

**Deepak Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/765873](http://sooperkanoon.com/765873)

**Court :** Rajasthan

**Decided On :** Apr-17-2003

**Reported in :** 2003CriLJ4736; RLW2004(2)Raj806

**Judge :** N.N. Mathur and; Sunil Kumar Garg, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 396, 460 and 461

**Appeal No. :** D.B. Criminal Jail Appeal No. 33 of 2000

**Appellant :** Deepak

**Respondent :** State of Rajasthan

**Advocate for Def. :** K.R. Vishnoi, Public Prosecutor

**Advocate for Pet/Ap. :** P.C. Solanki and; A. Bhansali, Advs. and; Mahendra Goyal

**Disposition :** Appeal dismissed

**Judgement :**

**Garg, J.**

1. All the abovementioned four appeals files by the accused appellants from jail are being decided by this common judgment as all of them have been preferred against the common judgment and order dated 15.12.1999 passed by the learned

Additional Sessions Judge No. 2, Bikaner in Sessions Case No. 57/97 by which he convicted the accused appellants for the offence under sections 396, 460 and 461 IPC and sentenced each of them in the following manner-

Name of accused appellants

Convicted under section

Sentence awarded

1. Deepak

2. Ummalo

3. Sanwal Das

4. Prasanto

396 IPC

Imprisonment for life and a fine of Rs. 100/-, in default of payment of fine, to further undergo simple imprisonment for one month.

460 IPC

Ten years' SI and to pay a fine of Rs. 100/-, in default of payment of fine, to further undergo SI for one month.

461 IPC

One year SI and to pay a fine of Rs. 50/-, in default of payment of fine, to further undergo SI for 15 days.

All the substantive sentences were ordered to run concurrently.

2. It may be stated here that in the alleged incident, there were five accused persons and since one of the accused, namely, Dharma Phukan was child at the relevant time, therefore, his case was sent to the Children Court, Bikaner and he was not tried along with the present four accused appellants.

3. It may further be stated here that the accused appellants were not convicted for the offence under Section 302 IPC as they were already convicted and sentenced for the offence under Section 396 IPC and it was further ordered by the learned Addl. Sessions Judge No. 2 that Rs. 24,200/- be given to PW5 Jagdish Prasad.

4. It may further be stated here that since these appeals were preferred by the accused appellants from jail and the accused appellants were not being represented by any counsel, therefore, this Court appointed Amicus Curiae in the following man-ner:-

S.No.

Appeal No.

Date of order

Name ofamicus curiae

1.

33/2000

Deepak vs. State

24.9.2001

Mahendra Goyal

2.

24.9.2001

Mahendra Goyal

24.9.2001

A. Bhansali

3.

34/2000

Ummalo vs. State

24.9.2001

P.C. Solanki

4.

35/2000

Sanwal Das vs. State

24.9.2001

Vijay Purohit

5. The facts giving rise to these jail appeals, in short, are as follows:-

On 4.3.1997 at about 9.00 AM, PW5 Jagdish Prasad lodged an oral report with the Police Station Nokha District Bikaner stating inter-alia that there was a cement factory known as Sarvotam Cement Private Limited, Charkada belonging to him situated on the road going from Nokha to Nagaur. It was further stated in the report by PW5 Jagdish Prasad that his elder brother Bhanwar Lal Daga used to live in the factory premises and a day before the alleged incident, he had already left for Jaipur. It was further stated in the report by PW5 Jagdish Prasad that on 4.3.1997 in the morning at about 8-8 1/4 AM, his factory servant Bahadur Singh (PW7) informed him at Nokha through telephone that in the varanda of the office of the factory, there was blood and upon this, he went to the factory where he found blood lying on the floor of the varanda of the office of the factory and thereafter, he entered in the office room where the account books were to be kept and found Bhanwarlal, Munim of the factory (hereinafter referred to as the deceased) lying on the floor dead and he found huge blood around the body of the deceased and he also found many injuries on his body. It was further stated in the report by PW5 Jagdish Prasad that the safe box lying in the room was found open and thus, he came to the conclusion that some unknown persons had entered in

the office room and after murdering the deceased, they took away the amount kept in the safe box.

PW12 Nand Lal, SHO, Police Station Nokha reduced that report into writing and chalked out regular FIR Ex.P/52 for the offence under sections 302, 460, 394, 34 IPC and started investigation.

After reducing that report into writing, PW12 Nand Lal reached on the spot alongwith photographer and vedeo-grapher and prepared site plan Ex.P/1 in presence of motbirs Jagdish Prasad (PW5), Gopi Kishan (PW1) and Manak Chand and site inspection/description memo Ex.P/1 A and thereafter, he made inspection of the dead body of the deceased Bhanwarlal and prepared inspection memo Ex.P/53 of dead body of deceased, in presence of motbirs Jagdish Prasad (PW5), Hazari Ram and Ramdhan and panchnama Ex.P/2 in presence of motbirs Jagdish Prasad (PW5), Hazari Ram, Gopi Kishan (PW1) and Manak Chand. Thereafter, he collected and sealed the blood lying near the dead body of the deceased and prepared the seizure memo of blood Ex.P/3 in presence of motbirs Jagdish Prasad (PW5), Gopi Kishan (PW1) and Manak Chand. Thereafter, he seized heirs lying on the choki outside the office through seizure memo Ex.P/4 in presence of motbirs Jagdish Prasad (PW5), Gopi Kishan (PW1) and Manak Chand. He also got done the vedeography of the place of occurrence and kept the vedeo cassette in the police custody and prepared fard Ex.P/5 in this respect in presence of motbirs Jagdish Prasad (PW5), Gopi Kishan (PW1) and Manak Chand. The clothes of the deceased were also seized and sealed through fard Ex.P/8 in presence of motbirs Jagdish Prasad (PW5), Gopi Kishan (PW1) and Manak Chand.

Thereafter, post mortem of the dead body of the deceased Bhanwarlal ,was got conducted by Dr. B.K. Kashyap (PW11) and the post mortem report of deceased Bhanwarlal is Ex.P/42 where it was opined that the cause of death of deceased was multiple incised wounds on his body.

Thereafter, in the evening at about 6.00 PM, the investigation of the case was handed over to PW13 Tribhuvan Singh, Dy. SP (South), Bikaner. He also inspected the place of occurrence on 5.3.1997 alongwith finger print expert and

found marks of blood stain on the doors and floor and also found mark of chappal on the floor. The chance prints were taken from the floor, doors and place of occurrence by one Mukand Singh through fard Ex.P/20 in presence of motbirs Radheyshyam (PW2) and Kanhaiya Lal (PW6). In between the office building of factory and labourer quarters, he also found a chapal stained with blood and he seized that chappal through seizure memo Ex.P/10 in presence of motbirs Gopi Kishan (PW1) and Bhagirath (PW8).

During the course of investigation, PW13 Tribunal Singh came to the conclusion that the alleged offence was committed by some labourers of the factory and not by some out-siders. During investigation, he interrogated some suspected persons and during interrogation, he saw injuries on the fingers of accused Dharma Phukan (since he was child, therefore, his case was sent to Children Court, Bikaner and he was not tried alongwith the present four accused appellants) and therefore, he arrested accused Dharma Phukan through arrest memo Ex.P/11 on 5.3.1997 in presence of motbirs Gopi Kishan (PW1) and Bhagirath (PW8). The accused Dharma Phukan was got medically examined and his injury report is Ex.P/93.

During investigation, the accused Dharma Phukan gave information to PW13 Tribhuvan Singh that he could get recovered stolen amount of Rs. 4200/- and on his information, Rs. 4200/- were got recovered and the same were stained with blood.

The further case of the prosecution is that during interrogation from accused Dharma Phukan, PW13 Tribhuvan Singh came to the conclusion that the present four accused appellants were also involved in the alleged incident alongwith the child accused Dharma Phukan.

Thereafter, all the four accused appellants, namely, Deepak, Ummalo, Prasanto and Sanwal Das were arrested by PW13 Tribhuvan Singh on 6.3.1997 through arrest memos Ex.P/12, Ex.P/13 Ex.P/14 and Ex.P/15 respectively in presence of motbirs Gopi Kishan (PW1) and Bhagirath (PW8).

The further case of the prosecution is that during investigation, the nails of all the four accused appellants were got cut and taken by PW13 Tribhuvan Singh, which were stained with blood, and the same were seized and sealed through seizure memos, the details of which are given below:-

S.No.

Name of accused appellants

Seizure Memo No.

Article No.

Name of motbirs

1.

Deepak

Ex.P/16

22

Gopi Kishan (PW1) Bhagirath(PW8)

2.

Prasanto

Ex.P/17

23

Gopi Kishan (PW1) Bhagirath(PW8)

3.

Ummalo

Ex.P/18

21

Gopi Kishan (PW1) Bhagirath(PW8)

4.

Sanwal Das

Ex.P/19

24

Gopi Kishan (PW1) Bhagirath(PW8)

Accused appellant Prasanto of appeal No. 36/2000

During investigation, on 6.3.1997, the accused appellant Prasanto gave information (Ex.P/81) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered knife and in pursuance of that information, a knife stained with blood was recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same was seized through seizure memo Ex.P/22 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The knife was marked as article 15.

During investigation, the accused appellant Prasanto gave another information (Ex.P/82) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered Rs. 5000/- and in pursuance of that information, the currency notes of Rs. 5000/- (Rs. 50-50) stained with blood were recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same were seizure through seizure memo Ex.P/21 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The currency notes were marked as article 17.

During investigation, on 9.3.1997, the accused appellant Prasanto gave another information (Ex.P/91) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered his pent and jersy and in pursuance of that information, his pent and jersy stained with blood were recovered at his

instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/40 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The pent was marked as article 4 and jersey was marked as article 3.

Accused appellant Deepak of appeal No. 33/2000

During investigation, the accused appellant Deepak gave information (Ex.P/74) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered knife and in pursuance of that information, a knife stained with blood was recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same was seized through seizure memo Ex.P/29 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The knife was marked as article 12.

During investigation, the accused appellant Deepak gave another information (Ex.P/75) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered Rs. 5000/- and in pursuance of that information, the currency notes of Rs. 5000/- (Rs. 50-50) stained with blood were recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/28 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The currency notes were marked as article 19.

During investigation, on 9.3.1997, the accused appellant Deepak gave another information (Ex.P/88) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered his pent and bushirt and in pursuance of that information, his pent and bushirt stained with blood were recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/34 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The pent was marked as article 10 and bushirt was marked as article 11.

Accused appellant Ummalo of appeal No. 34/2000

During investigation, the accused appellant Ummalo gave information (Ex.P/80) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered knife and in pursuance of that information, a knife stained with blood was recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same was seized through seizure memo Ex.P/23 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The knife was marked as article 14.

During investigation, the accused appellant Ummalo gave another information (Ex.P/79) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered Rs. 5000/- and in pursuance of that information, the currency notes of Rs. 5000/- (Rs. 100-50-50) stained with blood were recovered a his instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/24 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The currency notes were marked as article 20.

During investigation, on 9.3.1997, the accused appellant Ummalo gave another information (Ex.P/90) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered his pent, bushirt and woolen jersy and in pursuance of that information, his pent, bushirt and jersy stained with blood were recovered at his 'instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/38 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The pent was marked as article 5, bushirt was marked as article 6 and woolen jersy was marked as article 7.

Accused appellant Sanwal Das of appeal No. 35/2000

During investigation, on 6.3.1997 the accused appellant Sanwal Das gave information (Ex.P/76) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered knife and in pursuance of that information, a knife stained with blood was recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same was seized through seizure memo Ex.P/25 in presence of motbirs Ram Gopal (PW9) and Om

Prakash (PW10). The knife was marked as article 13.

During investigation, the accused appellant Sanwal Das gave another information (Ex.P/77) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered Rs. 5000/- and in pursuance of that information, the currency notes of Rs. 5000/- (Rs. 100-50-50) stained with blood were recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/27 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The currency notes were marked as article 18.

During investigation, on 9.3.1997, the accused appellant Sanwal Das gave another information (Ex.P/89) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered his pent and bushirt and in pursuance of that information, his pent and bushirt stained with blood were recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same were seized through seizure memo Ex.P/36 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The pent was marked as article 8 and bushirt was marked as article 9.

During investigation, the accused appellant Sanwal Das gave another information (Ex.P/78) under Section 27 of the Evidence Act to PW13 Tribhuvan Singh to the effect that he could get recovered chappal and in pursuance of that information, chappal stained with blood was recovered at his instance from the place pointed out by him, which is mentioned in the fard and the same was seized through seizure memo Ex.P/26 in presence of motbirs Ram Gopal (PW9) and Om Prakash (PW10). The chappal was marked as article 2.

The further case of the prosecution is that thereafter, all the sealed articles were sent for chemical analysis and the report of the FSL pertaining to articles knife, clothes, nails and currency notes is Ex.P/105, which shows that on these articles, human blood was found.

After completion of investigation, the police filed challan against the accused appellants in the Court of Judicial Magistrate, Nokhaon 28.4.1997 for the offence

under sections 449, 302, 396, 460, 461 and 120B IPC and thereafter, the case was committed to the Court of Session, Bikaner on 19.7.1997 and thereafter, the learned Sessions Judge, Bikaner through order dated 5.8.1997 transferred this case for trial to the Court of Addl. Sessions Judge No. 2, Bikaner.

The learned Additional Sessions Judge No. 2, Bikaner on 26.8.1997 framed charges against the accused appellants under sections 396, 460, 461 and 302 IPC. The charges were read over and explained to the accused appellants, who pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as 13 witnesses and got exhibited 129 documents. Thereafter, statements of the accused appellants under Section 313 Cr.P.C. were recorded. In defence, no evidence was led by the accused appellants.

After recording evidence and conclusion of trial, the learned Additional Sessions Judge No. 2, Bikaner through judgment and order dated 15.12.1999 convicted the accused appellants for the offence under sections 396, 460 and 461 IPC and sentenced each of them in the manner as stated above, by placing reliance on the following circumstances:-

- (i) That blood stained knives were recovered on the information of the accused appellants.
- (ii) That blood stained currency notes were recovered on the information of the accused appellants.
- (iii) That blood stained clothes belonging to the accused appellants were recovered on the information of the accused appellants.
- (iv) That blood stained chappal was recovered on the information of the accused appellant Sanwal Das.
- (v) That human blood was found on the nails of the accused appellants.

Thus, the above so-called recovery of articles on the information of the accused appellants and circumstance of finding of human blood on the nails of the accused

appellants were sufficient to connect the accused appellants with the commission of crime.

Aggrieved from the said judgment and order dated 15.12.1999 passed by the learned Additional Sessions Judge No. 2, Bikaner, these four appeals have been preferred by the accused appellants from jail.

6. In these appeals, it has been submitted by the learned counsel for the accused appellants that the judgment and order of the learned Addl. Sessions Judge No. 2, Bikaner dated 15.12.1999 convicting and sentencing the accused appellants for the offence under sections 396, 460 and 461 IPC cannot be sustained because of the following reasons:-

(i) That in the present case, the so-called recovery has been made from open place and, therefore, no conviction can take place on the basis of such recovery.

(ii) That the witnesses to the so-called recovery do not support the case of the prosecution and thus, the so-called recovery is not sufficient to connect the accused appellants with the commission of crime.

(iii) That since in the FIR Ex.P/52, the amount of currency notes contained in the safe box was not mentioned, therefore, the statement of PW5 Jagdish Prasad that Rs. 24,200/- were in the safe box is an after-thought and thus, the recovery of currency notes creates doubt on the prosecution case.

(iv) That there is deficiency from the side of the prosecution to prove linking evidence and from this point of view also, benefit of doubt should be given to the accused appellants.

(v) That the blood group of the accused appellants has not been determined and, therefore, the prosecution has not been able to establish that the blood found on the articles was that of the accused appellants.

7. On the other hand, the learned Public Prosecutor supported the impugned judgment and order dated 15.12.1999 passed by the learned Additional Sessions Judge No. 2, Bikaner.

8. We have heard the learned counsel for the accused appellants and the learned Public Prosecutor and perused the record of the case.

9. So far as the point whether the death of the deceased Bhanwarlal was homicidal or not, for that the statement of PW11 Dr. B.K. Kashyap, who conducted the post mortem of the dead body of the deceased, may be referred to. He states in his statement recorded in Court that on 4.3.1997 he was Senior Medical Officer at Nokha and on that day, he and Dr. B.L. Hatila conducted the post mortem of the dead body of the deceased and found as many as 18 incised wounds on various parts of the body of the deceased and the cause of death of the deceased was multiple incised wounds. He has proved the post mortem report of the deceased Ex.P/42.

10. Thus, from the statement of PW11 Dr. B.K. Kashyap, the fact that death of the deceased was homicidal is well established by the prosecution.

11. The next point which is to be considered is whether deceased was murdered by the accused appellants or not and whether thereafter, amount lying in the safe box was looted by the accused appellants or not.

12. In the present case, there is no direct evidence to prove the case and the prosecution has placed reliance on the following circumstantial evidence:-

- (i) Recovery of blood stained knives on the information of the accused appellants.
- (ii) Recovery of blood stained currency notes at the instance of the accused appellants.
- (iii) Recovery of blood stained clothes belonging to the accused appellants on the information of the accused appellants.
- (iv) Recovery of blood stained chappal on the information of the accused appellant Sanwal Das.
- (v) Circumstance of finding of human blood on the nails of the accused appellants.

13. Before proceeding further, it may be stated here that from the statement of PW5 Jagdish Prasad, the fact that the accused appellants were labourers of the factory is well established.

14. It may further be stated here that as per the prosecution case, there were in all five accused and since one of the accused, namely, Dharma Phukan was tried separately in the Children Court, therefore, in this sessions case, the present four accused appellants were tried by the learned Addl. Sessions Judge No. 2, Bikaner and thus, from the side of the prosecution, it has been established that there were in all five accused persons involved in the alleged incident.

15. Before proceeding further, we must see what is circumstantial evidence and what is its evidentiary value in criminal jurisprudence.

16. Circumstantial evidence is that which relates to a service of other facts than the fact in issue; but which by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion. It is one of the established principles of law that a witness may lie but not the circumstances. However, the court must adopt a cautious approach while basing its conviction purely on circumstantial evidence. As evidence there is no difference between direct and circumstantial evidence. The only difference is in that as proof, the former directly establishes the commission of the offence whereas the latter does so by placing circumstances which lead to irresistible inference of guilt.

17. In reference to cases where there is no direct evidence and the decision has to rest on circumstantial evidence, the Hon'ble Supreme Court in a line of decisions has consistently held that such evidence must satisfy the following tests:-

1. the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.
2. those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused,
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime

was committed by the accused and none else; and

4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

18. In this connection, the decisions of the Hon'ble Supreme Court in Ashok Kumar v. State of M.P. (1), Padala Veera v. State of A.P. (2), Josheph v. State of Kerala (3), and Kuldeep v. State of Rajasthan (4), may be seen.

19. It is also well settled that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and are inconsistent with his innocence.

20. Before proceeding further, legal aspect of the recovery and information given by the accused appellant under Section 27 of the Indian Evidence Act may also be discussed here.

21. For applicability of Section 27, two conditions are pre- requisite; (i) information must be such as caused discovery of the fact; (ii) the information must relate distinctly to the fact discovered so much of such information, whether it amounts to a confession or relate distinctly thereby discovery may be proved.

22. Section 27 of the Indian Evidence Act is an exception to the general rule that a statement made before police is not admissible in evidence.

23. The following are the requirements or conditions for application of Section 27 of the Indian Evidence Act:-

1. The fact must have been discovered in consequence of the information received from the accused.

2. The person giving the information must be accused of an offence.

3. He must be in custody of a police officer.

4. Only that portion of the information which relates strictly to discovery can be proved. The rest is irrelevant.

5. The discovery of fact must relate to the commission of some crime.

6. Before the statement is proved somebody must depose that some article was discovered in consequence of the information received from the accused.

24. Keeping the above principles in mind, the recovery and circumstances of the present case are being examined.

Recovery of knives, currency notes, clothes and chappal at the instance of accused appellants.

25. All the four accused appellants, namely, Deepak, Ummalo, Prasanto and Sanwal Das were arrested by PW13 Tribhuvan Singh on 6.3.1997 through arrest memos Ex.P/12, Ex.P/13 Ex.P/14 and Ex.P/15 respectively in presence of motbirs Gopi Kishan (PW1) and Bhagirath (PW8).

26. During investigation, on the informations given by the accused appellants under Section 27 of the Evidence Act to PW13 Tribhuvan Singh, the articles knives, currency notes, clothes and chappal were recovered through seizure memos, the details of which are given below:-

S.No.

Name of article with number

Information

Memo No.

SeizureMemo

No.

Namesof the

Motbirs

Accused appellant Prasanto

1.

Knife - 15

Ex.P/81

Ex.P/22

Ram Gopal (PW9)

Om Prakash (PW10)

2.

Currency Notes -17

Ex.P/82

Ex.P/21

Ram Gopal (PW9)

Om Prakash (PW10)

3.

Pent - 4

Ex.P/91

Ex.P/40

Ram Gopal (PW9)

Om Prakash (PW10)

Jersy - 3

Accused appellant Deepak

1.

Knife - 12

Ex.P/74

Ex.P/29

Ram Gopal (PW9)

Om Prakash (PW10)

2.

Currency Notes - 19

Ex.P/75

Ex.P/28

Ram Gopal (PW9)

Om Prakash (PW10)

3.

Pent - 10

Ex.P/88

Ex.P/34

Ram Gopal (PW9)

Om Prakash (PW10)

Bushirt - 11

Accused appellant Ummalo

1.

Knife - 14

Ex.P/80

Ex.P/23

Ram Gopal (PW9)

Om Prakash (PW10)

2.

Currency Notes - 20

Ex.P/79

Ex.P/24

Ram Gopal (PW9)

Om Prakash (PW10)

3.

Pent - 5

Ex.P/90

Ex.P/38

Ram Gopal (PW9)

Om Prakash (PW10)

Bushirt - 6

Woolen jersy - 7

Accused appellant Sanwal Das

1.

Knife - 13

Ex.P/76

Ex.P/25

Ram Gopal (PW9)

Om Prakash (PW10)

2.

Currency Notes - 18

Ex.P/77

Ex.P/27

Ram Gopal (PW9)

Om Prakash (PW10)

3.

Pent - 8

Ex.P/89

Ex.P/36

Ram Gopal (PW9)

Om Prakash (PW10)

Bushirt - 9

4.

Chappal - 2

Ex.P/78

Ex.P/26

Ram Gopal (PW9)

Om Prakash (PW10)

27. In this case, the most important witness of the prosecution is PW13 Tribhu-van Singh, who took over the investigation of the case from PW12 Nandlal and, thereafter, investigated the case and made recovery of articles on the information of the accused appellants. Through his statement, he has proved the above fards of recovery. In cross-examination, he has admitted the following facts:-

(i) That it is correct to say that in the FIR Ex.P/52, how many currency notes were stolen has not been mentioned.

(ii) That he took the keys from the accused appellants after their arrest.

(iii) That it is also correct to say that the place from where recoveries of knives, currency notes, clothes and chappal were made, anybody could go there, but these articles were hidden by the accused appellants.

(iv) The copy of the cash book was not produced by PW5 Jagdish Prasad.

28. A bare perusal of the statement of PW13 Tribhuvan Singh does not reveal that he in any manner has given a wrong statement of facts in the Court or that he has falsely implicated the accused appellants and on the contrary, his statement appears to be straight forward, reliable and trustworthy and the recovery, which

has been made by him at the instance and information of the accused appellants, cannot be said to be tainted recovery. His statement does not suffer from any infirmity and on the contrary, it appears to be credible as it gets corroboration to some extent from other evidence also.

29. No doubt PW9 Ram Gopal, one of the motbir witnesses of the fards of recovery, in the beginning, has been declared hostile, but during his cross-examination by APP, he has admitted all the facts and he has proved the fards of recovery of articles made on the information of the accused appellants and admitted his signatures on all the recovery fards. Merely because recovered articles, namely, knives and currency notes were not shown to him in the court, his statement cannot be thrown away or discarded, as all the articles were produced before the star witness PW13 Tribhuvan Singh and were identified by him and, thereafter, on each of them exhibits were marked. The statement of PW13 Tribhuvan Singh gets corroboration from the statement of PW9 Ram Gopal.

30. So far as the statement of PW10 Om Prakash, one of the motbir witnesses of the recovery fards, is concerned, this witness was left by the prosecution and, therefore, non examination of this witness would not render the evidence of PW13 Tribhuvan Singh and PW9 Ram Gopal doubtful.

31. Thus, in view of the above, the argument of the learned counsel for the appellants that the witnesses to the recovery fards do not support the prosecution case, is wholly untenable and stands rejected.

32. So far as the argument that since in the FIR Ex.P/52, the amount of stolen currency notes was not mentioned, therefore, the statement of PW5 Jagdish Prasad that there were Rs. 24,200/- in the safe box of the factory is an after-thought is concerned, no doubt in the FIR Ex.P/52, PW5 Jagdish Prasad has not mentioned the exact amount kept in the safe box, but in his statement recorded in Court, he has stated that Rs. 24,200/- were in the safe box. In our considered opinion, when the FIR Ex.P/52 was lodged by PW5 Jagdish Prasad, it was not possible for him to collect the exact amount kept in the safe box and during examination in Court, if he has stated the exact amount kept in the safe box, his statement cannot be doubted on this point and it cannot be regarded as lacuna in

the prosecution story. Thus, the argument in this respect stands rejected.

33. The argument that since the recovery was made from open place, therefore, no conviction can take place on such recovery, cannot be accepted as PW13 Tribhuvan Singh has categorically stated that all the things or articles, which were recovered on the information of the accused appellants, were found in concealed condition and when this being the position, the recovery, even if made from open place, it cannot be doubted in any manner. Thus, the argument in this respect stands rejected.

34. Thus, in this case, all the conditions which are necessary for application of Section 27 of the Indian Evidence Act as mentioned in the preceding para 23 of this judgment have been fulfilled by the prosecution and the facts discovered through information of the accused appellant under Section 27 of the Indian Evidence Act, are concrete facts to which information directly relates.

Circumstances of blood stained nails of accused appellants

35. During investigation, the nails of all the four accused appellants Deepak, Prasanto, Ummalo and Sanwal Das were got cut and taken by PW13 Tribhuvan Singh, which were stained with blood, and the same were seized and sealed through seizure memos Ex.P/16, Ex.P/17, Ex.P/18 and Ex.P/19 in presence of motbirs Gopi Kishan (PW1) and Bhagirath (PW8).

36. PW1 Gopi Kishan, one of the motbir witnesses of the fards of seizure of nails, has admitted in his cross-examination that at the time when the nails of the accused appellants were got cut and taken by PW13 Tribhuvan Singh, they were not stained with blood.

37. PW8 Bhagirath, another motbir witness of the fards of seizure of nails, has categorically stated in his cross- examination that at the time when the nails of the accused appellants were got cut and taken by PW13 Tribhuvan Singh, they were stained with blood.

38. The FSL report Ex.P/105 also confirms the fact that the nails of the accused appellants were stained with human blood.

39. Thus, this circumstance that nails of the accused appellants were stained with human blood also connects the accused appellants with the commission of crime.

40. It may be stated here that in this case the deceased received as many as 18 injuries on his body by sharp edged weapon and blood was profusely coming out from his body and was lying on the floor and in these circumstances, the possibility that after committing the murder of the deceased, the hands of the accused appellants might have stained with blood, cannot be ruled out and when this possibility is there, the possibility of blood stained nails still exists and simply because they were taken after two days, it cannot be doubted on the point that it was not possible that blood must have been there. The blood was not found on the point of nails, but on the inner side of the nails.

41. So far as the argument that since the blood group of the accused appellants was not determined, therefore, prosecution has not been able to establish that the blood found on the articles recovered on the information of the accused appellants was of accused appellants themselves, is concerned, in our considered opinion, it does not carry any weight as from the FSL report Ex.P/105, it is well established that the articles recovered on the information of the accused appellants were stained with human blood and if it is so, it is not necessary that blood group should also have been proved, as the report of the Chemical Analyst is evidence within Section 293 Cr.P.C. and substance of opinion is admissible. Thus, the argument in this respect stands rejected and the law laid down by this Court in *Bhanwar Lal v. State of Rajasthan* (5), would not be helpful to the accused appellants.

42. So far as the argument that there is lack of linking evidence is concerned, the statement of PW13 Tribhuvan Singh may be referred to and a bare perusal of his statement clearly reveals that he recovered the articles at the instance and information of the accused appellants and thereafter, they were sealed and kept in Malkhana in sealed condition and sent to FSL in sealed condition. He has given a vivid description of each article recovered at the instance and information of each accused appellant and he has also identified in Court and marked articles in a very categorically manner. Apart from this, FSL report Ex.P/105 reveals that seals on all the packets were found intact when they were examined by the expert.

Therefore, it cannot be said that the prosecution has failed to prove linking evidence. Thus, the argument in this respect stands rejected and the law laid down by the Hon'ble Supreme Court in Mohd. Aman and Anr. v. The State of Rajasthan (6), is distinguishable on the point that in the present case, seized articles were produced in the Court while in that case, the seized articles were not produced in the Court.

43. In our considered opinion, from the above evidence i.e. recoveries of knives, currency notes, and clothes at the instance and information of the accused appellants and from the circumstance that nails of the accused appellants were found stained with blood, the prosecution has established that these circumstances form a complete chain without giving room to any hypothesis and are consistent with the guilt of the accused appellants and are inconsistent with their innocence. The evidence of recovery of articles on the information of the accused appellants and the circumstance that nails of the accused appellants were found stained with human blood are sufficient to connect the accused appellants with the commission of crime and the above circumstances form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused appellants and none else.

44. The chain of circumstances found against the accused appellants is further strengthened by the fact that all the accused appellants used to reside behind the factory and therefore, they all were aware about the premises and working of the factory and thus, their presence on the spot cannot be doubted.

45. The court below has been fair in discussing the contentions raised on behalf of the defence in some detail and has given cogent reasons for rejecting the same. We have no reason to dissent from the findings arrived at by the learned trial Judge, the judgment and order of the learned trial Judge do not suffer from any illegality in the approach to the case or we do not see any perversity in the appreciation of evidence on record by the learned trial Judge.

46. Therefore, the findings of the learned trial Judge that the deceased was first murdered by the accused appellants and, thereafter, amount lying in the safe box

was looted by them are liable to be confirmed one.

47. Thus, we have no hesitation to hold that the judgment and order dated 15.12.1999 passed by the learned Addl. Sessions Judge No. 2, Bikaner convicting and sentencing the accused appellants for the offence under sections 396, 460 and 461 IPC do not call for any interference by this Court.

48. It may be stated here that while appreciating the findings of the trial court, rule of practice which has almost the force of law is that the appellate Court should not reverse a finding of fact rested on a proper appreciation of oral evidence. Thus, opinion of trial judge on appreciation of evidence should not be disturbed except for exceptional reasons. In this case, we see no exceptional reasons.

49. It may further be stated here that this Court is aware that in criminal cases, the prosecution is under an obligation to prove the case beyond all reasonable doubt and if there is any doubt, the benefit must go to the accused. In the present case, the evidence, which has been produced by the prosecution, proves the case beyond all reasonable doubt and thus, it is not a case where benefit of doubt should be given to the accused appellants as there is a complete chain of evidence to prove the guilt of the accused beyond all reasonable doubt.

For the reasons stated above, all the above mentioned four jail appeals filed by the accused appellants are liable to be dismissed and the same are dismissed after confirming the judgment and order dated 15.12.1999 passed by the learned Addl. Sessions Judge No. 2, Bikaner.

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