

Ram Narain Alias Narain Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-18-1994

Reported in : 1994CriLJ2513; 1994(1)WLN503

Judge : B.R. Arora and; V.G. Palshikar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 447

Appeal No. : D.B. Criminal (Jail) Appeal No. 446 of 1989

Appellant : Ram Narain Alias Narain

Respondent : State of Rajasthan

Advocate for Def. : Chandralekha, P.P.

Advocate for Pet/Ap. : R.K. Charan, Adv.

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. These three appeals are directed against the judgment dated 6-10-1989, passed by the Sessions Judge, Jodhpur, by which the learned Sessions Judge convicted and sentenced appellant Ram Narain alias Narain for the offences under Sections 302 and 447 I.P.C. and co-accused Ram Gopal alias Gopal for the

offences under Sections 302/34 and 447 I.P.C.

2. The prosecution case, in brief, is that the accused-appellant Ram Narain along with co-accused Ram Gopal alias Gopal, committed the murder of one Madan Lal (aged about 80 years) R/o Nandiya Khurd in the intervening night of 20/21st September, 1986, at about 1.00 a.m., in the Dhani of PW 4 Kana Ram and PW 11 Mohan Lal. The incident was witnessed by PW 4 Kana Ram and PW 11 Mohan Lal. The report of the incident was lodged at Police Station, Kherapa by PW 4 Kana Ram at about 9.00 a.m. on 22-9-1986. The accused-appellant and the co-accused were tried by the learned Sessions Judge, Jodhpur. The learned Sessions Judge, after trial, convicted and sentenced the accused-appellant, as stated above. While convicting and sentencing the appellant, the learned Sessions Judge placed reliance over the statements of the two eye witnesses, viz., PW 4 Kana Ram and PW 11 Mohan Lal, which were supported by the statement of PW 2 Arjun Ram and PW 5 Bhanwar Lal. The learned Sessions Judge, also, relied upon the statement of PW 1 Dr. Vijay Kumar and the recoveries of the blood-stained Dhariya, recovered on the information and at the instance of the accused-appellant Ram Narain as well as the Dhoti of the appellant Ram Narain, which were also found stained with human blood. The learned Sessions Judge, also believed the dying declaration of the deceased allegedly made before PW 2 Arjun Ram.

3. It is contended by the learned counsel for the appellant that there is some delay in lodging the First Information Report, conducting the post-mortem and reaching the report to the Court, It is further contended by the learned counsel for the appellant that the appellant had no motive to commit the murder of deceased Madan Lal as the relations between the deceased and the accused were cordial, as has been stated by various witnesses and there was no enmity or bad-blood between them. His further contention is that the so-called recoveries of the Dhariya and Dhoti are fake recoveries and they were not made on the information and at the instance of the accused-appellant Ram Narain. The appellant was arrested on 26-9-1986, but the recovery of the Dhoti was made on 28-9-1986, and at the time of arrest of the accused-appellant, no blood was detected or noticed on the Dhoti. So far as the recovery of Dhariya is concerned, the case of the learned

counsel for the appellants is that the recovery of Dhariya cannot be said to have been made on the information and at the instance of appellant Ram Narain as the keys to the locks of the house were with the police since the date of arrest of the appellant and as such the recoveries re tainted one and the prosecution witnesses deposing about the same are un-reliable and, therefore, the learned Sessions Judge was not justified in convicting and sentencing the appellants. It is further contended by the learned counsel for the appellants that although some foot-prints on the place of the occurrence were noticed by the Investigating Officer and the other witnesses but the moulds of the same were not taken by the police and this omission raises a suspicion about the fairness of the investigation. His further contention is that the statements of the prosecution witnesses does not find support from the medical evidence and there are material discrepancies between the statements of the prosecution witnesses and they have tried to make certain improvement in their statements in the trial Court from the statement made before the Investigating Officer during investigation. It is, also, contended by the learned counsel for the appellants that as per the evidence of PW 1 Dr. Vijay Kumar Verma, after receiving the injury on the parietal region, the deceased, looking to his old age, was not in a position to make the alleged dying declaration and, therefore, the alleged dying declaration could not have been made by the deceased before PW 2 Arjun Singh and as such the story of making dying declaration by the deceased before PW 2 Arjun Ram is concocted one. Lastly, it is contended by the learned counsel for the appellant that the so-called eye witnesses, viz., PW 4 Kana Ram and PW 11 Mohan Lal, are not reliable witnesses as they were living in village Dudi (district Barmer) and not in village Nandiya Khurd, where the incident took place, and the appellant has been falsely implicated in the case on account of enmity with Kana Ram and Mohan Lal. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned Sessions Judge convicting and sentencing the accused-appellant.

4. We have considered the submissions made by the learned counsel for the parties and have gone through the record of the case.

5. Before considering the arguments, advanced by the learned counsel for the appellant, we would first like to take into consideration the nature of the evidence

produced by the prosecution. The prosecution, in support of its case, produced two eye witnesses, viz., PW 4 Kana Ram and PW 11 Mohan Lal, in whose Dhani the incident took place and who have allegedly witnessed the occurrence and saw both the accused inflicting injuries on the person of Madan Lal (the deceased). They are also claiming themselves to be the witnesses of the dying declaration made by the deceased before PW 2 Arjun Ram. PW 4 Kana Ram has, also, lodged the First Information Report of the incident at Police Station, Kherapa, and is, also, a witness to the preparation of various Memos by the Police, i.e., Haalat Moka Ex. P.2, Furd Surat Haal Lash Ex. P.4, Panchanama-a-Lash Ex. P.5, recovery of the Gadda Ex. P.6 and the clothes of deceased Madan Lal vide Ex. P.7. The evidence of PW 4 Kana Ram and PW 11 Mohan Lal are sought to be corroborated by the statement of PW 2 Arjun Ram, who reached at the place of the occurrence along with his brother Birma Ram immediately after the incident and before whom the deceased made the dying declaration; and PW 5 Bhanwar Lal (the son of the deceased) to whom Kana Ram narrated the incident in the village and who came thereafter hearing the sad news of murder of his father. This evidence is further sought to be corroborated by the statement of PW 1 Dr. Vijay Kumar Verma, who conducted the autopsy on the dead body of deceased Madan Lal as well as the statement of PW 3 Bija Ram, who is the Motbir witness, in whose presence the various memos, i.e., Ex. P.2 to Ex. P.7 were prepared and PW 8 Balu Ram, who is also a Motbir witness, before whom the recoveries of Dhariya and the Dhoti were made vide Ex. P.11 and Ex. P.12, respectively. PW 9 Achla Ram was, also, produced as a Motbir witness regarding the recovery of Lathi (vide Ex. P. 13) on the information and at the instance of co-accused Ram Gopal alias Gopal, but has not supported the prosecution case and has turned hostile. PW 6 Raghunath Ram, Head Constable, was the Malkhana in charge and PW 7 Gopal Singh was the Constable posted at Police Station, Kherapa. PW 13 Banney Singh was the Station House Officer posted at Police Station, Kherapa, who conducted the investigation in this case. These are the three police witnesses, produced by the prosecution. PW 12 Dharma Ram Patwari was, also, produced by the prosecution to show the entry regarding the mutation relating to the land. This is all the evidence that has been produced by the prosecution.

6. The first contention raised by the learned counsel for the appellant is that the First Information Report was made after a lapse of eight hours and the delay in making the report has not been explained. The further contention of the learned counsel for the appellant is that this First Information Report reached in the Court on 22-9-1986 at about 10.30 a.m. when it was produced in the Court by PW 6 Raghunath Ram, Head Constable, which creates a doubt in the prosecution story as well as the time of lodging the report. The suspicion further arises from the fact that the post-mortem on the dead body of deceased Madan Lal was conducted on 22-9-1986 and not on 21-9-1986. It is true that the incident took place at about 1.00 a.m. on 21-9-1986, and the distance of the place of the incident from Police Station, Kherapa, is only seventeen kilometres. The informant, viz., PW 4 Kana Ram, first went to the village from the Dhani and informed Bhanwar Lal - the son of the deceased - as well as to the other villagers regarding the incident and thereafter proceeded to lodge the report and covered the distance of seventeen kilometres. The delay of eight hours in lodging the report has, thus, been properly explained by the prosecution. But the question is: whether actually the report was registered at the Police Station at the time when it has been alleged to have been registered. The receipt of the report in the Court on 22-9-1986 at 10.30 a.m. and conducting the post-mortem on 22-9-1986 by PW 1 Dr. Vijay Kumar Verma, 'raise the doubt regarding the registration of the report on 21-9-1986, because if the report would have been lodged on 21-9-1986 and the investigation would have commenced on that very day then after the preparation of the various memos and the recoveries of the articles from the place of the occurrence, the deadbody should have been taken to the hospital for post-mortem on the same day or the doctor would have been called at the place of the occurrence for conducting the postmortem by the deadbody would not have been kept at the place of occurrence at the house of the deceased for such a long time without any reasonable explanation. Though PW 5 Bhanwar Lal has tried to explain that the doctor was not available as he had gone to attend the Camp but this statement does not find corroboration from the statement of PW 13 Banney Singh - the Station House Officer - who conducted the investigation. According to PW 13 Banney Singh, the dead body could not be taken to the hospital on the same day as no arrangement for transportation was made and the jeep was made available by the villagers only

on the next day. When the police-party reached the place of the incident for conducting the investigation after lodging the report on 21-9-1986 then the same must have come on/ in some vehicle and not on foot, and on the same vehicle the dead body of Madan Lal could have been taken to the hospital for conducting the post-mortem or the doctor could have been called at the place of the occurrence. The non-conducting of the postmortem on the same day and the receipt of the report to the Police Station on the next day, thus, raises a suspicion. Of course, merely delay in despatching of the F.I.R. to the Court is not a circumstance which can be taken as sufficient for throwing out the prosecution case but providing a reasonable explanation for delay in conducting the post-mortem and the explanation for delayed despatching the F.I.R. to the Court provide a legitimate basis for relying upon the prosecution case and the absence of such reasonable explanation creates a suspicion that the F.I.R. was recorded at a later date and time than the stated date and the time and this may provide sufficient time to the prosecution to do improvements to set-out a distorted version of the occurrence.

7. The next contention raised by the learned counsel for the appellant is that there was no motive with the accused-appellant to commit the murder of deceased Madan Lal and, therefore, the appellant deserves to be acquitted. Of course, motive alone is not sufficient to connect the appellant with the crime but if there is some motive with the accused then it may heighten the probability that the offence was committed by the accused who was impelled by that motive, but in the absence of motive, the appellant cannot be acquitted when there is a truthful prosecution evidence available on record to prove the occurrence. The absence of motive itself is no ground for acquittal. It is, therefore, not incumbent for the prosecution to prove the motive for the crime if the witnesses are found reliable. The question, which requires consideration is : whether the witnesses produced by the prosecution are reliable and whether their evidence connect the accused with the crime. Admittedly, as per the prosecution case itself, there was no enmity of the accused with the deceased, rather they were having cordial relations. If at all there was some enmity, it was between the accused and PW 4 Kana Ram and PW 11 Mohan Lal. If these two witnesses were available with the accused then the accused persons would have killed these two witnesses instead of killing Madan Lal. The cordial relations of the accused with the deceased and the absence of

motive to murder Madan Lal find support from the statements of Kana Ram, Bhanwar Lal, Mohan Lal, Dharma Ram Patwari as well as from the statement of Banney Singh, S.H.O. From the evidence, produced by the prosecution, it is, therefore, proved that the appellant had no motive to commit the murder of Madan Lal and the relations of the accused with Madan Lal were cordial. But the absence of motive itself is no ground for acquittal when the other evidence connecting the accused with the crime is found truthful.

8. The next contention, raised by the learned counsel for the appellant is that the recovery of the Dhariya, allegedly made on the information and at the instance of the accused-appellant is a tainted one and no recovery was made from the appellant on his information or at his instance. The accused-appellant was arrested on 26-9-1986, vide Ex. P.6, by Pratap Singh, A.S.I. Police, at Barmer and was produced before PW 13 Banney Singh, S.H.O., on the same day and he was taken to the police custody. At the time of arrest, five keys, including the key to the lock put on the house of the accused, were recovered from the pocket of the accused-appellant. These keys were never sealed and the key of the house along with other keys, remained with the police. According to PW 13 Banney Singh, S.H.O., the key of the house remained in the Malkhana of the Police Station without being sealed and were taken at the time when the recovery was to be made. The Malkhana in charge, viz., Ragunath Ram, H.C. has not stated regarding the custody of the keys with him in the Malkhana. Even otherwise, the keys were available with the police since 26-9-1986, in an unsealed condition and the possibility of planting the Dhariya cannot be ruled out. As the key of the house, from where the Dhariya was recovered, remained with the police in an unsealed condition till the time of recovery of the Dhariya so made, it raises a suspicion in the recovery of the blood-stained Dhariys from the house of the appellant on his information and at his instance. The recovery of the Dhariya, though found stained with the blood of the blood-group of the deceased, therefore, appears to be tainted one. This recovery of the Dhariya, therefore, does not lend support to the prosecution case. There is another circumstance, also, that the Clerk concerned posted at the office of the Superintendent of Police, to whom the articles were sent by Raghunath, Head Constable, and were handed-over by PW 10 Laxman Singh and from whom PW 7 Gopal Singh, Constable posted at Police Lines, had taken

the articles for F.S.L. Examination to the State Forensic Science Laboratory, Jaipur, have not been produced to show that the articles remained in the same sealed position as were brought by Laxman Singh and were handed over to Gopal Singh in the same condition. This omission, also, creates a suspicion in the linking evidence.

9. The next contention, raised by the learned counsel for the appellant is that the recovery of the Dhoti is, also, doubtful. Appellant Ram Narain was arrested by Pratap Singh, A.S.I., on 26-9-1986, at Barmer vide Ex. P.6. At that time Pratap Singh, A.S.I., did not notice any blood-stains on the Dhoti of the appellant. The accused-appellant was in the police custody since 26-9-1986, but no blood-stains were noticed either by PW 13 Banney Singh - the Investigating Officer - or by Pratap Singh, A.S.I., or by any other person, but surprisingly, on 28-9-1986, when the recovery of Dhariya was made by the Investigating Officer at about 3.00 p.m. on 28-9-1986, he suspected the blood-stains on the Dhoti of the accused and recovered the Dhoti, though till then no blood-stains were seen by any of the witnesses or the Staff of the Police Station. It is really surprising that nobody could see the blood-stains on the Dhoti of the accused-appellant when he was arrested and remained in custody for three days, but surprisingly enough, after the recovery of the Dhariya, the Investigating Officer noticed the blood-stains on the Dhoti of the appellant after three days of the arrest of the accused. It appears that at the time of arrest, there was no blood-stains on the Dhoti of the appellant. Moreover, it has not been proved by the prosecution by producing any evidence that the blood-group of the appellant was not of 'Group-A'. If any evidence would have been produced by the prosecution to show that the blood-group of the appellant Ram Narain was not of 'Group-A' then it would have excluded the probability of his having some injury and the presence of his own blood on the Dhoti. The evidence of recovery of the Dhoti, which appears to be tainted one, therefore, cannot be read against the appellant.

10. The next contention, raised by the learned counsel for the appellant, is that the foot-prints of two persons were available near the scene of the occurrence which were seen by the various witnesses including the Investigating Officer, but the mould of those foot-prints were not taken by the Investigating Officer. If the moulds

of the foot-prints would have been taken by the Investigating Officer then they would have lent support to the prosecution in connecting the appellant with the crime. The foot-prints were visible but the moulds of those foot-prints were not taken by the Investigating Officer, which, also, creates a doubt in the prosecution case. The Investigating Officer tried to ignore the presence of the foot-prints only by saying in the cross-examination that the foot-prints were not measurable and, therefore, he did not think it proper to take the moulds thereof. That was not a right approach of investigating the case by the Investigating Officer. If the foot-prints were available, the Investigating Officer should have tried to take the moulds of those foot-prints in order to connect the accused-appellant with the crime as the presence of the foot-prints of the accused-appellant at the place of the occurrence would have lent support to the prosecution case. Not taking the moulds of the foot-prints further raises a suspicion in the prosecution case.

11. The next contention, raised by the learned counsel for the appellant is that the evidence of the prosecution witnesses does not find support from the medical evidence. Both the eye witnesses' have stated that appellant Ram Narain alias Narain inflicted three injuries by a sharp-edged weapon on the person of the deceased while co-accused Ram Gopal alias Gopal inflicted five-six injuries on the person of the deceased with a Lathi. PW 1 Dr. Vijay Kumar Verma, who conducted the autopsy on the dead body of the deceased, found as many as fourteen injuries, out of which injury No. 1 was by a sharp-edged weapon while the remaining thirteen injuries were by the blunt weapon. As per the evidence of the two eye witnesses, three/four injuries were inflicted by the appellant with the sharp-edged weapon and five/six injuries were inflicted by co-accused Ram Gopal by a Lathi and, therefore, the medical evidence, also does not support the prosecution case. In view of the prosecution case, the deceased must have received three injuries by sharp-edged weapon and five injuries by blunt weapon. Looking to the nature and the number of the injuries found on the person of the deceased, the statements of the so-called witnesses does not find corroboration from the medical evidence and raises a suspicion on the prosecution case.

12. The next contention raised by the learned counsel for the appellant is that the alleged dying declaration, made by the deceased before PW 2 Arjun Ram is a

tainted piece of evidence because the deceased, after receiving the injury No. 1 on the head was not in a position to speak and to give such statement. Deceased Madan Lal received as many as fourteen injuries, out of which injury No. 1, which was an incised wound on the parietal region, was sufficient in the ordinary course of nature to cause death. PW 1 Dr. Vijay Kumar Verma has specifically stated that after receiving the injury No. 1 on the parietal region, the parietal and temporal regions of the deceased were affected and he must have immediately become unconscious. He has, however, stated that unconsciousness depends upon the tolerance power and the strength of the body but because the deceased was eighty years of age, therefore, he had a lesser physical tolerance and as such immediately after receiving injury No. 1, he would have become unconscious. As per the medical evidence the deceased was eighty years of age and as per the medical evidence he could have immediately become unconscious while Arjun Ram came at the scene of occurrence after about half an hour as per the prosecution witnesses. Even making the dying declaration before Arjun Ram does not find mention in the First Information Report which is alleged to have been lodged after eight hours of the occurrence by PW 4 Kana Ram. Moreover, PW 2 Arjun Ram could not have heard the alarm raised by PW 4 Kana Ram and PW 11 Mohan Lal as his house is situated at sufficiently a longer distance and as per his own version he was in his house: The presence of this witness immediately after the occurrence has, thus, become doubtful because this witness himself has stated that he came at the place of the occurrence and thereafter went away and never came to the place of the occurrence before he was called by the police. This witness has also made several improvements in his statement before the Court from that of his earlier statement and when he was confronted with the earlier statement made during the investigation he denied to have made such a statement before the police and has stated that what he had stated before the Court was stated by him before the police. In view of the improvements made by this witness in the Court during trial from that of his earlier statement and the condition of the deceased at the time of the alleged making the dying declaration and the possibility of his reaching at the scene of the occurrence immediately after the occurrence, make his statement as unreliable. The evidence of dying declaration made by the deceased before this witness, thus, does not stand

proved.

13. The next point, which requires consideration is : whether the witnesses produced by the prosecution are worthy of reliance or not and whether the conviction can be made on the basis of the testimony of these witnesses. The learned Sessions Judge, while convicting the accused-appellants, placed reliance on the testimony of PW 4 Kana Ram and PW 11 Mohan Lal - the two eye witnesses of the occurrence and sought corroboration from the statement of PW 2 Arjun Ram, who came at the place of the incident immediately after the occurrence and PW 5 Bhanwar Lal - the son of the deceased - to whom Kana Ram (PW4) stated the incident in the village and who came at the spot thereafter. So far as PW 2 Arjun Ram is concerned, we have discussed his evidence in details in the preceding paragraphs of this judgment and looking to his conduct and the other connecting circumstances, we are of the view that he is not a reliable witness and he neither came at the place of the incident immediately after the occurrence nor any dying declaration was made by deceased Madan Lal before this witness. Now, we will like to consider the evidence of PW 4 Kana Ram and PW 11 Mohan Lal - the two alleged eye witnesses - to see whether they were present at the scene of the occurrence and whether they [had seen the incident and whether their evidence inspire confidence?

14. PW 4 Kana Ram has stated that on 20-9-1986, Madan Lal came to his Dhani at about 12.00 in the noon. He came to see whether his grand-daughter Paro had come there with the cattle (s) to graze them. Mst. Paro went with the cattle to the village in the evening while Madan Lal stayed with them. He took the meals in the night and thereafter he slept in the Court-yard. Madan Lal, also, slept on a cot lying nearby while he slept in the hut (Jumpa). At about 11.00 p.m., Monan Lal felt some cold and came inside the hut while Madan Lal remained sleeping outside. At about 1.00 a.m. in the night, Madan Lal cried, 'MAARE RE MAARE RE' and on hearing the cries of Madan Lal, he went outside the hut and saw accused Ram Gopal alias Gopal and Ram Narain alias Narain giving beatings to Madan Lal. Appellant Narain was armed with a Dhariya while appellant Ram Gopal alias Gopal was armed with a Lathi. He made inquiries from the accused-appellants as to why they were beating Madan Lal, upon which the appellants said that they

would kill him because they (Kana Ram and Mohan Lal) have forcibly taken the possession over their field. The witness further stated that he saw accused Narain inflicting injuries by Dhariya on the head of Madan Lal while accused Gopal inflicted injuries by Lathi on the hands of Madan Lal. Thereafter the accused ran away. Madan Lal was crying 'HAI RE HAI RE' and was demanding water. He offered him water. Thereafter he went to the village to call the son of Madan Lal and PW 11 Mohan Lal remained with Madan Lal. From the village, Bhanwar Lal, Champa Lal and Munni Lal came with him. When they reached at the place of the occurrence, by that time Madan Lal breathed his last and Mohan Lal was sitting by the side of Madan Lal. He thereafter lodged the written report (Ex. P.8) at Police Station, Kherapa, on which the F.I.R. (Ex. P.9) was registered. Both these reports bear his signatures. Thereafter the police came at the scene of the occurrence and prepared Ex. P. 2 Haalat Moka, Ex. P. 4 Furd Surat Hjaal Lash, Ex P. 5 Pancnnama, Ex. P. 6 Furd Jabti of blood-smeared soil and Ex. P. 7 recovery of Gadda, which bear his signatures. In the cross-examination, this witness has admitted that their parent had long back shifted to Barmer district where they own some agricultural land and a house and he is serving in the Rajasthan State Road Transport Corporation at its Falna Office but is under suspension. He has, also, admitted that the litigations are going on between them and the accused-party regarding the theft of agricultural produce and, also, a revenue suit is pending between the parties. These two cases have been instituted against him by the accused-party and the trial is going on for the last three years. He has, however, denied the fact of any litigation between him and the accused-party regarding the land. Though in the examination-in-chief he has stated that Madan Lal came to his Dhani at about 12.00 noon but in the cross-examination he has stated that Madan Lal came of his own at his Dhani after the Sun set. He has, also, admitted that Madan Lal used to go to his village and stayed in the Dhani only when it is the late hours of night and on that day, the grand-daughter of Madan Lal, who came with the deceased for grazing the cattle(s), went to the village along with the cattle in the evening. He has, also admitted that normally they reside in village Dudu (district Barnjier). but in the rainy season they used to live in the Dhani where the incident took place. He has, also admitted that Madan Lal was aged about seventy years but he had no difficulty in walking. He has

stated in the cross-examination that PW 11 Mohan Lal awaken before him and while he was sleeping, he cried 'MAARE RE MAARE RE' and on hearing the cries of Mohan Lal, this witness, also woke up. Mohan Lal came upto the doors of the hut while he came out-side the Jhumpa. Both the witnesses stayed near the door of the Jhumpa and did nothing because they Were threatened by the accused-appellants to be put to death. He has further stated that three-four injuries were inflicted by accused Ram Narain alias Narain by a Dhariya on the person of Madan Lal while five-six injuries were inflicted by accused Ram Gopal alias Gopal by a Lathi on the person of Madan Lal and no more injuries were inflicted by the accused-appellant to the deceased. This wit-ness has denied the suggestion put to Mm regarding the improvement made by him in the trial Court from his earlier statement regarding the number of injuries and their infliction by the accused. He has, also, tried to make certain improvements in the cross-examination from his statement recorded in the examination-in-chief regarding the num-ber of injuries inflicted by the accused-appellants on the person of Madan Lal. This witness has, also, admitted in the cross-examination that though the accused threatened them but they remained standing there and did not not run away and the accused, also, continued beating Madan Lal and did not try to inflict injury on them. This Witness, in the cross-examination, has, also, admitted that the accused treated them as their enemy. He has, also, admitted that the talks of compromise between them and the accused-party regarding the settlement of land in question were held but the same resulted in failure. He has however, denied the sugges-tion of false Implication of the accused-appellant in the offence of murder of Madan Lal. He, however, admitted that the deceased had no grudge or enmity with the accused-appellants and the relations between the accused-appellants and the deceased were cordial. In the cross-examination he has further stated that the police, after recording the F.I.R. came at the place of the occurrence on a tractor which was arranged by the police party and saw the site, made certain recoveries and prepared certain memos. He, however, stated that he brought a jeep in the night to take the deadbody of Madan Lal for post-mortem examination to Osia. They did not take the deadbody to Osia on the same day because he knew that the doctor was not in Osia and, therefore, they took the dead body on the next day at about 7.00 a.m. and the post-mortem was conducted by the doctor. The Station House

Officer and the police constables were, also, with him when they took the deadbody of Madan Lal to Osia.

15. P. W. 11 Mohan Lal - the second alleged eye-witness of the occurrence - has stated that Madan Lal came to his field on 20-9-1986, in the evening. In the evening, the children took the cattle (s) to village while Madan Lal stayed with them in their Dhani. At that time PW 4 Kana was, also, there. After taking the meals Madan Lal slept on a cot lying out-side the hut while he slept on the Chabutari. Kana Ram slept in the hut. At about 11.00 p.m. he felt some cold and went inside the Jhumpa and slept near the cot of Kana Ram. Madan Lal remained sleeping out-side the hut. At about 12.00/1.00 O'Clock in the night, he heard the cries of Madan Lal 'MAARE RE MAARE RE'. He and Kana Ram both, awoke. They came near the doors of the Jhumpa and saw accused-appellants Gopal and Narain giving beatings to Madan Lal. Ram Narain was armed with a Dhariya while Gopal was armed with a Gedi. He saw accused Ram Narain inflicting injury by the Dhariya on the head of Madan Lal and second injury was inflicted by accused Ram Narain on the left hand of Madan Lal. Accused Gopal inflicted injuries by Lathi on the right side of the body of Madan Lal. Upon seeing this, he raised alarm, 'MAARE RE MAARE RE' but none came at that time and the accused-appellants went away. Sometime thereafter Birma Ram and Arjun Ram came there. When the accused went away after giving beatings to Madan Lal, he came near Madan Lal. Madan Lal then informed him that accused-appellants Ram Narain and Ram Gopal had inflicted injuries to him. Thereafter Arjun Ram and Birma Ram came and in their presence, Madan Lal again stated that Ram Narain and Ram Gopal inflicted injuries to him. Kana Ram went to the village to inform regarding the incident to Bhanwar Lal - the son of the deceased. Arjun Ram and Birma Ram went to their houses. Madan Lal died sometime thereafter. In the cross-examination this witness has admitted that he resides in village Dudu (district Barmer) and has an agricultural land there. He has, also admitted the fact of institution of three criminal cases of theft against him by the accused-party. He has, also, admitted the pendency of a criminal case against Kana Ram instituted by the accused-party. He has, also, admitted the fact of pendency of a criminal case against him regarding giving beatings to accused Ram Narain. He has, also, admitted the pendency of a litigation regarding the land in dispute between him

and the accused-party and on account of this litigation the relations between them are strained and inimical. He has, also, admitted that Arjun Ram and Birma Ram came at the place of the incident after twenty to twenty-five minutes of the occurrence. He has, also, admitted that he and Kana Ram did not make any attempt to rescue Madan Lal because if they would have tried to do so then the accused would, have killed them, also. He has, also, admitted that each of the accused inflicted two-three injuries on the person of Madan Lal. After the accused went away, he prepared tea and gave it to Madan Lal, who took it. He saw the injuries on the person of the deceased before Arjun Ram and Birma-Ram came, which were four in number. He has, also, admitted that there were foot-prints available near the place of the occurrence. The footprints were available from near the Court-yard up to the roadj i.e., up to a distance of about 3/4 to one mile. He has, however, denied the suggestion that the deceased was not in a conscious state when Arjun Ram and Birma Ram came and Madan Lal died after one hour of the incident. He has, also, stated that Birma Ram and Arjun Ram enquired from Madam Lai about the incident and thereafter they went away. He has, however, denied the suggestion that on account of election, Birma Ram and Arjun Ram had some grudge against the accused-party and, therefore, the accused-appellants have falsely been implicated in the case. He has, also, stated that Kana Ram, after informing Bhanwar in the village, came to the place of the occurrence, along with Bhanwar Lal, Champa Lal and Munni Lal and thereafter went to the Police Station to lodge the report. The police thereafter came to the place of the occurrence, made certain recoveries and prepared the site plan etc. and the dead body of Madan Lal was taken to Osia on the next day. The police came on a tractor and the jeep was hired to take the deadbody to Osia. He has, also, stated that Madan Lal was aged about 80 years while Paro alias Parodi (the grand-daughter of Madan Lal), who came with the cattle(s) was aged about only eight/ nine years. He has, also, stated that the partition between the brothers regarding this land had already taken place but the mutation has not been entered in their names and they deposit the Bigodi collectively and he has the receipts regarding depositing the Bigodi but, he has not brought the same as the police never demanded so. He has, however, denied the suggestion that he never deposited the Bigodi or his name has not been entered in the voters' list or his ration-card has not been

prepared in the village. He has, however, admitted that after hearing the cries of Madan Lal, he and Kana Ram came near the doors of the Jhumpa together and saw the incident from the doors. He has, also admitted that he had a talk with the accused and the accused called them to come-out and they would be killed and as such he did not come outside the Jhumpa. This part of statement was not made by this witness during the investigation and he was confronted with this statement and on this he stated that he made the statement before the police but it has not been written in Ex. P. 2. He has further stated that he had seen the occurrence and, therefore, there was no question of making enquiry from Madan Lal as to who had given beatings to him but Madan Lal himself told him that the accused-appellants gave beatings to him. Madan Lal again informed Arjun Ram and Birma Ram that the accused gave beatings to him. He has, however, admitted that usually he resides in village Dudu (district Barmer) but uses to come to the Dhani of the village only in the rainy season and as it was the rainy season, he and Kana Ram had come to the Dhani at village Nandiya Khurd. He has, however, admitted that continuously they never resided in village Nandiya Khurd though they have a joint house with Gopal in village Nandiya Khurd as his grand-father and the grandfather of Gopal were the real brothers. He has denied the suggestion that after shifting to Barmer district, they are not coming to village Nandiya Khurd but he along with his father is cultivating the land in the rainy season in village Nandiya Khurd.

16. Both these witnesses, viz., PW 4 Kana Ram and PW 11 Mohan Lal, have admitted that their parents had shifted to village Dudu (district Barmer) long back since the early age of the childhood of these witnesses and they have the land in the village but in order to show their presence in the village, they have stated that they used to come to the Dhani to cultivate their field in the rainy season. They have, also, admitted that they have inimical and strained relations with the accused on account of a dispute regarding the land and have, also, admitted that three criminal cases regarding the thefts as well as regarding giving beatings to the accused-party were instituted against them and they are facing the trials. They have, also, admitted that the relations of deceased Madan Lal with the accused were cordial and the accused-appellants had no grudge against Madan Lal. If the accused had no grudge against the deceased and if the witnesses, as stated by

them, were present at the scene of the occurrence while the accused were giving beatings to deceased Madan Lal then on account of strained and inimical relations with the accused and who were their targets, the accused-appellants would not have spared them, particularly when these witnesses were unarmed and were within the reach of the accused-appellants and they never tried to run away. These witnesses were the first targets of the accused and if they would have been present there then they would have certainly be beaten by the accused-appellants looking to their strained and inimical relations and in the presence of these witnesses they would not have given , beatings to Madan Lal, with whom they had no grudge, rather they were having cordial relations. According to these witnesses, no efforts were made by these accused-appellants to inflict any injury to them, but they were only threatened by the accpused-persons of the dire consequenes in case they proceeded further. There was no occasion or motive with the accused-appellants to give beatings and kill Madan Lal -- an innocent old person -- with whom they had no grudge. The story so narrated by these witnesses, therefore, does not inspire confidence because in the presence of the first enemy, nobody spares them and will murder a person who is not having any bad-blood with him. These witnesses are residing in village Dudu (district Barmer) and PW 4 Kana Ram was employed in the Rajasthan State Road Transport Corporation at its Falna Depot. Their presenee at the scene of the occurrence, therefore, appears to be somewhat doubtful. Even if these witenesss would have been present in the Jhumpa, as alleged by them, the circumstances further show that they had not seen the occurrence because if they would have been present at the scene of the occurrence then they would not have been spared by the accused-appellant to give evidence against them. Moreover, the accused-party had no motive to murder Madan Lal while these two witnesses had a motive to falsely implicate the accused-appellants in a crime which took place in their Dhani in order to save themselves and to wreck their grievances and to take revenge from the accused-appellants who had instituted three criminal cases against them and are litigating in the Revenue Court regarding the possession of the land. The murder of Madan Lal had taken place in their Dhani, which according to these witnesses, belong to them and in order to save themselves from the offence of murder of Madan Lal they have implicated these two accused-appellants. These two witnesses, also,

have tried to make several improvements in their statements made before the trial Court from their earlier statements made during the investigation and when they were confronted with those statements, they have merely stated that they made the statements before the police but that was not recorded by the police or they have not stated so. Even their conduct at the time of the occurrence makes their presence unworthy of belief. They did not take any steps to rescue Madan Lal from the overt act of the accused-appellants. Even after the occurrence, when the accused ran away, they did not take any steps to provide medical aid to the deceased. Moreover, the accused-appellants are aged about seventy years while these two witnesses are in their early thirties and, therefore, their statements that they were threatened by these two accused-appellants and so they did not proceed towards the accused to save the deceased, also creates a doubt in their testimony. The over-all assessment of the evidence of these two witnesses reveals that these two witnesses were not present at the scene of the occurrence and they have not seen the incident and when they found the dead-body of Madal Lal nearby their Dhani, they took the opportunity and implicated these two accused-appellants as the perpetrators of the crime with an oblique motive to get rid of these accused-appellants and to save, themselves from the criminal as well as the revenue litigations pending against these witnesses. After a careful reading of the statements of these witnesses we are of the opinion that they are not worthy of credence and their evidence does not inspire confidence. We are, also, of the opinion that they were not present at the scene of the occurrence when the incident took place and have tried to falsely implicate the accused-appellants.

17. The learned trial Court further relied upon the testimony of PW 5 Bhanwar Lal and sought corroboration of the evidence of PW 4 Kana Ram and PW 11 Mohan Lal from the evidence of PW 5 Bhanwar Lal, to whom PW 4 Kana Ram informed about the incident and who came at the scene of the occurrence thereafter. PW 5 Bhanwal Lal has only stated that at about 2.00 a.m. in the night, PW 4 Kana Ram came and informed him that appellants Gopal and Narain have killed his father, upon which he, along with Champa Lal and Munni Lal, went to the Dhani of Mohan Lal and saw his father dead, who was having injuries on this body. In the cross-examination he has admitted that his father had cordial relations with the accused-party and Mohan Lal. He further stated that PW 4 Kana Ram and PW 11 Mohan

Lal have no residential house in the village and they are residing in village Dudu (district Barmer) and are doing cultivation there. He further stated that PW 4 Kana Rani and PW 11 Mohan Lal are his cousins. He has, also, admitted that PW 4 Kana Ram and PW 11 Mohan Lal went to take possession over the field which is in the possession of the accused-party while the accused-appellant are not ready to give the possession over that field to these two witnesses and the litigations between the accused-appellants and these two witnesses are going-on for last twenty years, but so far as his father is concerned, there was no dispute between his father and the accused-party and the relations between them were cordial. In the cross-examination, he has, also, admitted, that PW 4 Kana Ram informed him regarding the incident sometime before the Sunrise and when Kana Ram came to him, by that time he had awoken. He has, also, admitted that he does not know how the incident occurred and who killed his father and if in giving him the information Kana Ram had played any mischief then he cannot say anything in this regard. He has, also, admitted that he is not in a position to state whether Kana Ram and Mohan Lal had killed his father and falsely implicated these accused-appellants. This witness came at the place of the incident after the occurrence was over and stated in his statement what was let known to him by PW 4 Kana Ram. This evidence of this witness, viz., PW 5 Bhanwar Lal, is, therefore, of no importance because he himself had not seen the incident.

18. After a careful consideration of the various circumstances, as discussed above, we are of the opinion that the prosecution has miserably failed to prove the case against the accused-appellants beyond a reasonable, manner of doubt and the accused-appellants, therefore, deserve to be acquitted.

19. In the result, the appeals, filed by the accused-appellants Ram Narain alias Narain and Ram Gopal alias Gopal, are allowed and the judgment dated 6-10-89, passed by the learned Sessions Judge, Jodhpur, convicting and sentencing the accused-appellants is set aside and the accused-appellants are acquitted of all the charges levelled against them. They are in jail and they may be released forthwith if they are not required in any other case.