

Laloo Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-29-1985

Reported in : 1986(1)WLN661

Judge : Kanta Bhatnagar and; Kishore Singh Lodha, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 242 of 1980

Appellant : Laloo

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Kanta Bhatnagar, J.

1. This appeal is directed against the judgment dated 14th April, 1980, passed by the learned Sessions Judge, Udaipur, The learned Judge by the judgment convicted the appellant for the offences under Sections 302 and 394 IPC and sentenced him to imprisonment for life on the first count and imprisonment for seven years and a fine of Rs. 250/- in default of payment of fine to undergo one year's rigorous imprisonment on the second count with an order that the substantive sentences awarded for both counts shall run concurrently.

2. Briefly stated that facts of the case giving rise to the trial and conviction of the appellant in the present appeal are as under : On 10-8-1979 at 11.30 a.m. Kodara Gujar resident of Madhri lodged a written report Ex.P 14 at Police Station Falasiya to the effect that on 9-8-79 at about 2 p.m. his maternal aunt Smt. Nathi Gujar had gone to graze her cattle in Pipalwala jungle, where she had been murdered with a knife by Laloo and his companion. That, the pair of silver anklets and pair of silver Baliyas (Bangles) were taken away by the miscreants. That the incident was seen by Ranga, Soma, Smt. Navli and Rama and they had seen Lalia running away. That on hearing the noise of the aforesaid persons, Thavra also reached there. Case under Sections 302 and 394 IPC was registered by the Head Constable Ajay Singh, Incharge of the police station. On 11-8-1979 Ajaysingh went to village Pipalwala and inspected the site. He prepared the site inspection memo and site plan and the inquest report of the dead body of Smt. Nathi. Dr. Suraj Mal Mishra (PW 15), Medical Officer, Primary Health Centre, Jhadol, conducted the autopsy over the dead body of Smt. Nathi on 11-8-1979 and prepared the post-mortem examination report Ex. P 23. The Doctor noted following external injuries on the dead body;

(1) Incised wound on neck, front side, left to median line of neck. From median line to distance of 1-8/10' slightly oblique in direction size 1-8/10' x 1/2' 1-1/2' margins inverted and ecymosed. Depth of wound was oblique in direction upwards to downwards. Dark clotted blood was present and fresh blood coming out from injury. Injury was 2' above from mid point of manubrium sterni Edges clean cut. Due to this injury the sternomastoid muscle also injured obliquely;

(2) A tranverse cut on trachea from median line to left side 1/2' in centre and 1/10' width 2' below from upper border of cricoid cartilage;

(3) Abrasion 1/2' x 1/10' on nose. Left side oblique in direction 1/2' above from tip of nose. Base was red;

(4) Abrasion on neck 1-3/10' x 2/10' just left to injury No. 1. Transverse in direction and base was red;

(5) Abrasion on neck 7/10' x 2/10' and 1/2' below from injury No. 6 Transverse in direction. Base was red;

(6) Incised wound on neck 1' x 1/4' 1/2' just left and below from Injury No. 1. Oblique in direction, Inverted ecoymosed and base was red fresh blood was deposited;

(7) Incised wound on left forearm flexor side 1-8/10' x 3/10' x 4/10' and 7' above from left wrist joint. Transverse in direction inverted and ecoymosed and clean cut margins;

(8) Incised wound on left hand dorsal side between thumb and first figure 2' x 3/10' x 1/2' just above and medial side of thumb of left hand, and depth of wound oblique in direction. Injury was upwards and downward in direction. Inverted and ecoymosed and clean cut margins,

3. On dissection of the dead body the Doctor found Thorax, Larynx and Trachea red and congested. Blood was present in trachea which was in dark clotted and fluid condition also. In the opinion of the Doctor death of Smt. Nathi was due to shock and asphyxia due to sudden and excessive haemorrhage from injury on neck and transverse cut on trachea caused by sharp weapon. Injury of neck and trachea in the opinion of the Doctor was sufficient in (he ordinary course of nature to cause death. Ajay Singh (PW 1) took in possession the blood smeared clothes of the deceased. He recorded the statements of some witnesses. On 14-9-1979 Ranjeet Singh (PW 12) SHO, Falasiya took the investigation in his charge. On 17-8-1979, the SHO arrested Laloo appellant vide memo Ex. P. 8 and co-accused Khema since acquitted by the Sessions Judge, memo vide Ex. P. 10. On 24-8-1979 appellant Lallo furnished information for getting recovered one 'Chhuri' (dagger) from his house. The information reduced into writing is Ex. P. 17. On the same day, co-accused Khema furnished information Ex. P. 11 for getting recovered one Chhuri from his house. Chhuris Ex.Ps. 4&5 were recovered in pursuance of those informations of the appellant and the co-accused. On 25-8-1979 accused Laloo and Khema furnished information for getting recovered pair of silver anklets and one Baliya from one Raju at Ahmedabad and one silver Baliya from one Chhabildas of Vijaynagar. The information of Laloo and Khema

reduced into writing are Ex. P 19 and Ex. P. 20 respectively In pursuance of those informations the SHO recovered one silver Baliya from Chhabildas at Vijaynagar which was said to have been sold to him for Rs. 57/-. The recovery memo is Ex. P. 13. In pursuance of the information of the appellant and the co-accused the SHO recovered a pair of silver Kadas and one silver Baliya from PW 14 Rajendra at Ahemda-bad, which is said to have been pledged with him for Rs. 800/-. The recovery memo is Ex. P.21. A document of pledge Ex. 22, has also been produced by witness Raju. The Chhuris suspected to have blood stains and other articles, except the ornaments, suspected to be stained with blood were sent for chemical examination. The report of the Chemical Examiner is Ex. P 24 and that of the Serologist Ex. P. Thavara the son of the deceased and Smt. Navli had identified the ornaments to be those of the deceased. The identification parade for ornaments recovered during the course of investigation was conducted by SDM, Jhadol Shri Narsingh Rao on 18-9-1979.

4. Upon completion of necessary investigation, charge-sheet against the appellant and the co-accused Khema was filed in the court of Munsif Magistrate, Kotra. The learned Magistrate finding a prima facie case exclusively triable by the court of Sessions, committed the two accused to stand their trial in the court of Sessions Judge, Udaipur. The learned Sessions Judge charge-sheeted the accused for offence under Sections 302 and 394/34 IPC and recorded their plea., Both of them denied the indictments and claimed to be tried. To substantiate its case, prosecution examined 14 witnesses in all. Both the accused in their statements under Section 313 Cr. PC. denied the allegations levelled against them. No defence witness was examined. The learned Sessions Judge did not find the case against accused Khema established beyond reasonable doubt and acquitted him of the charges. The learned Judge placed reliance on the oral dying declaration of deceased Smt. Nathi before the persons who claimed to have reached near her immediately after the occurrence, the testimony of the witnesses to the effect that they had seen Laloo running from the field where the incident had taken place and the recovery of the ornaments and held the case against appellant Laloo duly proved. The learned Sessions Judge, therefore, convicted the appellant for the aforesaid charges and sentenced him for the aforesaid charges as stated earlier. Feeling aggrieved by his conviction and sentences, Laloo has filed this appeal

though the Superintendent Central Jail, Udaipur. As he was unrepresented, Mr, Vijay Singh Advocate was appointed Amicus Curiae to plead on his behalf. We heard Mr. Vijay Singh, learned Amicus Curiae and Mr. G.M. Bhandari, learned Public Prosecutor for the State.

5. The learned Amicus Curiae strenuously contended that if the learned Sessions Judge did not find case against Khema, co-accused established, then there is no justification in holding the charges established against the appellant Laloo on the same evidence. Regarding the dying declaration on which reliance has been placed by the learned trial Judge, the argument of Mr. Vijay Singh is that on sustaining the injury on trachea, there could not be any chance for the victim to survive and, therefore, the story of of the deceased telling the name of Laloo is a concocted one. On this point emphasis has been laid on the omission of the dying declaration in the first information report lodged by Kodra who at the trial had claimed to be a witness to the dying declaration. Mr. Vijay Singh drew our attention to the contradictions and the discrepancies appearing in the statements of the witnesses reaching the site and submitted that they could not be in a position to see any miscreant running from the site. Regarding the recovery of the ornaments, Mr. Vijay Singh, vehemently argued that there was joint information and from the statement of Ranjeet Singh, it is evident that both the accused had furnished similar informations for getting recovered the ornaments that are said to have been recovered in pursuance of the information furnished by both of them and at the instance of the two accused. As such Mr. Vijay Singh emphasized that the recovery should not have been pressed into service against appellant.

6. The learned Public Prosecutor, controverted these arguments and submitted that from the statements of the witnesses dying declaration is proved and as the deceased had named Laloo as one of the assailants, the learned trial Judge has rightly held the appellant guilty for the murder of Smt. Nathi. That because Rajendra (PW 14) had identified Laloo to be the person who had pledged the ornaments with him, the learned trial Judge was right in finding the guilt established against the appellant Laloo only.

7. At the very outset, it may be observed that there is no direct evidence to the occurrence, though the First Information Report names certain persons as the witnesses of the actual occurrence. The prosecution case rests on the circumstantial evidence. Circumstances are as under:

(1) Witnesses Smt. Navli, Ranga, Rama and Soma saw Laloo running away after the incident; (2) The oral dying declaration of Smt. Nathi before Navli, Ranga, Rama, Soma that Laloo and one more person injured her and took away her ornaments; (3) Recovery of Chhuri in pursuance of the information furnished by the appellant; (4) Recovery of one Baliya from Chhabil Das and a Baliya and a pair of Kadas from Rajendra in pursuance of the information furnished by the appellant.

8. Navli is the most important witness of the prosecution in the case because, as claimed by her, she reached near the injured first of all. She has stated that Nathi had brought lunch for her to the field where she had gone to graze the cattle on the day next to Rakhi. According to her, Laloo appellant inflicted knife blow to Nathi which injured her neck. The witness then raised the cry which attracted Ranga, Rama and others and they reached the place where she was. The witness thereafter stated that when she had rushed near Nathi, the latter told her that Laloo had run away after causing knife injuries and that her pair of Baliyas also had been taken away by him. That, thereafter, Nathi was taken to her house and she breathed her last after dinner time, The witness also deposed that Nathi had also stated about there being one more companion of Laloo whom she did not know. Rama (PW 3) has stated that at about 2 p.m. he was grazing cattle in the jungle. Soma and Ranga were also there with him. They on hearing the cry of Navli 'NATHI KE CHAKU LAGA KAR MAR GAYO HAI DAUDO, DAUDO' went to the place where Nathi was lying. That they had seen Laloo, Kalal and one man with him running from there. That, Nathi was conscious at the time and was speaking. That on inquiry Nathi told that Laloo Kalal and one other man whom she did not know injured her with knife and ran away with her Kadas and Baliyas. Nathi was taken to her house. Similar are the statements of Ranga (PW 5) and Soma (PW 6). Thavara (PW 2) son of the deceased stated that Navli raising a cry went to him and informed about his mother being killed by Laloo and his companion. That, he went towards the site. His mother told that she has been injured with knife

by Lalia Kalal and one more person and they had run away. He has stated about the clothes and the ornaments her mother was putting on when she left for jungle to graze the cattle and stated that those ornaments were not found on her body when he saw her after the incident. PW 1 Kodara has stated that when he was at his house he heard the cry of his maternal aunt and went to Pipliwala jungle where she was. That, on enquiry Nathi told that she had been injured with knife and assailants were Laloo Kalal and his companion whom she did not know. She also stated about the miscreants taking away her pair of Kadas and two Balias. The witness stated that he thereafter went to the Police Station, Falasiya and lodged the report.

9. On the face of it, it appears that Navli, Rama, Ranga and Soma had seen Laloo and one more person running away from the site. From their statements as well as those of Thavara and Kodara it appears that they had been told by Nathi assailant that the miscreant were Laloo and one person with him, whom she could not identify. However, on close and careful scrutiny of the deposition of these witnesses, we are of the opinion that the facts were not as they have deposed. The statements of the witnesses taken in light of one another show that they could not have reached near Smt. Nathi immediately after the incident and there could not have been any chance for them to see any body running from the site.

10. Smt. Navli is the most important witness of the prosecution in the case. She has stated that she was at distance of about 25 ft. from Nathi when the latter injured Nathi with the knife. In examination-in-chief she has posed to be an eye-witness to the actual occurrence but in the cross-examination she admitted that she did not see the infliction of the blow and had heard the cry only. She also admitted that Nathi did not raise the cry as to who was injuring her. According to the witness when she raised the cry Rama, Ranga etc. reached near Nathi and Nathi informed them about Laloo being the assailant and one more being with him. Rama, Ranga & Soma had supported the version of Navli but whereas Navli stated that one man was seen running from there, these three witnesses have stated that Laloo and one more man were seen running from the jungle. Rama has admitted that he had seen Laloo and the other man running from a great distance and he had only seen the back of Laloo and could not identify him. Similar is the

statement of Soma, who has stated that he had only seen the back of the running man from a distance. He also admitted that he never had any occasion to live or talk with Laloo. Though Ranga, Rama and Soma claimed to be at the same place when they heard the out cry of Navli, Ranga does not speak of his being in a position to see the miscreants running from the site. He has stated that when he heard the cry of Navli, he was at a distance of about 50 ft. from the deceased. None of these witnesses have stated about Thavara being there near about or having reached near the injured on Navli raising cry. Thavara has stated that his house is at a distance of about 1/2 'Kos' i.e. one mile from the place of the occurrence. That his mother has gone to graze the cattle at 8 a.m. on that day and he was at the field. According to the witness, Navli, raising a cry, had gone to him and informed that his mother had been murdered by Laloo s/o Dita Kalal, resident of Patiya and one more person. Navli has nowhere stated that she left the site and went to inform Thavara about the incident. The detailed description of the parentage and the r/o Laloo has not been given by Navli, what to talk of her informing Thavara about the details of Laloo. Thavara has stated about his mother telling that Lalia Kalal and one more person had injured her. According to the witness at the time Ranga, Rama and Soma had also reached there. In cross-examination, the witness has categorically stated that Ranga, Soma and Rama had arrived near his mother after his reaching there. If Navli, immediately after seeing the injured had rushed to Thavara to inform him about the incident and the latter, at her instance went to the place where his mother was lying injured, then it must have taken some time. If Ranga, Rama and Soma reached there near Smt. Nathi after Thavara it could not have been possible for the those three witnesses to have seen Laloo and his companion running away from the field. Statement of Kodara (PW 1) falsifies the statement of all these witnesses on the point that three of them Ranga, Rama and Soma had seen Laloo and one more running from the site and had immediately reached near Nathi and she in their presence made a statement regarding the incident. Kodara has stated that his house was at a distance of 2 'Kos' i.e. 4 miles from the place where his maternal aunt Nathi was lying injured' That, he was informed about the incident by one Tejia Kalal. That Tejia Kalal has not been examined by the prosecution. According to Kodara he had heard the cry of his 'Masi' at about 2 P.M. at his house and he went to

Pipalwala jungle. By no stretch of imagination it can be believed that Kodara could have heard the shrieks of Nathi from a distance of four miles when he was at his house at the time as stated by him. According to Kodara when he reached the site he asked Nathi as to what had happened and she informed him that she had been injured with knife. That she also said that amongst the assailants he was Laloo Kalal resident of Patiya and the other man she did not know. That, she also state about his ornaments being taken away by the miscreants. According to Kodara the incident had taken place one hour prior to his reaching near Nathi. The contention of the learned Public Prosecutor is that Nathi might have told other witnesses what had happened when they reached near her and thereafter again on Kodara reaching there and asking her, she might have repeated the incident. But for the statement of Soma, we would have agreed with the learned Public Prosecutor. Soma has given a categorical version that on hearing the cries Navli he, Ranga and Kodara went near Nathi. Prosecution case is about Ranga, Rama and Soma going together. If according to Soma, Kodara was also with him and Ranga when they went near Nathi and it was at that time that Nathi informed about the incident, then the statements of Soma and Kodara read together indicate that the incident had taken place about an hour prior to the witnesses reaching near Nathi. This shatters the whole prosecution case that on Navli's cry the witnesses reached the site and in their presence immediately after the incident Nathi had given the statement. This also breaks down the prosecution version that the witnesses Rama, Ranga and Soma had seen Laloo and one more running on the site.

11. A very important point for consideration arising from the above discussion is that had Kodara been a witness of the dying declaration, he would not have missed that important fact while lodging the First Information Report. All the witnesses have stated about Nathi being in a position to speak, Kodara has stated that Nathi was lying unconscious but she was speaking. The learned Public Prosecutor contended that she might be semi-conscious and in that state could have uttered something. By the word 'BEHOSH' the witness might not be meaning total unconscious and it may be taken that she being seriously injured might have become semi-conscious and could have spoken something. No question has been put by the prosecution or the defence to the Doctor on the point as to whether after sustaining the injury with a sharp edged weapon on the neck and the trachea

being cut, a person can be in position to speak. The learned Amicus Curiae emphatically argued that if there is a wound on trachea it is not possible for the injured to speak. To substantiate his contention, he referred to the opinion of H.J. Modi. The learned author in his treatise 'Medical Jurisprudence and Toxicology' twentieth Edition at page 275 wrote as under:

In the case of a wound of the larynx, speech is possible, if the wound is above the vocal cords, even if it is gaping. But in a wound of the larynx below the vocal cords, and in that of the trachea, no speech is possible. In such a case one may be able to speak in a whisper, if the wound is not gaping sufficiently to allow air to pass into the mouth.

12. Dr. Surajmal has given the cause of death due to shock and asphyxia due to sudden and excessive haemorrhage from the injury on neck and transverse cut on trachea produced by sharp weapon. Ordinarily on sustaining a cut on the trachea, the injured would lose speech. However, in absence of an opinion sought on the point from the Doctor who conducted the post-mortem examination we cannot be certain on the point as to whether it was not at all possible for the injured Nathi to have spoken something after the fatal injury on the neck transversely cutting the trachea. The statements of the witnesses discussed above clearly show that they have given discrepant version regarding their reaching near the injured and the time they had taken for it and those discrepancies are not conciliable. The learned Amicus Curiae submitted that even if the prosecution case that some persons had seen Laloo and one man running from the site is taken into consideration still that would not be sufficient to connect the appellant with the crime because the witnesses nowhere speak that Laloo was having a weapon in the hands at the time. To substantiate his contention the learned Amicus Curiae referred to the case of Jagdish Prashad v. State 1980 SCC (Cr) 311. In view of the facts and circumstances of the case i.e. the circumstance of the accused seen running away from the place of occurrence with knife in his hand was not considered to be a circumstance sufficient for conviction under Section 324 IPC. According to their Lordships, it was possible that the accused might have been coming from some other locality with a knife and since he was chased by some persons he waved the knife in order to protect him or to scare away the crowd.

13. This is not a case where the incident might have taken in a populated area. The incident was in jungle. Even if the statements of the witnesses about the miscreants having been seen running away is taken to be correct we would be inclined to adhere importance to this point after referring to the other circumstances of the case against the appellant and the grave infirmities in the prosecution case which, as we would presently discuss are sufficient to discard the prosecution case.

14. Before dealing with the investigation part of the case we would discuss the circumstances of the recovery of the daggers and the ornaments said to be belonging to the deceased Smt. Nathi at the instance of the appellant and co-accused Khema in pursuance of their informations. SHO Ranjeet Singh (PW 12) has stated that he had arrested the two accused on 19-8-1979. That on 24-8-1979 informations were furnished by the two accused for getting recovered daggers and in pursuance of that information daggers were recovered from each of them. There being no human blood on those daggers according to the report of the Serologist, the learned Sessions Judge has rightly not placed reliance on that circumstances against both the accused. According to Ranjeet Singh SHO(PW 12), on 25-8-1979 both the accused furnished separate informations for getting recovered one silver Balia from one Chhabildas of Vijaynagar sold to him for Rs. 57/- and a pair of Kadas and one silver Baliya from one Rajendra with whom those ornaments were said to have been pledged for Rs. 800/-. In pursuance of the information, ornaments were recovered from Chhabildas and Rajendra. The learned Sessions Judge did not consider it to be a circumstance against accused Khema but in view of the Tehrir Ex. P 22 produced by Rajendra of Ahmedabad, the learned Sessions Judge pressed into service this circumstance of recovery of ornaments in holding the appellant guilty.

15. The learned Amicus Curiae vehemently argued that there was common information for common articles by both the accused as the prosecution alleges and the recovery is also said to have been made in pursuance of the informations furnished by both of them and, therefore, guilt cannot be fastened on the neck of one only. The learned public prosecutor on the other hand, referred to Ex. P 22 and submitted that it was Laloo who had pledged and sold the ornaments and

even if Khema would have accompanied him, in absence of other connecting evidence against him, the learned trial Judge has rightly held only the appellant guilty for the charge of theft. From the statement of SHO, Ranjeet Singh and the information Memos and recovery Memos, he referred to, it is evident that information containing same facts were furnished by the two accused. The recovery Memos also state about the recovery being made in pursuance of the informations of the two accused and at their instance. If two persons furnish similar informations and recovery is made in pursuance of those separate informations and the Investigating Officer comes with the case that both the accused were responsible for the recovery so made, there cannot be any justification in absolving one of them and convicting the other. The distinguishing feature of the case of the appellant is Ex. P 22. According to PW 14 Rajendra, he was knowing Laloo and he had pledged the ornaments with him. The SHO has stated that Ex. P 22 relates to those ornaments which Laloo had pledged. The prosecution case is that Khema and Laloo both had pledged the ornaments. It has nowhere come on record as to which of the two accused pledged which ornament. In these circumstances, the learned Amicus Curiae has rightly argued that the recovery, even if any, is a joint recovery on the basis of joint or common informations on which no reliance can be placed. From the evidence of SHO, there appears to be no distinction between the case of Khema and the appellant so far as the recovery is concerned. He has categorically stated that he had taken both the accused to Vijayanagar as well as at Ahmedabad and it was at their instance that the recoveries were made. In these circumstances if one accused has been acquitted on the same evidence, the conviction of the other for the charge of theft cannot be sustained. This is all the more so in this case because of the infirmities in the investigation which we would presently observe and which in our view are themselves sufficient to discard the testimony of the witnesses against the appellant. Smt. Nathi was murdered on 9-8-1979 in the after-noon. Kodara has claimed to have reached the site and has stated that he immediately rushed to the police station, Jhadol. Police Station, Jhadol was at a distance of 15 miles. There is nothing to explain why the information could not be lodged by Kodara till 11.30 a.m. on the next day. i.e, on 10-8-1979. The learned Amicus Curiae has built up the argument that Kodara had not reached the site and was rather subsequently

informed about the incident and after the death of Smt. Nathi in the night might have gone for lodging the report. According to the learned Amicus Curiae there was sufficient time for the relatives to consult and lodge the report. If the information alone would have been delayed, we would have agreed with the learned Public Prosecutor that Kodara might have stayed some-where in the night and then would have proceeded to Jhadol to lodge the report but another important fact damaging the prosecution case is that Investigating Officer did not proceed for investigation on the day he received the information. It was on 11-8-1979 that the police had reached the site and proceeded with the investigation. Even on that day witnesses were not examined. Thavra, son of the deceased even was examined on the next day, i.e., on 12-8-1979. Rama was examined on 12-8-1979 but Ranga was examined on 14-8-1979, Soma on 18-8-1979, Navli, the most important witness in the case, on whose testimony the success of the prosecution depends was not examined till 18-8-1979. The inordinate unexplained delay in examining important witnesses in most cases raises a suspicion in the minds of the Courts that the real story may not be what they claim to have seen and there might be chances of their tutoring and coaching. This delayed examination of Navli, in our opinion has under valued her statement regarding her reaching the site and hearing Smt. Nathi telling about the ornaments. The delay of one day in lodging the report and further delay of one day for the police in reaching the site and the delay in recording the statements of all the witnesses, specially the nine days delay in examining the most important witness in the case are not the only facts which raise the suspicion about the prosecution case. There is yet another factor which gives a fatal blow on the prosecution story. The First Information Report reached the concerned court on 19-8-1979. The importance of sending the First Information Report to the concerned Magistrate forth with envisaged by Section 157 of Cr.PC has a great significance. It minimises the chances of embellishment & embroidery in the earliest version of the informant and, therefore, courts very often look with suspicion a report said to have been lodged in time but not sent to the concerned Magistrate at its earliest. There is no explanation by the prosecution as to why the report was not sent for eight days. We do agree with the learned Public Prosecutor that the delay in sending the report to the concerned Magistrate is not invariably fatal to the prosecution case. That infirmity can be

overlooked if from other evidence, direct or circumstantial, the case against the accused is proved. In the present case the discrepant and inconsistent statements of the witnesses, whose evidence we have discussed earlier, did not impress us as their being the witnesses of truth. The delay in lodging the report and further delay in starting the investigation are the factors which constrain us to give importance to the delay of the First Information Report reaching the Court. All these infirmities taken together raise a suspicion regarding the prosecution case against the appellant. We do not agree with the learned Sessions Judge that prosecution has succeeded in bringing home the guilt against the appellant beyond all shadow of reasonable doubt. We, therefore, do not find any justification in his conviction.

16. Consequently, the appeal filed by Laloo is allowed. His conviction and sentences under section 302 and 304 IPC are set aside and he is acquitted of the charges. He is in jail. He shall be set forth to liberty if not required in any other case. The order of the learned Sessions Judge regarding the disposal of the property is however, maintained.