

Resham Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-17-1995

Reported in : 1995CriLJ3325

Judge : B.R. Arora and; R.R. Yadav, JJ.

Acts : Indian Arms Act - Sections 27; Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 362, 364, 392, 397 and 449

Appeal No. : Criminal (Jail) Appeal No. 75 of 1989

Appellant : Resham Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : H.S.S. Kharlia, Adv.; Chandralekha, Public Prosecutor and;

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 1-2-1989. passed by the Additional Sessions Judge No. 1, Sri Ganganagar, by which the learned Additional Sessions Judge No. 1, Sri Ganganagar convicted the appellant and Kakoo alias

Sarvajeet Singh for the offences under Sections 302. 302/34,364,449,392 read with 397, IPC and S. 27 of the Indian Arms Act.

2. Appellant Resham Singh and co-accused Kakoo alias Sarvajeet Singh were tried by the learned Additional Sessions Judge No. 1, Sri Ganganagar, for the offence under Section 302, in the alternative, for the offence under Sections 302/34, IPC for committing the murders of Gurvendra Singh and his two servants Jatu Ram and Ram Bahadur Nepali. They were, also, tried for the offences under Sections 449, 362, 392 read with Section 397, IPC as well as under Section 27 of the Indian Arms Act.

3. The case of the prosecution, in nutshell, is that in the intervening night between 15th and 16th February, 1985, two persons, whose foot- prints were found in the house of deceased Gurvendra Singh situated in village 4-W (district Sri Ganganagar) committed the murder of Gurvendra Singh and took away his two servants Ja'tu Ram and Bahadur Nepali for committing their murder, also. The accused, after committing the murder took away the jeep No. RJQ 5330 of Gurvendra Singh. They, also, took away the licensed 12-bore DBBLgun, bandolierand the cartridges, one gold ring and Kara belonging to deceased Gurvendra Singh as well as his wrist watch. In the morning of 16-2-1985, at about 9-00 a.m., P.W. 7 Ajayab Singh along with one Bacchan Singh came to call Gurvendra Singh, who was the Sarpanch of the village and who had come on the previous night for canvassing in the general election which was to be held shortly and called Gurvendra Singh but no reply came from the house. Thereafter they called his servants but the same remained unattended. Thereafter they knocked the outer gate and found the door open and when they peeped inside the house, they saw the deadbody of Gurvendra Singh lying on a cot which was smeared with blood and his two servants Jatu Ram and Bahadur Nepali were found missing. The diesel jeep belong to deceased Gurvendra Singh was, also, not available there. The prosecution, in support of its case, examined seventeen witnesses. The accused, in their defence, examined one witness. The nature of the evidence, produced by the prosecution consists of the statement of PW 1 Dr. Leela Dhar, who conducted the post-mortem on the deadbody of Kala Bahadur Nepali and Jatu Ram on 23-2-85. P.W. 3 Dr. Jaswant Singh performed the post-mortem on

the deadbody of Gurvendra Singh on 6-2-85 in village 4-W in the house of the deceased. PW 4 Gurbachan Singh is a Motbir witness to the taking of the moulds vide Ex. P. 7 while PW 7 Ajayab Singh lodged the FIR and is a Motbir witness to all the recoveries as well as preparation of the site-plan, the arrest of the accused etc. PW. 8 Ved Prakash is a Motbir witness to the recovery of the Jeep on 18-2-1985 on Jetsar Raisinghnagar road. PW 2 Deodar Singh is the brother of deceased Gurvendra Singh, who received the information, at Patiala regarding the murder of his brother and who. along with PW 6 Smt. Sarvajeet Kaur (widow of deceased Gurvendra Singh) came to village 4-W and saw the deadbody of Gurvendra Singh lying in the house. The deadbody of Gurvendra Singh was given to him and he performed his last rites. PW. 5 Ajeet Singh is the person who had last seen the accused near village 4-W on the fateful night. PW. 6 Sarvajeet Kaur is the widow of deceased Gurvendra Singh, who. on receiving the information about the murder of her husband came from Patiala to village 4-W. She has. also, identified the gold ring. Kara and the wrist watch of her deceased husband. PW. .9 Gogi Arora is a Photographer of village Kesarisinghpur. who took the photographs of the deadbody of Gurvendra Singh. PW 13 Anil Kumar is the photographer at Sri Ga'ngahagar. who took the photographs of the glass and the Lota. PW. 10 Malkiyat Singh was the Assistant Sub Inspector of police, who was the Malkhana Incharge at Police Station, Kesrisinghpur with, whom the articles were deposited by the investigating officer and who handed-over the same to PW. 14 Maam Raj for taking the articles for F.S.L. examination at the State Forensic Science Laboratory Jaipur. PW. 11 Narendra Singh is the Incharge of the Dogs Squad who came to village 4-W, but this witness has not supported the prosecution case and he was declared hostile. PW. 12 Shall Mohammed was the tracker who followed the foot-prints. PW. 14 Maam Raj is the Police Constable posted at the relevant time at Police Station, Kesrisinghpur, who took 17 scaled packets for FSL examination to the aforesaid Laboratory at Jaipur. PW. 15 Abdul Aziz was the Station House Officer, who investigated the matter and presented the challan. PW. 16 Mr. Shiv Dayal Mulha was the then Munsif and Judicial Magistrate, who took the moulds of the foot-print of the accused wearing Punjabi Jooti and the flat vide Ex.P. 73 and Ex.P. 74 and. also, took the sample Finger-prints of the accused vide Ex.P. 75 to Ex.P. 78 and. also. conducted the identification parade of the gold

ring and Kara. PW. 17 Om Prakash was the Police Constable, who accompanied PW. 12 Shall Mohammed the tracker.

4. The learned Additional Sessions Judge, after trial. vide judgment dated 1-2-89, convicted the appellant as well as Kakoo alias Sarvajeet Singh, for the offences under Sections 302, 302/34, 449, 364, 392 read with 397, IPC as well as under Section 27 of the Indian Arms Act and by the Order dt. 2-2-89, sentenced each of the accused to undergo imprisonment for life and a fine of Rs. 1000/- each and in default of payment of fine to further undergo six months' rigorous imprisonment for the offence under S. 302,, alternatively under Section 302/34, IPC; seven years, rigorous imprisonment and a fine of Rs. 50.0/- each and in default of payment of fine further to undergo, four months' rigorous imprisonment for each of the offences under Sections 449. 364 and 392 read with 397, IPC and three years', rigorous imprisonment and a fine of Rs. 250/- and in default of payment of fine further to undergo one month's rigorous imprisonment for the offence under Section 27 of the Indian Arms Act. All the sentences were ordered to run concurrently. It is against this judgment and the Order of Sentence that the appellant has preferred this appeal. The State, also, filed an appeal bearing D.B. Criminal Appeal No. 346 of 1989 (the State of Rajasthan v. Resham Singh), which was dismissed on 27-2-91. Accused Kakoo alias Sarvajeet, Singh, also, filed D.B. Criminal Appeal No. 86 of 1989 but during the pendency of the appeal, he committed suicide in the Central Jail, Bikaner and, therefore, the appeal filed by him stood abated and an order to this effect was passed by this Court on 13-2-1992. As the appeal filed by the State stands dismissed and the appeal filed by co-accused Kakoo alias Sarvajeet Singh stands abated, therefore, we decide the appeal filed by accused-appellant Resham Singh.

5. There is no eye-witness to the occurrence and the case of the prosecution mainly rests upon the circumstantial evidence. The circumstances, which have been relied-upon by the prosecution and believed by the trial Court, are : (i) the last seen of the accused by PW 5 Ajeet Singh proceeding towards village 4-W: (ii) the recovery of the deadbody of Jatu Ram on the information and at the instance of the accused-appellant: (iii) the recoveries of the articles, namely, gold ring, the Kara and the licensed 12-Bore DBBL gun along with the bandolier and the

cartridges on the information and at the instance of the accused-appellant; (iv) the recovery of the pistol - the weapon of the offence-, the Darat containing human blood of 'B' Group; (v) the presence of the footprints of the accused in the house of the deceased (vi) the evidence of trackers as well as the Incharge of the Dogs' squade; and (vii) the presence of the finger-prints on the glass and Lota found on the mud-guard of the tractor standing in the house of the deceased. As the prosecution case purely rests upon the circumstantial evidence, we have, therefore, to adopt a cautious approach in arriving at a conclusion about the guilt of the accused and have to see whether the circumstances relied-upon by the prosecution, conclusively and firmly establish the guilt of the accused and all the circumstances, taken together, complete the chain and unerringly point towards the guilt of the accused and there is no escape from the conclusion that the accused is the perpetrator of the crime? The chain of the circumstances must be so complete that it is incapable of any explanation and is inconsistent with the innocence of the accused. It is true that three persons have been murdered and the offences are shocking one but the gravity of the offences cannot outweigh the necessity of the legal proof. We have, therefore, to see : whether the circumstances relied-upon by the prosecution, are conclusively and firmly established or not?

6. The first circumstance relied-upon by the prosecution and believed by the learned trial Court is the last seen of the accused-appellant by PW. 5 Ajeet Singh near village 4-W. PW. 5 Ajeet Singh has neither given any date nor any month when he had seen the accused. Even this witness was examined by the investigating officer on 7-3-85, i.e.. after about twenty days of the incident. The explanation given by this witness for his late examination is that on the next day of the day of occurrence, he went to Punjab as his sister was not feeling well and on the day when he returned, he went to the Police Station to give his statement though he was not asked by any person. The investigating officer PW. 15 Abdul Aziz has not given any explanation why he could not examine this witness earlier. This witness was examined after fourteen days of the arrest of the accused. A close reading of the statement of this witness does not inspire confidence. Moreover, he has seen the accused at W-Minor and the village of the accused is, also, situated near W-Minor. The presence of the accused near his village cannot

be said to be, in any way, suspicious, though we are of the opinion that the evidence of PW-5 Ajeet Singh does not inspire confidence but even if that is believed still it is not incriminating against the appellant as the presence of the accused near his village cannot be said to be, in any way, unnatural or suspicious.

7. The next incriminating circumstance believed by the learned trial Court is the recovery of the deadbody of Jatu Ram on the information and at the instance of the accused-appellant. To support this recovery, the prosecution has placed reliance over the statement of PW. 7 Ajayab Singh and PW 15 Abdul Aziz - the investigating officer. The accused was arrested on 23-2-85 and as per PW. 15 Abdul Aziz, the accused gave the information (Ex. P. 65) under Section 27 of the Indian Evidence Act on the same day and in pursuance to that information, the deadbody of Jatu Ram was recovered from the field situated near village Ridmalsar on the way in between Ridmalsar and P.S. Head. The witnesses to this recovery are PW. 7 Ajayab Singh and Baldeo Singh. The recovery memo Ex. P. 2 does not contain the name of the owner of the field but in the Furd Surat Haal Lash (Ex. P. 21) it has been stated that the deadbody was recovered from the field of Pritam Singh Jat-Sikh R/O 12-ML, where gram crop was standing. It has been stated in Ex.P. 21 that:-

(Matter in Vernacular omitted...Ed.)

Though in the Furd Surat Haal Lash and the Panchnama the recovery of the deadbody has been shown from the field of Pritam Singh but in the site plan Ex. P-23-A, the recovery of the deadbody has been shown from Kila No. 7 of square No. 30 of Mst, Harcharan Kaur. In Ex.P.-23-A, it has been mentioned that:-

(Matter in Vernacular omitted...Ed.)

This discrepancy has not been explained by the investigating officer, rather, on the contrary, the statement of PW 15 Abdul Aziz raises a suspicion regarding the recovery of the dead body on the information and at the instance of the accused. PW 7 Ajayab Singh, who is a witness to this recovery, has stated that four jeeps went to village Ridmalsar to recover the deadbody and the deadbody of Jatu Ram was brought to the hospital in a jeep. The statement of PW. 2 Deedar Singh - the

brother of deceased Gurvendra Singh - is, also, similar to that of Ajayab Singh, who has stated that the deadbody of Jatu Ram was brought in a jeep while PW. 15 Abdul Aziz states that the deadbody was brought in a trolley. The recovery of the deadbody on the alleged information and at the instance of the accused, therefore, raises a suspicion when the investigating officer states that he did not make any entry in the Police Diary on 23-2-85 and no proceedings were drawn in the case diary though in the earlier part of his statement he tried to state that he did not mention any timings regarding the proceedings on 23rd and entered only the important events and the important events namely leaving the Police Station etc. have been mentioned in the Roznamcha but when further cross-examined, he admitted that no entry of any investigation on 23-2-85 has been mentioned in the case-diary.

There is another aspect of the case also. Jatu Ram was murdered on 16-2-85 and his deadbody was found on 23-2-85 in the field which is situated at a distance of about 250 feet from the public way proceeding from Ridmalsar to P.S. Head. The village Ridmalsar is, also, near to the place wherefrom the deadbody was recovered and the crop of gram was standing there. The decomposition of the deadbody starts between twelve to twenty-four hours and as per the statement of PW. 1 Dr. Lecladhar Bhardwaj. decomposition had already started and blisters and maggots were present on the deadbody and the foul gases were found in the stomach and according to the doctor, the deceased must have died between three to ten days prior to the time of the post-mortem examination. When the decomposition had already started and the field, from where the deadbody was recovered, was near the public way. it cannot be said that nobody had seen the deadbodies. Even no witness from the nearby village was called for being a witness to the recovery and only PW-7 Ajayab Singh and Baldeo Singh were called from village 10-W to witness this recovery. PW. 5 Abdul Aziz has admitted in the cross-examination that when the recovery of the deadbody of Jatu Ram was made, certain persons were working in the nearby fields, to whom he called and got their signatures on the Punchnamu and those witnesses were of village Ridmalsar. He has, also, admitted that those twothree persons were with him while the recovery memo was prepared but on seeing the case diary, he stated that no person of village Ridmalsar is a witness to this recovery. When the villagers were

there in the fields, who were called by PW. 15 Abdul Aziz and appended their signatures then they should have been examined but those witnesses have not been produced by the prosecution which raises a suspicion regarding the recovery of the deadbody on the information and at the instance of the accused. The crops were standing in the nearby fields and the place of recovery of the deadbody is near village Ridmalsar as well as to the public way and. therefore, it is not expected that the deadbody will not have been seen by any villager for the last seven days and was recovered as alleged by the prosecution. This recovery of the deadbody on the alleged information and at the instance of the accused, therefore, does not inspire confidence, rather we are of the opinion that it is a lake recovery and has not been made by the investigating officer on the alleged information and at the instance of the accused from the field. This circumstance, therefore, does not stand established against the accused and the learned trial Court was not justified in accepting this circumstance against the accused-appellant.

8. The next circumstance relied upon by the prosecution and believed by the learned trial Court is the recovery of the gold ring and Kara of deceased Gurvendra Singh on the alleged information and at the instance of the accused-appellant. The appellant was arrested on 23-2-85. According to PW. 15 Abdul Aziz, the information Ex.P. 68 was given by the accused on 27-2-1985 and the recoveries of these articles were made on the same day from the house of the appellant. The recoveries of the gold ring and Kara were made from a Polythene bag kept under the wooden beam of the Kotha. No independent witness to witness these recoveries from the village was called. PW. 7 Ajayab Singh, who is a resident of village 10-W. situated about five kilometres from the place where the deadbody was lying, was called to witness these recoveries. Even PW. 7 Ajayab Singh does not support the prosecution case that the recoveries were made in his presence. He has only stated that the police went inside the Kotha of the accused and brought the articles and he remained standing out-side the house of the accused. He has not even stated that the accused-appellant was with them who got the articles recovered. PW. 7 Ajayab Singh does not support these recoveries and no other independent witness was called. PW 7 Ajayab Singh is a witness to almost all the recoveries and the arrest of the accused, the exhibits made in the case between 16-2-85 to 27-2-85 etc. He is even the witness to the recovery of the

license of the gun which was produced by PW. 2 Dcedar Singh after a month of the incident. The presence of PW 7 Ajayab Singh on all these occasions raises a suspicion : whether he was actually present at all the times whenever the recoveries of the articles were made, the accused were arrested etc.. or he appended his signatures on all these memos at the Police Station alter the memos were prepared otherwise the presence of this witness on all the occasions during these eleven days would not have been possible. In the recovery memo Ex. P. 30. the gold ring, which was recovered, was engraved with the letter 'GS' and the Kara was broken and twisted. PW. 6 Smt. Sarvajeet Kaur (widow of Gurvendra Singh) has stated that the gold ring. which was identified by her, was containing the letter 'GB' inscribed on it. She, in her statement recorded during the investigation, has stated that letters 'GB' were inscribed on the ring but the ring which was recovered, was containing the letter 'GS'. How that ring was changed and contained the letters 'GB', has not been explained. Even the identification of this ring before PW. 16 Mr. Shi v Dayala Mutha does not inspire confidence because in the identification parade, though five rings were mixed with this ring but none of those rings had the marks of letters 'GS'or 'GB' and, therefore, PW 6 Smt. Sarvajeet Kaur, who is an educated lady upto the standard of Higher Secondary, could easily identify it. So far as the Kara is concerned, it was broken while the other Karas mixed with it during the identification parade, were not broken or twisted. The recoveries of these articles as well as their identification, therefore, do not inspire confidence. This circumstance, also, does not incriminate the accused with the crime.

9. So far as the recovery of the 12-Bore DBBL gun, bandoliar and the cartridges, alleged to have been recovered on the information and at the instance of the accused-appellant, are concerned, no witness of the locality was called and PW 7 Ajayab Singh is a witness to this recovery, also. The gun, bandolier and cartridges were recovered from an open place by removing the soil by hand, which suggests that it was not concealed. Even otherwise, the seals on this gun and the packets containing bandoliar and the cartridges, were not found intact by the State Forensic Science Laboratory, Jaipur when these articles were taken there by PW. 14 Maam Raj and, therefore, they were not accepted by the aforesaid Laboratory and were returned along with other packets on 3-4-85. Thereafter the gun was

again sealed and sent for examination by the Ballistic Expert. It is clear from entry No. 159 (Ex. P-62-A) the entry in the Roznamcha kept at the Police Station. As the recovery of the gun was made from the open place accessible to all and sundry, no independent witness of the locality was called and the seals on the article was not found intact by the Laboratory, therefore, these recoveries, also, do not inspire confidence and cannot be said to be an incriminating circumstance against the accused-appellant.

10. The next incriminating circumstance against the appellant is the recovery of the pistol the weapon of the offence. The pistol is not connected with the crime. The recovery of the pistol has been made from the open place accessible to all and sundry and no independent witness of the locality has been called to witness this recovery and PW. 7 Ajayab Singh, who is a resident of village 10-W, situated at a distance of five kilometres, has been called to witness the recovery of the pistol. The seals on this pistol were not found intact since the time of its recovery till it reached the Laboratory at Jaipur. As the seals on this pistol were found broken, therefore, this article was not accepted by the Laboratory and returned to PW. 14 Maam Raj, who took it back redeposited in the Malkhana, which is clear from Ex. P. 62-A (entry No. 159 of the Malkhana Register). The recovery of this pistol appears to be a tainted one and does not inspire confidence. The learned trial Court was, therefore, not justified in placing reliance over this recovery as an incriminating circumstance against the accused-appellant.

11. The next incriminating circumstance against the accused-appellant is the recovery of Darat, which was found stained with human blood of Group 'B', which was the blood-group of deceased Gurvendra Singh. This Darat was, also, recovered from the bank of the water-course and the witness to this recovery is, also, PW. 7 Ajayab Singh. No independent witness of the locality was called and this witness was called from village ! 0-W and was taken by the investigating Officer with him. The recovery of the Darat has been made from an open place accessible to all and sundry. Moreover, the doctor has not opined that the injuries found on the deadbody of deceased Gurvendra Singh could be caused by this Darat. the Darat is, therefore, not connected with the crime and even if the recovery of this Darat is accepted still it does not connect the appellant with the

crime. We are, therefore, of the opinion that as the recovery of the Darat has been made from an open place accessible to all and sundry and cannot be said to have been made on the information and at the instance of the accused in the absence of any independent and reliable evidence to this effect. This circumstances, therefore, does not connect the accused with the crime.

12. The next incriminating circumstance against the accused-appellant is the presence of foot-prints of the accused. The report of the State Forensic Science Laboratory, Jaipur, marked as Ex. P. 92, does not connect the appellant with the crime because according to this report, no opinion can be offered on moulds marks A. 3, A.4, B.1 and B. 2 for want of characteristics. As the report of the Laboratory is silent so far as the appellant is concerned, this evidence, therefore, cannot be read against the appellant.

So far as the evidence of PW. 12 Shafi Mohammed -the tracker-is concerned, he has only stated that the foot-prints of fleat and Jooti were found in the house of the deceased, which, when followed, had gone upto the place before five to six paces away from the house of Babu Singh - the father of the accused. The foot-prints did not enter the house of the accused even as per the evidence of this witness. The evidence of a tracker is a weak type of evidence. In the present case, it has not been proved from the evidence that these were the foot-prints of the accused as they ended before five to six paces away from the house of Baba Singh. So far as the evidence of PW. 11 NarendrasSingh - the Incharge of the Dogs' Squad-is concerned, according to him, one foot-print of naked foot was found outside the house which was followed by the dogs and it reached up to village 3-W. It is not the case of the prosecution that the appellant was bare footed. It is the positive evidence of the prosecution that the foot-prints of two persons wearing Punjab Jooti and fleat were found. The evidence of this witness, who was declared hostile, is, therefore, of no assistance to the prosecution. The statement of PW 11 Narendra Singh and PW. 12 Shafi Mohammed were not recorded by the investigating officer during the investigation. When PW-15 Abdul Aziz was asked about this, he stated that he did not think it proper to record their statements. The evidence of these two witnesses, therefore, does not inspire confidence and the learned trial Court was, therefore, not justified in accepting the testimony of these

witnesses against the accused-appellant.

13. The last incriminating circumstance believed by the learned trial Court against the accused-appellant is the finger-prints of the accused-appellant found on the glass and the Lota, which were recovered lying on the mud-guard of the tractor standing in the compound of the house of the deceased. In the site-plan, the tractor has not been shown. The witness to this effect is PW. 7 Ajayab Singh and Baldeo Singh. Baldeo Singh has not been produced in evidence. PW. 7 Ajayab Singh has stated that one glass and one Lota were lying on the tractor which were taken by the police, the photographs thereof were taken and they were sealed vide Ex.P. 15. The photographer, who was a Sikh of village Kesrisinghpur, was brought by the police and after taking the photographs by that Sikh (PW. 9, Gogi Arora), the Lota and the glass were sealed. PW. 9 Gogi Arora nowhere states that he took the photographs of the incriminating articles, i.e., Lota and the glass. PW. 13 Anil Kumar has been produced by the prosecution to show that he was the photographer who took the photographs of the finger-prints on the Lota and the Glass. Though this witness has alleged to have taken the photographs of the finger-prints on the Lota and the glass but PW. 15 Abdul Aziz the investigating officer has not mentioned the name of this witness in the case diary. When he was confronted with this infirmity, he stated that though he did not mention the name of the photographer but he had mentioned that a private photographer was called and he took the photographs. He did not even interrogate this witness during investigation. He has admitted that he did not record his statement. He has, also, admitted that in the case diary, he did not mention the name of the photographer and has only written that one private photographer was called who took the photographs. He has, also, admitted that in the case-diary, there is no mention of taking the photographs of the finger-prints by Anil Kumar the photographer. He has, also, admitted in the cross-examination that he did not prepare any recovery memo, pertaining to this article. He has, also, admitted that he did not make any payment to the Photographer Anil Kurriar. He has, also, admitted that he did not take any steps to obtain the negatives of the photographs. Even the bill Ex.P. 55 of these photographs does not bear the particulars of the case like the FIR Number, the Police Station or anything else. The bill even does not contain the particulars of the photographs taken. PW. 13 Anil Kumar has stated that though he developed

the photographs on the same day but the photographs remained with him and they were taken by the police after ten-twelve days. PW. 15 Abdul Aziz has, also, admitted that some Constable brought these photographs after ten twelve days. No recovery memo was prepared to this effect and the photographs were not sealed and they remained unsealed. The envelope containing the photographs, also, does not appear to have been deposited in the Malkhana as there is no entry to this effect in the Malkhana Register. Of course, PW. 14 Maam Raj has stated that he took one envelope containing the photographs to the Laboratory but where from he obtained it, he has not been stated. The statement of PW. 10 Malkiyat Singh only shows that seventeen packets were given by him to PW. 14 Maam Raj who had taken the same to the State Forensic Science Laboratory, Jaipur. He is silent about this envelope of the photographs. Where this packet remained and when it was obtained and sealed and where it was kept, have not been explained by the prosecution. All these circumstances, taken together, show that this circumstance of finger-prints on the Glass and the Lota, appear to be a tainted one. We are of the opinion that the prosecution has not been able to establish this circumstance, also, against the accused-appellant. The learned trial Court was, therefore, not justified in taking this circumstance as proved against the accused-appellant.

14. The prosecution has, therefore, failed to establish these circumstances conclusively and firmly against the accused-appellant and the learned trial Court was, therefore, not justified in convicting and sentencing the accused-appellant for committing the murders of the aforesaid three persons. The prosecution has, also, failed to prove the case against the accused-appellant for the offences under Sections 449, 364, 392 read with 397, IPC and Section 27 of the Indian Arms Act and the appellant deserves acquittal on all these counts.

15. In the result, the appeal, filed by accused appellant Resham Singh, is allowed. The judgment dated 1-2-89, passed by the learned Additional Sessions Judge No. 1, Sri Ganganagar, convicting the appellants for the aforesaid offences and the Order of Sentence dated 2-2-89 sentencing the appellants for the aforesaid offences, are set aside and the appellant is acquitted of all the charges levelled against him. He is in jail and shall be released forthwith if not required in any other

case.

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