formal witness of seizure memos which had been prepared on 6.2.2004 from the site, where the dead body of Ram Lal Jat had been found.

He cannot be said to be an important witness.

He states that moulds of footprints had not been sealed when they were taken from the site but as we have discussed earlier, the evidence of comparison of foot-wear impressions has not been found reliable in this case. PW-11 Laxman Dan, Head Constable is a formal witness regarding lodging of FIR(Ex.P.20). PW-14 Birbal is also a witness regarding seizure memo of pair of shoes of Poonam Chand and Ram Lal D.B.Cr.Appeal No.936/2005 24 Meghwal.

This witness can also be said to be a formal witness.

PW-17 Laxman (Photographer) is also a formal witness who exhibits photos (Ex.P.33 to ex.P.44) of dead body Ram Lal Jat.

Ex.P.13 Ramdeo, LC states that specimen footprints of accused-appellants had been taken by him in the Central Jail, Bikaner, but as we have discussed earlier, this specimen footprints/foot-wear impressions had not been taken in presence of a Magistrate and in the circumstances of the case, report of comparison of foot-wear impression (Ex.P.45) has not been relied upon by this Court in this case.

PW-18 Narayan Singh, HC is also a witness who states that moulds of shoe impressions of accused-appellants had been taken in his presence.

In the circumstances of the case, it can be said that a very strong 'last seen evidence' has come on record against both the accused-appellants.

Some form of motive, though not very strong, has also been alleged against the accused-appellants.

Blood stained clothes of both the accused-appellants have been recovered from their possession and all these clothes are stained with human blood of Group-A, which can be said to be of deceased Ram Lal Jat, for which no explanation has been given D.B.Cr.Appeal No.936/2005 25 by accused-appellants.

Soon after the incident, blood stained knife has also been recovered from the possession of accused Poonam Chand on his information.

Informations for recovery recorded by S.H.O.Jitendra Singh are Ex.P.31 and Ex.P.32 which have been duly proved by him and recovery has been made in furtherance of those informations, which are not doubtful in the case.

In the circumstances of the case, only because of some alleged imaginary minor contradictions in the statements of the witnesses Moola Ram, Ram Baksh, Sohan Lal, Het Ram, Chetan Ram and Badaruddin, who have been confronted with their police statements, it cannot be said that these witnesses are not reliable.

The accused-appellants have claimed benefit of doubt in the case but this Court is of the view that there are no grounds to reverse the conclusions arrived at by the trial court against the appellants and an order of acquittal cannot be recorded in their favour.

It is true that the golden thread which runs throughout the cob-web of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer.

But at the same time no guilty should escape unpunished, once the guilt has been proved to hilt.

An D.B.Cr.Appeal No.936/2005 26 unmerited acquittal does no good to the society.

If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the Court should not lean in favour of

acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof, where none exists.

A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal.

The question arising for consideration before us is- whether the prosecution story, as alleged, inspires confidence of the court on the evidence adduced ?.

In the circumstances of the case, this Court is of the view that the prosecution has fully proved its case beyond any reasonable doubt.

The prosecution has been able to bring forward a net-work of chain of circumstances from which there is no escape for the accused- persons.

The circumstances brought forward before us do not call for any inference except that of guilt of the accused- appellants.

Inculpatory facts against the accused-appellants are incompatible with their innocence and are incapable of any explanation upon any other reasonable hypothesis except their D.B.Cr.Appeal No.936/2005 27 guilt.

Thus, this appeal is bereft of any force, which deserves to be dismissed and which is hereby dismissed and conviction and sentence passed against the accused-appellants on 28.10.2005 by Addl.

Sessions Judge(Fast Track) No.2, Bikaner is upheld.

The record of the lower court along with a copy of this judgment be sent at the earliest to the trial court.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

mlt