

Jagdish Chandra Vs. State

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Court : Rajasthan Jodhpur

Decided On : Dec-18-2015

Appellant : Jagdish Chandra

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

1 D.B.Criminal Appeal No.614/2009 Jagdish Chandra S/o Lalu Ram versus State of Rajasthan 2.

D.B.Criminal Appeal No.962/2006 Jagdish Chandra S/o Ratanlal versus State of Rajasthan Date of judgment: Dec.

18th, 2015 PRESENT HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.JUSTICE VIJAY BISHNOI Mr.Shaitan Singh, for the appellants.

Mr.CS Ojha, Public Prosecutor <><><> (per Hon'ble Mr.Gopal Krishan Vyas, J.).Both above criminal appeals are filed by the appellants under Section 374(2) of the Cr.P.C.against the judgment of conviction and sentence dated 3.10.2006 passed by the learned Addl.

Sessions Judge (Fast Track) Chittorgarh in Sessions Case No.25/2005 arising out from FIR no.64/2005 registered at Police Station Kapasan, District Chittorgarh

whereby the learned trial court convicted both the accused appellants for the offences under Sections 302, 201, 380 and 379 IPC and in addition to that offence, accused Jagdish Chandra S/o Ratan Lal Jat was convicted for offence under Section 4/25 of Indian Arms Act also and following sentences were passed against both the accused appellants, which reads as under: 1.

Accused appellant Jagdish Chandra S/o Ratan Lal Jat Under Section 302 IPC Life imprisonment and a fine of Rs.5,000/- and in default of payment of fine to further undergo six months RI.

Under Section 201 IPC Five years RI and a fine of Rs.5,000/- and in default of payment of fine to further undergo six months additional RI Under Section 380 IPC Three years RI and a fine of Rs.3,000/- and in default of payment of fine to further undergo three months additional RI Under Section 379 IPC Two Years RI and a fine of Rs.2,000/- and in default of payment of fine to further undergo two months additional RI.

Under Section 4/25 of Arms Act Simple Imprisonment and a fine of Rs.2,000/- and in default of payment of fine to further undergo two months additional SI.

2.

Accused appellant Jagdish Chandra S/o Lalu Ram Keer Under Section 302 IPC Life imprisonment and a fine of Rs.5,000/- and in default of payment of fine to further undergo six months RI.

Under Section 201 IPC Five years RI and a fine of Rs.5,000/- and in default of payment of fine to further undergo six months additional RI Under Section 380 IPC Three years RI and a fine of Rs.3,000/- and in default of payment of fine to further undergo three months additional RI Under Section 379 IPC Two Years RI and a fine of Rs.2,000/- and in default of payment of fine to further undergo two months additional RI.

3 As per the facts of the case on 8.3.2005 at 12.15 pm, PW-1 Devi Lal, Ex-Sarpanch of Village Mungana gave telephonic information at Police Station

Kapasan that dead bodies of two persons are lying near the Mungana pond, upon said telephonic information, SHO, Police Station Kapasan along with other police officials went on spot where PW-1 Devi Lal submitted a written report Ex.P.1 in which it is stated that two persons are killed by unknown persons by causing number of injuries to them, therefore, investigation may be conducted.

On the basis of the above report, FIR No.64/05 (Ex.P.1) was registered at Police Station Kapasan, District Chittorgarh against unknown persons and investigation was commenced.

The Investigating Officer inspected the site and prepared inquest report and panchnama Ex.P/2 and Ex.P/5 respectively and recorded the statement of witnesses under Section 161 Cr.P.C.Both dead bodies were taken to the Primary Health Centre, Kapasan where post-mortem of both the dead bodies was conducted by the Medical Board and upon investigation it was found that names of both the persons are Bhagchand and Sunda Ram.

In the investigation, post-mortem reports Ex.P/21 and Ex.P/22 were obtained by the Investigating Officer and on the basis of the circumstantial evidence, the Investigating Officer arrested the accused appellants on 09.10.2005 vide arrest 4 memos Ex.P/81 and P/82 respectively.

Both the accused appellants were produced before the Addl.

Chief Judicial Magistrate, Kapasan and after taking police remand, thorough investigation was conducted and place of incident, blood stained clothes of the accused appellants as well as weapons used by them to kill were recovered upon information given under Section 27 of the Evidence Act by the accused appellants.

The SHO, Police Station Kapasan, District Chittorgarh after completion of investigation submitted a charge-sheet against both the accused appellants under Sections 302, 201, 380 and 379 of I.P.C and under Section 4/25 of Indian Arms Act in the Court of Addl.

Chief Judicial Magistrate, Kapasan.

The learned Magistrate committed the case for trial to the Court of Addl.

Sessions Judge, No.2, Chittorgarh, from where the case was transferred to the Court of Addl.

Sessions Judge (FT).Chittorgarh for trial.

The trial Court after hearing arguments upon charge, framed charges under Sections 302, 201, 380, 380/34, 379 and 379/34 I.P.C.against both the accused appellants and in addition to above charge, charge under Section 4/25 of the Indian Arms Act was framed against the accused appellant Jagdish Chandra Jat S/o Ratan Lal.

5 The the accused appellant denied the charges levelled against them and claimed for trial.

In the trial, to prove the prosecution case, the statement of 40 prosecution witnesses were recorded and 93 documents were exhibited in support of prosecution case.

After recording the prosecution evidence, learned trial Judge recorded the statement of accused appellants under Section 313 Cr.P.C.but both the accused appellants denied the allegations levelled against them by the witnesses and submitted that they have been falsely implicated in this case due to enmity with the SHO, Police Station Kapasan.

In defense, both the accused appellants produced four defence witnesses namely DW-1 Kishan Lal, DW-2 Modu, DW-3 Panna Lal and DW-4 Roop Lal and some documents were also exhibited in support of their case.

The learned Addl.

Sessions Judge (Fast Track).Chittorgarh finally heard the arguments of both the parties and convicted the accused appellants for aforesaid offences and passed sentence mentioned above.

Both these appeals are filed by the accused appellants to challenge the judgment dated 3.10.2006 on various grounds.

Learned counsel for the appellants vehemently argued that there is no eye witness of the case and challan was filed by the police on the basis of the circumstantial evidence and recovery of blood stained clothes and weapon but in fact the entire story of the prosecution is concocted by the Investigating Officer by recording false information under Section 27 of the Evidence Act for verification of place of incident so also everything was recovered from the said place but to connect the accused appellants with the crime the informations under Section 27 of the Evidence Act were prepared within short span of time upon false recovery of blood stained clothes and weapon.

Therefore, it is a case in which accused appellants have been falsely implicated on the basis of false circumstantial evidence and false recovery of articles collected by the Investigating Officer during investigation.

Learned counsel for the accused appellants submits that names of both the accused appellants are not mentioned in the FIR.

According to prosecution case, deceased Bhagchand and Sunda Ram gave phone call to one Kadar Khan before incident but Kadar Khan has not been produced as witness by the prosecution so also the allegation of prosecution that Shiv Shakti Hotel belongs to accused appellants is also not established in absence of trustworthy and reliable evidence, therefore, whole story concocted by the prosecution deserves to be rejected.

Learned counsel for the accused appellants further submits that truck was recovered vide recovery Memo Ex.P/61 in front of Shiv Shakti Hotel, which is alleged to be of accused appellant Jagdish Chandra Jat but said fact cannot be treated as an evidence to connect the accused appellants with the crime.

The truck was recovered by the Police on road.

The motbirs of recovery are not of the same locality, therefore, the recovery of truck in front of Shiv Shakti Hotel is become doubtful.

While inviting attention towards the statement of PW-3 Mithu, PW-9 Likma Ram, Pw-24 Dana Ram, PW-27 Gopiram, PW- 30 Hardev Ram and PW-31 Jaggu Ram, it is submitted that all these witnesses are close relatives of deceased, therefore, they are interested witnesses and on the basis of their testimony, no conviction can be based, further argued that prosecution witnesses namely PW-12 Bhagwati Lal, PW-13 Altaf Hussain, PW-36 Sajjan Singh and PW-40 Bhagwan Sahai Goswami are police officers. therefore, their evidence cannot be believed without corroboration by the independent witnesses but learned trial Court erroneously relied upon the testimony of all these witnesses so as to convict the accused appellants, therefore, the finding given by trial Court to hold the accused appellants guilty on the basis of circumstantial evidence deserves to be quashed.

Learned counsel for the accused appellants vehemently argued that as per prosecution case, the 8 accused appellants gave information under Section 27 of the Evidence Act for verification of place of incident where the dead bodies were murdered but in fact the place of alleged incident and recovery of dead bodies was previously known to the police, therefore, on the basis of the so called information and recovery of place of occurrence upon the information given by the accused appellant, the recovery becomes doubtful.

Further, it is submitted that motbirs of Ex.P/7 and P/8 are not from the same locality, more so they are relatives of both the deceased, therefore, on the basis of interested witnesses, the conviction is not sustainable in law.

While attacking upon the finding given by the trial Court, it is submitted that the trial Court has erroneously relied and believed the recovery of articles because the recoveries of clothes, weapon knife were made from the open place, not belonged to the accused appellants.

Further, the blood of accused appellants has not been tested during investigation, therefore, blood found upon the recovered shirt and pant became doubtful and cannot be treated as an evidence so as to convict the accused appellants for the alleged crime.

Recoveries of Articles vide Ex.P/40.

P/41 and P/42 were not identified by any person, so also, recovery of articles shoe and clothes of both the deceased were not identified by the family members. Therefore, the recovery of those articles cannot be treated as proved.

Likewise, trolley recovered vide recovery memo Ex.P/68 does not connect the accused appellants with the crime because alleged tractor trolley is not belonging to the accused appellants, therefore, the impugned judgment which is based on wrong and erroneous finding of conviction may be quashed.

It is also argued that FSL report Ex.P/1 shows only human blood upon the trolley was found but blood group was not compared with the blood of dead bodies, therefore, the allegation of transporting dead bodies by tractor trolley by the appellants is not established.

With regard to recovery of currency note and the bag, it is submitted that both the recoveries were made in front of two motbirs namely PW-30 Hardev Ram and PW-31 Jaggu Ram but both these witnesses are not belonging to the locality, more so, they are relatives of the deceased, therefore, upon the testimony of interested witnesses, the conviction is not sustainable in law.

Learned counsel for the accused appellants invited attention towards the fact that recovered bag and puRs. were not identified by the relatives of deceased, so also, the recovery of weapon of offence is not proved by the 10 independent motbirs because motbirs of recovery memos are not from the locality, therefore, it is a case of the false implication of the accused appellants.

Learned counsel for the accused appellants lastly argued that it is a case in which false and concocted story was framed by the Investigating Officer on the basis of false circumstantial evidence so as to connect the accused appellants with the crime with ulterior motive.

The punishment upon the finding of conviction arrived at by the trial Court vide judgment dated 3.10.2006 deserves to be quashed on the ground that the statement of PW-15 Lalu Ram were recorded under Section 164 (Ex.20). upon those statement, the accused appellants were implicated in this case for the

alleged offence of murder but the said witness turned hostile before the trial Court and did not support the prosecution case, therefore, the impugned judgment 3.10.2006 may kindly be deserves to be quashed and set aside.

Learned counsel for the accused appellants strongly relied upon the judgment of Hon'ble Supreme Court in case of Sharad Birdhichand versus State of Maharashtra, reported in 1984 (4) SCC, p.116 and submits that prosecution has completely failed to prove its case beyond reasonable doubt because the chain of 11 circumstances is not complete by all means to held accused appellants guilty for offence of murder of two persons.

Per contra, learned Public Prosecutor vehemently argued that although there is no eye witness of the incident but after thorough investigation and upon information given by the accused appellants under Section 27 of the Evidence Act, the place of occurrence was recovered at the instance of the accused appellants and from the place of occurrence, blood stained mud and other articles were seized and sent to the FSL.

Further, upon information given by the accused appellant Jagdish Chandra Jat vide Ex.P/9, the blood stained clothes, puRs.and driving license were recovered.

Similarly, the blood sustained articles were recovered vide Ex.P/10 upon information given by accused appellant Jagdish Chandra Keer under Section 27 of the Evidence Act in front of two independent witnesses, therefore, it cannot be said that the recoveries of clothes, puRs.and diary of deceased is proved in pursuance of the information given by the accused appellants under Section 27 of the Evidence Act.

Learned PP invited attention of us towards the fact that in the investigation, it is found that both the deceased Bhagchand and Sunda Ram were drivers upon the truck Turbo No.RJ-14 2G7345and the said truck was 12 recovered in front of hotel of accused appellant Jagdish Chandra Jat vide Ex.P.6.

The dead body of deceased Bhagchand was identified by his relative vide Ex.P/28 and dead body of deceased Sunda Ram was identified vide Ex.P/27 by the

witness PW-23 Bhanwar Lal, PW-24 Dana Ram, PW-25 Pratap and PW-26 Jagdish.

Likewise one shoe of deceased Bhagchand was also identified by PW-26 Jagdish.

It is submitted that chain of circumstances completely proves the charge levelled against the accused appellants for committing offence of murder of two persons namely Bhagchand and Sunda Ram, therefore, learned trial Court after considering the entire evidence in right prospects held that on the basis of circumstantial evidence produced by the prosecution in the Court, the prosecution has proved its case beyond reasonable doubt so as to held the accused appellants guilty for the aforesaid offences.

In view of above, it is submitted that there is no strength in the arguments of learned counsel for the accused appellants that the prosecution has failed to prove its case beyond reasonable doubt.

Learned Public Prosecutor submits that there is no dispute that in absence of direct evidence as per the judgment of Hon'ble Supreme Court in case of Sharad Birdhichand versus State of Maharashtra, reported in 1984 (4) SCC, p.116, the para-meters laid down by Hon'ble Supreme 13 Court to assess the circumstantial evidence are required to be satisfied by the prosecution so as to held accused appellant guilty.

The case of prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence.

Learned Public Prosecutor submits that herein this case, the truck, upon which both the deceased were driveRs.recovered in front of hotel of accused appellant Jagdish Chandra Jat.

In the investigation, the statement of Lalu Ram PW-15 (Ex.P/20).employee of the hotel were recorded under Section 164 Cr.P.C.in which he has categorically said on oath that both accused appellants took both the deceased in the back side of hotel, turned hostile but in the investigation, an information was given by the accused appellant Jagdish Chandra Jat under Section 27 of the Evidence Act,

which is Ex.P/86 after arrest on 10.3.2005 at 9 a.m.and accused Jagdish Chandra Keer gave same information under Section 27 of the Evidence Act at 9.15 a.m.that he can point out the place where occurrence took place.

Upon aforesaid informations, the place of occurrence was recovered vide Ex.P/7.

The place was inspected by the Investigating Officer and found that blood was spread over in the mud, therefore, vide Ex.P/8, blood sustained mud and simple mud was taken and seized vide Ex.P/8.

The place was recovered as per information given by the accused appellants under Section 27 of the Evidence Act in front of 14 two independent witnesses Likhma Ram and Gopi Ram.

In the investigation, upon other informations with regard to cloths, which accused were wearing at the time of killing two persons and weapon, recorded under Section 27 of the Evidence Act, the blood sustained clothes, puRs.and diary of deceased were recovered vide Ex.P/9, P/10, P/11 and P/12 on 10.3.2005 in presence of two independent witnesses Likhma Ram and Gopi Ram and all the clothes as well as PuRs.and Diary of deceased were recovered and sent for FSL.

Likewise, tractor trolley No.RJ-09-R-1639 was recovered in which blood sustains were found and after taking samples of blood found upon the tractor trolley sent to the FSL for chemical examination.

The bodies of deceased were recovered at different places where both the accused appellants thrown the dead bodies after committing their murder, therefore, the learned trial Court while considering the entire facts and trustworthy circumstantial evidence on record held accused appellants guilty for the reason that the complete chain of circumstances is on record so as to held the accused appellants guilty, therefore, it is prayed that as per the judgment of Sharad Birdhichand (supra).if chain of circumstances is complete so as to held the accused guilty for alleged offence then the finding of learned trial Court does not suffer from any illegality.

15 Learned Public Prosecutor submits that the judgment cited by learned counsel for the accused appellant in case of Sharad Birdhichand (supra) supports the prosecution case and not the case of the accused appellants because by leading trustworthy and reliable evidence, the prosecution has proved its case beyond reasonable doubt.

Lastly it is argued by the learned Public Prosecutor that it is a case in which two innocent persons were brutally murdered by the accused appellants when they were going in truck and stayed for some time on the hotel of Jagdish Chandra Jat and only to take their money, the accused appellants murdered them, which is evident from the police investigation, therefore, upon reliable and trustworthy evidence led by the prosecution case, the learned trial Court accepted the evidence of prosecution so as to convict the accused appellants for alleged charge of murder, therefore, the finding given by the trial Court does not suffer from any illegality.

The trial Court categorically analysed the entire evidence in right prospects and gave finding that there is no strength in the defence taken by the appellants for their innocence against the circumstantial evidence independently assessed by the trial Court to held the accused appellants guilty for the offence under Sections 302, 201, 380 and 379 I.P.C, therefore, the grounds raised by the accused appellants with regard to false recovery and 16 absence of chain of circumstances are totally untenable, more so, the finding arrived at by the trial Court does not suffer from any illegality or infirmity.

Hence, both these appeals may be dismissed.

After hearing learned counsel for the accused appellants as well as learned Public Prosecutor, we have perused the finding given by learned trial Court.

Admittedly, the learned trial Court after hearing arguments of both the parties in para No.52 of the judgment observed that some circumstances are common for both the accused.

The said common circumstances are as follows :- (1) 8.3.05 11.30 ..

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17 While discussing the fiRs.common circumstance, the trial Court after discussing the entire evidence gave finding that the prosecution has proved its case beyond reasonable doubt that the truck trolley No.RJ-14 2G7345was recovered on 8.3.2005 vide Ex.P/6 at 11.30 p.m.in front of hotel of accused appellant Jagdish Chandra Jat and also accepted the fact that both the deceased Bhagchand and Sunda Ram were drivers upon the tractor No.RJ-14 2G-7345 on the basis of statement of Investigating Officer Bhagwan Sahai Goswami.

It is also accepted that the place where the dead bodies of both the deceased were found is 1.5.

kilometer far from the hotel of Jagdish Chandra Jat and appellant Jagdish Chandra Jat is owner of the said hotel and other appellant Jagdish Chandra Keer was working as servant in the said hotel.

After perusing statements of prosecution witnesses, we are of the opinion that no error has been committed by the trial Court.

For the second circumstance, the learned trial Court after discussing the entire evidence held that the said circumstance has not been proved.

With regard to third evidence, the learned trial Court discussed the entire evidence and held that all the articles were recovered in front of independent witnesses 18 PW-9 Likhma Ram and PW-27 Gopi Ram and it cannot be said that the prosecution has failed to prove the recoveries.

The learned trial Court categorically gave finding that information was given by the accused appellant Jagdish Chandra Jat vide Ex.P/86 and Jagdish Chandra Keer vide Ex.P/87 upon the said information, he put his signatures.

Both the accused appellants were arrested on 09.3.2005 vide Ex.P/81 and P/82 and upon those arrest memos, their signatures are there.

Witness Bhagwan Sahai Goswami, Investigating Officer PW-20 proved the arrest of both the accused appellants and they were produced within 24 hours before the concerned Magistrate from where the remand was taken, therefore, the arguments of learned counsel for the accused appellant that two witnesses Madan and Giriraj in whose presence, the accused appellants were arrested are not examined are not reliable to prove the arrest of accused appellants.

Learned trial Court while discussing the statement of witnesses PW-9 Likhma Ram and PW-27 Gopi Ram observed that both these witnesses are residents of village Bhadun District Kishangarh.

Meaning thereby both these witnesses are not residents of local area, therefore, the recoveries made in front of these witnesses and proved before the Court while leading their evidence does not suffer from any illegality.

Learned trial Court after considering the entire evidence and the fact that the blood stained clothes and weapon were recovered held that the prosecution has 19 proved its case beyond reasonable doubt.

The occurrence took place in the night in between 7 to 8 p.m.on 8.3.2005 in the back side of hotel of accused appellant Jagdish Chandra Jat and after killing both the deceased Bhagchand and Sunda Ram, their bodies were taken and thrown at 1.5 kilometer distance from the hotel.

The trial Court gave finding with regard to third circumstance that the prosecution has proved the third circumstance beyond reasonable doubt that the turbo truck was recovered in front of hotel, belongs to the accused appellant Jagdish Chandra Jat and on the basis of inspection upon the place of occurrence as informed by the accused appellants, the blood sustained mud was recovered and in the report received from FSL Ex.107, it is found that upon Article Ex.P/30, 32, 34, which is blood sustained mud and pieces of crop, human blood was found.

The clothes of deceased Bhagchand were also sent to FSL in which the blood of 'A' group was found and upon Articles Ex.P/30, P/32 and P/34, the blood of 'A' group was found.

Similarly, upon the clothes of Sunda Ram, the blood group of 'AB' was found and upon place 'B' mentioned in Ex.P/7, upon blood sustained mud, the same blood group was found.

Meaning thereby, as per the finding given by the trial Court, the third circumstance is proved by the prosecution beyond reasonable doubt.

20 The forth common circumstance not found to be proved by the trial Court.

We have perused the different circumstances considered by the trial Court for both the accused.

For accused appellant Jagdish Chandra Jat, the learned trial Court considered following four circumstances, which reads as under :- (1) 3.

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" The learned trial Court after taking into 21 consideration evidence for the fiRs.circumstance held that information was given by the accused appellant Jagdish Chandra Jat for recovery of blood sustained clothes, puRs.and blood of 'AB' group was found upon the clothes of accused appellant Jagdish Chandra Jat and blood of deceased Sunda Ram was of 'AB' group, which is found upon the clothes of deceased.

We have perused the discussion of the evidence taken into account by the trial Court to accept the said circumstance to be proved.

Learned trial Court while considering statement of PW-20 Investigating officer and information given by the accused appellant Jagdish Chandra Jat and recovery of blood sustained clothes of accused appellants upon information Ex.P/87 observed that in pursuance of the information given by the accused appellant Jagdish Chandra Jat, shirt Article -36, Pant Article 37, Sando Baniyan Article 38 and puRs.of deceased Sunda Ram Article 42 and license Article 40 found in the puRs.of deceased Sunda Ram and telephone diary Article 41 were recovered at the instance of accused appellant in front of independent witnesses Likhma Ram PW-9 and Gopi Ram PW-27 and both these witnesses proved the recovery of these articles as per information of accused and after seizing all the articles, they were put in a bag of cloth Article 43 and sealed upon the site in front of above two 22 witnesses, upon these Articles, blood was found.

Meaning thereby, as per the finding given by the trial Court on the basis of statement of PW-9 Likhma Ram and PW-27 Gopi Ram, the prosecution has proved the recovery of Articles at the instance of accused appellants.

The trial Court held that both the witnesses of recovery and investigating officer proved the fact that as per information given by the accused appellant, articles were recovered and blood group of 'AB' was found upon the clothes of accused appellants, which he was wearing at the time of occurrence and the blood group of deceased Sunda Ram was matched.

Therefore, this independent circumstance against accused appellant Jagdish Prasad Jat is proved.

With regard to the second independent circumstance against accused appellant Jagdish Chandra Jat, learned trial Court discussed the entire evidence in para 83 and gave finding that upon recovered articles and the statement of other witnesses, the said circumstance is proved because as per the information given by the accused appellants under Section 27 of the Evidence Act, the tractor trolley was recovered from his Nohra.

Upon that blood stains were found, which is proved by the witness PW-29 Dr.

Surya Shekher Daga.

Vide Ex.P/73, the blood taken from Tractor Trolley was sent to the FSL and as per the report given by FSL, Ex.P/107, human blood of 'A' Group 23 was found, which belongs to deceased Bhagchand.

In view of above, the finding given by the learned trial Court for second circumstance against the accused appellant Jagdish Chandra Jat does not require any interference.

With regard to third circumstance for recovery of articles upon information given by the accused appellant Jagdish Chandra Jat, we have perused entire discussion and evidence taken into consideration by the trial Court.

In our opinion, the trial Court has rightly arrived at with the finding that on the basis of the evidence of recovery, prosecution has proved its case beyond reasonable doubt by leading trustworthy circumstantial evidence.

For forth circumstance, we have perused the finding given by the trial Court in para 98 of the judgment.

Learned trial Court discussed the statement of PW-20 Investigating Officer and recovery of weapon (Churi) vide Ex.P/65, which is said to be prepared after recovery of weapon (churi) in front of two witnesses Hardev Ram and Jaggu Ram.

Both these witnesses PW-31 and PW-30 categorically stated that upon information given by accused Jagdish Chandra Jat, the Investigating Officer recovered 'Churi' from hotel Shiv Shakti Bhojnalaya.

In view of above facts, we have no hesitation to hold that the forth circumstance has been proved by the prosecution and while 24 discussing entire evidence, the trial Court rightly concluded that recovery of weapon from accused appellant Jagdish Chandra Jat has been proved because upon the said weapon blood of 'AB' group was found and blood group of deceased Sunda Ram was also of 'AB' Group.

In view of above finding upon all the four independent circumstances, the prosecution proved its case beyond doubt.

The only argument raised by learned counsel for the accused appellants that the recoveries were not made in front of local witnesses, therefore, the recovery is not admissible, is hereby rejected because it is a case in which thorough investigation has been conducted and on the basis of the oral evidence and evidence of recoveries, the prosecution has proved its case beyond reasonable doubt, which is supported by the report of FSL Ex.P/107.

For accused appellant Jagdish Chandra Keer, three independent circumstances were taken into consideration so as to assess the prosecution evidence, which reads as under :- (1) 7.3.05 3.

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To prove the fiRs.circumstance against accused appellant Jagdish Chandra Keer, the learned trial Court considered the statement of investigating officer PW-20 Bhagwan Sahai Goswami, who has categorically stated before the Court that the accused Jagdish Chandra Keer gave information Ex.P/88 that clothes which he was wearing at the time of occurrence can be recovered from particular place where I put them.

Learned trial Court after perusing the Ex.P/10 and statement of two witnesses Likhma Ram PW-9 and Gopi Ram PW-27 recorded in the trial held that upon information Ex.P/88 given by the accused appellant Jagdish Prasad Keer, clothes wearing at the time of occurrence by him and puRs.of deceased Bhagchand and telephone diary of deceased Bhagchand were recovered.

Recovered articles were sealed on spot in a bag of cloth Article 44 in front of two independent witnesses Likhma Ram PW-9 and Gopi Ram PW-27 upon which they put their signatures.

Article 45 Shirt, Article 46 Pant, black coloured 26 puRs.Article 47, telephone diary Article 48 and one receipt of donation Article 49 were recovered upon the information given by accused appellant Jagdish Prasad Keer in front of two independent witnesses.

We have perused the statement of both these witnesses along with the statement of PW-20 Ramcharan, PW-12 Bhagwati Lal and PW-13 Altaf Hussain, all the persons members of investigating agency and report of FSL Ex.P/107.

In our opinion, the finding given by the trial Court that the prosecution has proved its case beyond reasonable doubt does not suffer from any illegality.

With regard to second circumstance, which is taken into consideration by the trial Court so as to adjudicate this controversy, we have perused the finding given by the trial Court.

As per the finding, the accused appellant Jagdish Prasad Keer gave information on 11.3.2005 vide Ex.P/21 that one shoe of deceased and two shoes of another deceased were put by him in a water tank near the hotel, which can be recovered from the said place.

Upon the said information, the shoes of deceased were recovered in front of two witnesses Badri Lal PW-32 and Prathvi Raj PW-33 from one water tank of dirty water and after recovering one 27 Boot and two other working shoes (jutiya) were washed.

One shoe was of black colour and two other shoes (Jutiya) were black in colour but having design over them.

After recovery, the shoes were seized on spot in front of two witnesses Badri Lal PW-32 and Prathvi Raj PW-33, both these witnesses proved before the Court that shoes were recovered as per the information given by the accused appellant Jagdish Prasad Keer in their presence and they put signatures upon the recovery memo.

In view of above evidence that shoes were recovered as per the information given by the accused appellant Jagdish Prasad Keer which were identified by PW-25 Pratap and PW-26 Jagdish in the police station vide Ex.P/63 on 15.3.2005.

In view of above evidence, there is no strength in the arguments of accused appellants that recovery cannot be taken into account so as to held the accused

appellant Jagdish Prasad Keer guilty because no identification was made before the Magistrate independently.

In our opinion, the recovery of both shoes is trustworthy evidence to connect the accused appellant with the crime.

Upon perusal of photographs, which is piece of evidence in this case, it is obvious that upon the body of one deceased both shoes were not found and upon body of other deceased one shoe was found, therefore, it cannot be said that any error was committed by the police so as to investigate whether these shoes belong to the deceased or not, for which identification parade was undertaken in the 28 police station.

Learned trial Court on the basis of the photographs and the shoes recovered at the instance of the accused appellant rightly held the accused appellant guilty while accepting the evidence for the circumstance No.2.

With regard to third circumstance, taken into consideration by the trial Court so as to consider the case of the accused appellant Jagdish Prasad Keer, the learned trial Court while perusing the statement of Investigating Officer PW-20 Bhagwan Sahai Goswami held that upon information given by the accused appellant on 15.3.2005, one lathi was recovered vide Ex.P-93 and lathi was recovered in front of two witnesses PW-30 Hardev Ram and PW-31 Jaggu vide recovery memo Ex.P/66 and lathi was seized.

Both these witnesses categorically said that the accused appellant Jagdish Prasad Keer fiRs. took the key from the meter-box of the hotel and opened the room and under the cot, one lathi was brought by him and produced before the police in front of them, which is Article 18.

Although in the FSL report Ex.P-107, blood stains were not found but upon the said recovery, the accused appellant Jagdish Prasad Keer cannot be held guilty but on the basis of information given by the accused appellant Jagdish Prasad Keer, the clothes were recovered and upon those clothes, human blood was found.

29 After considering the arguments of learned counsel for the accused appellants and in the light of evidence on record, we are of the opinion that the judgment cited by learned counsel for the accused appellants in the case of Sharad Birdhichand (supra) supports the case of the prosecution rather than the case of the accused appellants because upon every angle, which is recovery of clothes, weapon and FSL report Ex.P/107, it can be said that every circumstance of the case has been proved by the prosecution so as to connect the accused appellants and held them guilty for the charge of murder of two persons.

There is no strength in the arguments of learned counsel for the accused appellants that the prosecution has miserably failed to prove its case beyond reasonable doubt, more so, it is a case in which the trial Court has thoroughly examined the entire evidence and while accepting the evidence of recovery of the clothes, weapon and other Articles to be proved as per information given by the accused appellants held that accused appellants are guilty for committing offence of murder of two innocent persons and there was motive to get money from them.

The Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda v.

State of Maharashtra (1984) 4 SCC116 has enumerated the following golden principles, which reads as under : 30 (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

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

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

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In view of above discussions and the law laid by Hon'ble Supreme Court in the case of Sharad Birdichand (supra).we find that the finding given by the trial Court is based upon sound appreciation of evidence and upon the fact that there is reliable circumstantial evidence to complete the chain of circumstances so as to held the accused appellants guilty.

Therefore, there is no substance in the prayer of learned counsel for the accused appellants to quash the judgment impugned because prosecution has proved its case beyond reasonable doubt.

Hence, both the appeals are hereby dismissed, the conviction and sentence passed by the learned trial court is hereby confirmed.

31 (VIJAY BISHNOI).J.

(GOPAL KRISHAN VYAS),J.

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