

(2017) 01 RAJ CK 0021
In the Rajasthan High Court
Case No : 774 of 2006

Ganshyam S/o Govind Ram

APPELLANT

Vs

State of Rajathan

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 374\(2\)](#)
a> - Examination of witnesses by police - Power to examine the accused - Appeals from convictions<B

Citation : (2017) 01 RAJ CK 0021

Hon'ble Judges : Gopal Krishan Vyas, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : K.R. Bhati, R.K. Charan, Vishnu Kachhawa

Final Decision : Allowed

Judgement

1. In both the appeals filed under Section 374(2) Cr.P.C. the appellants are assailing the validity of the judgment dated 24.8.2006 passed by the learned Addl. Sessions Judge (FT) No.1, Bhilwara in Sessions Case No.34/2006 whereby all the three accused appellants were convicted for offence under Section 302 / 34 and 460 / 34 IPC and following sentence was passed against them:

Under Section 302 / 34 IPC Life imprisonment with fine of Rs.2,000/- and in default of payment of fine to further undergo two months imprisonments .

Under Section 460 / 34 IPC Seven years RI with fine of Rs.1,000/- and in default of payment of fine to further undergo one month imprisonment. 2. Brief facts of the case are that on 27.12.2005 at 12.00 pm,

the complainant PW--1 Hukam Singh submitted a written report (Ex.P/1) at Police Station Kareda, District Bhilwara alleging therein that he is doing the work of selling milk in village Gajuna, today in the morning at about 7.00 am I went to the house of deceased Sobha Lal S/o Gulab Chand Mahajan for distributing milk, I raised my voice loudly to call him, to take milk but no response came from the house, the door of house and rooms were opened. At that time, the neighbor Sajjan Singh also came there and called "Sethji Sethji" but no response came from the house. Number of villagers came on spot and informed the police by telephone. One Suresh Jain and police officials entered in the house and found that dead body of Sobha Lal was lying on cot and articles of house were scattered and as per his information, the wife of Sobha Lal just day before went to village Bemali. The deceased Sobha Lal was not having any issue and living in the house with his wife and on the date of occurrence he was alone in the house, therefore, assailants entered in the house in night and after killing him took away the ornaments and other articles of Sobha Lal and ran away.

3. Upon aforesaid complaint, FIR no.111/2005 was registered against unknown persons under Section 460 IPC at Police Station Kareda on 27.12.2005 and investigation was commenced.

4. During investigation, site was inspected by the police and after usual investigation the statement of prosecution witnesses were recorded and body of the deceased Sobha Lal was taken to the Government hospital, Asind for post mortem where post mortem was conducted by the medical board and report (Ex.P/24) was prepared and handed over to the police for investigation. During investigation the accused appellants were arrested by the police on the basis of recovery of golden ornaments, coins , currency note, pass book and RC book. The typed stamps and

other articles were also recovered vide Ex.P/99, P/11 and P/12.

One knife and motor cycle Hero Honda Deluxe was also recovered during investigation as per information given by the accused appellants under Section 27 of the Evidence Act.

5. After post mortem, the dead body of the deceased was handed over for cremation to the family members vide Ex.P/14. The accused appellant Ghanshyam, Praksh and Gaffur Mohd were arrested vide Ex.P/17, P/18 and P/19 respectively. The proceedings by dog squad was also executed vide Ex.P/28 and all the recovered articles were sent for chemical examination of the FSL and ultimately after completion of investigation, charge-sheet was filed against the accused appellants in the court of Judicial Magistrate, First Class, Mandalgarh on the basis of circumstantial evidence of recovery because no direct evidence was found.

6. The learned Magistrate committed the case for trial to the court of District & Sessions Judge, Bhilwara from where, the case was transferred to the court of Addl. District & Sessions Judge (FT) No.1, Bhilwara for trial.

7. The learned trial court after providing an opportunity of hearing framed charge against the accused appellants for offence under Section 302, 302 / 34, 460 and 460 / 34 IPC and commenced trial.

8. In the trial, the statements of 26 prosecution witnesses were recorded and 42 documents were exhibited from prosecution side, thereafter statement of the accused appellants were recorded in the trial under Section 313 Cr.P.C. but all accused appellants denied the allegation of prosecution witnesses levelled against them and said that they are innocent. In spite of granting opportunity to lead evidence in defence no evidence led by the accused appellants.

9. The learned trial court finally heard the arguments and vide judgment dated 24.8.2006 passed in Sessions Case No.34/2006 convicted the accused appellants and held them guilty for offence under Section 302 / 34 and 460 / 34 IPC on the basis of circumstantial evidence of recovery of ornaments and other articles and passed sentence aforementioned.

10. Learned counsels for the appellants vehemently argued that the judgment impugned is based upon circumstantial evidence of recovery of ornaments which has not been proved by the prosecution beyond reasonable doubt but the learned trial court erroneously convicted the accused appellants for alleged offence under Section 302 / 34 and 460 / 34 IPC, therefore, the judgment impugned deserves to be quashed. It is further submitted that the alleged incident took place in the night on 26-27.12.2005 but FIR (Ex.P/1) was filed at 12.00 pm on spot in which the names of the appellants are not mentioned nor FIR was filed by the eye witness of the occurrence, the entire case is based upon circumstantial evidence which has not been proved. According to the prosecution case, the "motive" of crime was dacoity but there is no evidence to not connect the accused appellants with the alleged crime because the learned trial court has erroneously relied, upon the statement of PW--22 Madan Lal, PW--24 Prakash Chandra Khateek and PW--26 Bhagwan Singh, so also, documents (Ex.P/28, P/29, P/30 and P/42). Therefore, the finding of the learned trial court deserves to be quashed.

11. Learned counsel for the appellants vehemently argued that recovery of ornaments which is said to be recovered at the instance of the accused appellants vide recovery memo Ex.P/9 in the presence of PW--3 Gokal Ram and PW--5 Bhanwar Singh cannot relied upon because all these witnesses turned hostile and

did not support the prosecution case. The learned counsel for the appellants submit that totally false and concocted story is framed by the prosecution on the basis of so called evidence of recovery of ornaments and knife, which is evident from the fact that information with regard to recovery of knife was obtained from accused appellant Gaffur Mohd. vide Ex.P/33 whereas knife was recovered vide Ex.P/10 on 5.1.2006 at the instant of accused appellant Ghanshyam, that too, in the presence of two witnesses Bhanwar Singh and Ram Prasad Joshi and both the witness of recovery of knife PW--4 Ram Prasad and PW--5 Bhanwar Singh turned hostile and did not support the prosecution case, therefore, if the recovery of knife and ornaments has not been proved by the witnesses then obviously, the finding of conviction recorded by the learned trial court is totally baseless. Therefore, the judgment impugned deserves to be quashed.

12. Learned counsel for the appellants vehemently submit that in the FIR which is filed by Hukum Singh there is no mention about missing of the ornaments, coins or other articles but later on in the investigation, statement (Ex.D/2) of Roshni Devi wife of deceased Sobha Lal were recorded under Section 161 Cr.P.C. in which it is stated by her that upon inspection of the house, her ornaments Baju, Bor, Jhumariya, Aguthiya, about 30 tolas in weight were not found. The cash of more than Rs.1 lac and 60 coins were also missing, but no identification proceeding was conducted during investigating so as to identify the ornaments. For the first time in the court, when statement of Roshni Devi were recorded, the ornaments were shown to the witness Roshni Devi (PW--19) and identified by her in the Court, therefore, in absence of any identification proceedings of the ornaments during investigation or description of ornaments, the prosecution has

failed to prove its case beyond reasonable doubt.

13. On the basis of above arguments, it is submitted by the learned counsel for the appellants that in absence of any proceedings of identification during investigation before any Officer or Magistrate by the wife of the deceased Smt. Roshni Devi, it cannot be presumed that prosecution has proved recovery of ornaments as per information of the accused appellants or to connect the accused appellants with the crime. The learned counsel for the appellants vehemently argued that entire finding of the learned trial court is based upon circumstantial evidence of recovery of gold ornaments and knife and other articles, but neither recovery of articles is proved nor the recovery of knife is proved, therefore, the judgment impugned deserves to be quashed.

14. While inviting attention towards the proceedings of dog squad it is submitted that although the trained dog squad came on spot but in the proceedings (Ex.p/26) it is nowhere mention that dogs identified the accused appellants to connect them with the crime. Likewise footprints were also taken but said evidence has not proved to connect the accused appellants with the alleged crime. Therefore, the entire investigation and finding of the learned trial court based upon the evidence of recovery for which no identification proceedings were under taken by the Police deserves to be quashed because prosecution has failed to prove its case beyond reasonable doubt. Learned counsel for the appellants in support of their arguments invited our attention towards the judgment in the case of Rami Vs. State of Rajasthan, reported in 2009(2) CJ (Cri.) Raj., 667, Mani Vs. State of Tamilnadu reported in 2008(2) CJ (SC) Cri. 523, Varun Choudhary Vs. State of Rajasthan reported in 2012(2) CJ (Cri.) (SC) 352,

Sharad Birdhichand Sarda Vs. State of Maharastra reported in AIR 1984 (SC) 1622, C. Chenga Reddy v. State of A.P . reported in (1996) 10 SCC 193 and Trimukh Maroti Kirkan vs. State of Maharashtra reported in (2006) 10 SCC 681.

15. While inviting attention towards the aforesaid judgments, it is submitted that the conviction of the accused appellants for offence under Section 302 / 34 and 460 / 34 IPC is not sustainable in law because the entire case is based upon circumstantial evidence of recovery of ornaments and knife, but prosecution has failed to prove its case beyond reasonable doubt, therefore, the judgment impugned dated 24.8.2006 may kindly be quashed.

16. Per contra, learned Public Prosecutor submits that although in this case there is no eye witness but the accused appellants were charge-sheeted by the police on the basis of evidence of recovery of ornaments as well as knife as per information given by the accused appellants. The witness PW--19 Roshani Devi wife of the deceased specifically gave description of the ornaments in her statement recorded under Section 161 Cr.P.C., so also, she reiterated her statement during trial with regard to identification of the gold and silver ornaments. The witness PW--19 Roshan Devi identified the ornaments in the court on oath. Upon all the recovery memos (Ex.P/9, P/10, P/11, P/12 and P/13) the witnesses PW--3 Gokal Ram, PW--4 Ram Prasad and PW--5 Bhanwar Singh put their signatures, therefore, even if they turned hostile, the learned trial court has not committed any error to accept the statement of the investigating officer and police officials to give finding that recovery of ornaments has been proved by the prosecution so as to connect them with the crime and, therefore, argument of learned counsel for the accused appellants has no force to disbelieve the finding of learned trial

court whereby accused appellant have been convicted for offence of murder with dacoity.

17. Learned Public Prosecutor further submits that it is true that for conviction upon circumstantial evidence, all the circumstances are required to be established by reliable evidence and in this case, the prosecution has proved the recovery of ornaments and knife beyond doubt at the instance of accused appellants, therefore, even if there is no eye witness in the case, the finding of the learned trial court that prosecution has proved its case beyond reasonable doubt does not require any interference. As per judgment in case of Sarad Birdhichand (supra) also, no error has been committed by the learned trial court so as to convict the accused appellant for the alleged crime. Therefore, the both the appeals filed by the accused appellants may kindly be dismissed.

18. After hearing learned counsel for the parties, we have perused the statement of all the prosecution witnesses, so also, document exhibited during trial coupled with finding. Admittedly, there is no eye witness in this case because as per prosecution story, the day on which the occurrence took place, except deceased Sobha Lal, nobody was in the house. It is also not in dispute that neither in the FIR nor any witness gave any evidence for the presence of the accused appellants even in the village on the date of occurrence. Meaning thereby, there is no evidence of last seen or with regard to presence of the accused appellants in the area concerned or in the house on the date of incident.

19. To prove the motive, there is no evidence on record even after perusal of statement of Roshani Devi wife of the deceased (PW--19). The witness PW--19 Roshani Devi wife of deceased Sobha Lal specifically stated in her statement that no proceedings for identification of the ornaments was conducted during

investigation. The learned trial court for the first time, open the seal of the recovered articles in the court where statement of wife of the deceased were recorded, in the court. The said witness stated that these ornaments belongs to her. In our opinion, if no identification parade was conducted during investigation and this fact is not in dispute, then obviously it can be presumed that prosecution has proved the recovery of ornaments and articles beyond doubt. It is also very important aspect of the matter that all the witnesses PW--3 Gokul Ram PW--5 Bhanwar Singh and PW--4 Ram Prasad of the recovery of articles and knife turned hostile and did not support the prosecution case.

20. We have perused the information (Ex.P/33) which is said to be given by the accused appellant Gaffur Mohd on 3.1.2006 at 9.00 pm and in which following facts information was given about recovery of knife by the accused appellant Gaffur Mohd., which reads as under:

VERNACULAR MATTER OMITTED

21. We have perused the recovery memo of knife (Ex.P/10) dated 5.1.2006 at 11.00 pm in which following assertion is made:

VERNACULAR MATTER OMITTED

22. Upon perusal of the recovery memo (Ex.10) it is obvious that recovery was made from the accused Ghanshyam whereas information for recovery of knife was given by the accused Gaffur Mohd. Therefore, it is obvious that recovery of knife is also grossly doubtful.

23. The witness PW--1 Hukum Singh who first reached in front of house of deceased Sobha Lal has not levelled any allegation against the accused appellants.

24. PW--2 Suwa Lal is the witness of proceedings in the house of deceased where the body of Sobha Lal was lying. Nothing is said

by this witness against the accused appellants which created doubt.

25. PW--3 Gokul Ram is the witness of recovery memo of ornaments and knife (Ex.P/()). The said witness turned hostile and did not support the prosecution case.

26. PW--4 Ram Prasad is the witness of recovery memos of ornaments and articles (Ex.P/10, P/11, P/12 and P/13), but this witness turned hostile and did not support prosecution case.

27. PW--5 Bhanwar Singh is also witness of recovery memo Ex.P/8, P/7 and P/14 but said witness turned hostile and did not support the prosecution case.

28. PW--6 Bheru Lal is also witness of recovery of cloths of deceased Sobha Lal. The said witness turned hostile and did not support prosecution case.

29. PW--7 Mod Singh and PW-8 Gopi Lal are the witnesses before whom accused appellants were arrested vide Ex.P/18, P/18 and P/19 but no allegation is levelled by them.

30. PW--9 Madan Lal was working as Constable at Police Station Kareda. It is stated by him that as per direction of SHO, three sealed packets A,B,C were deposited by him at FSL and receipt of FSL is no record.

31. PW--10 Kailash Chandra is the witness who was working in the SP Office. He prepared the forwarding letter to send articles to the FSL, Udaipur.

32. PW--11 Dinesh Chandar is the real brother of the deceased. Upon perusal fo his statement it is revealed that allegation was levelled by him against accused appellants.

33. PW--12 Ram Prasad is the photographer who was called by the police to take photographs of place of occurrence on 27.12.2005.

34. PW--13 Suresh Kumar is the neighbor of deceased. Upon perusal of his statement, it is nowhere alleged by him that accused appellants were involved in the incident.

35. PW--14 Dr. Mangi Lal Sharma and PW--21 Dr. Vijay Kumar Goyal both were members of the board for conducting post mortem and they supported the post mortem report (Ex.P/24) and it is submitted by them that in the post mortem report it is observed that five injuries were caused to the deceased which resulted into death to the deceased.

36. PW--15 Sajjan Singh is also residing in the same area where Sobha Lal was residing. He is supporting the statement of complainant Hukum Singh with regard to incident, but there is no wisher against the accused appellants to connect them with the crime.

37. PW--16 Ladu Lal is the son of sister-in-law of deceased Sobha Lal. The said witness came from village Bimali. PW--17 Navratan Singh is the witness of investigation. He is head constable of Police Station Kareda. PW--18 Dharam Chand is the real brother of the deceased. Upon perusal of his statement it is revealed that no allegations are levelled by him against the accused appellants except the fact that incident took place on 27.12.2005 and upon information received by him he went on spot.

38. PW--19 Smt. Roshan is the wife of deceased. The said witness did not disclose any incident against the accused appellants or their presence or relation with the deceased. It is specifically stated by this witness that no identification parade was conducted during investigation to identify the ornaments and missing documents and articles. More so, the said witness specifically stated before the court that:

VERNACULAR MATTER OMITTED

39. There is no documentary evidence on record to prove the fact that during investigation identification proceeding was conducted to identify the recovered ornaments and articles. We have peruse the statements of PW--26 Bhagwan Singh, Sub-Inspector, who has conducted the investigation. The said witness specifically stated before the court in cross-examination that:

VERNACULAR MATTER OMITTED

40. In view of the above consideration of evidence, it is perfectly established that there is no evidence on record to prove that any identification proceeding was conducted after recovery of ornaments and articles at the instance of the accused appellants during investigation.

41. With regard to dog squad proceedings, we have perused the document (Ex.P/28) in which following proceedings were recorded after inspection in by the dog squad, which reads as under:

VERNACULAR MATTER OMITTED

42. Likewise for the evidence of foot mould there is no evidence on record to prove the fact that prosecution has led any evidence to connect the accused appellants with the crime on the basis of foot identification.

43 In view of the above, the entire prosecution case based upon circumstantial evidence of recovery of ornaments and articles and knife has not been proved by the prosecution beyond reasonable doubt.

44. In case of Mani Vs. State of Tamilnadu (supra), the Hon"ble Supreme Court held that evidentiary value of recovery is a weak kind of evidence and that cannot be relied upon so as to hold accused appellants guilty. The para no.21 of the said judgment is as follows:

"21. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. We have already held that the prosecution has failed to prove that the house where alleged blood stains were found belonged exclusively or was possessed exclusively by the appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts that the prosecution

never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect. Therefore, even if we accept the discovery, it does not take us anywhere near the crime. Both the Courts below have ignored this very important aspect. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory. We also fail to understand the finding of the High Court in respect of the motive. In our opinion, there was no motive whatsoever much less entertainable by the present appellant. He had nothing to do with the straying cattle nor was he a party to subsequent altercation between P.W.1 Arunachalam and the accused No. 2 Moyyasamy. Lastly, there is nothing on record to show that he was a henchman set up to take revenge by accused no. 2 Moyyasamy and he was set up by the accused no. 1 to revenge. We also did not understand that if there was no motive for Moyyasamy, how could there be any motive entertainable by the appellant. Therefore, even for that circumstance has to go.

45. In case of Rami Vs. State of Rajasthan (supra) the following adjudication is made by this Court that on the basis of recovery of ornament of deceased without any identification, the conviction cannot be based. Paras nos.10 to 14 of the said judgment are relevant, which reads as under:

"10. These opinion clearly indicate that dead body cannot float on surface at least before 24 hours. It is beyond imagination that dead body of 5 years? girl will float on surface within an hour of drowning. This alone circumstances is sufficient to discard whole prosecution story. 11. Thus, it becomes clear that Munna was not pushed by the accused on 18.8.1981 at about 8 a.m. and in such circumstances, it can very well be said that Paras was also not pushed in the well by the accused on that day at that time. Whole prosecution story is nothing but full of concoctions. 12. As far recovery of ornaments and their identification is concerned, the learned Trial Court has rightly not placed reliance on recovery of articles. PW/2 Roshan has admitted in his cross examination that Sarpanch asked Madhunath to take care of recovered ornaments. He admitted that he had knowledge where the ornaments were lying before the SHO came on the spot. PW/9 Sajjan Singh who was Sarpanch of

village karsana has also admitted in cross examination that he was aware about the ornaments before police reached on the spot and he had deputed Madhunath to take care of ornaments. Identification memo also reveals that requisite articles were not mixed for identification purposes. Hence, recovery of articles on the information and at the instance of accused and their identification cannot be believed and this recovery does not link the accused with the crime, specially when recovered articles contained some more articles which were not of Paras. 13. In the light of the aforesaid discussion, it becomes clear that prosecution has failed to prove charges against accused and lower court has committed error in placing reliance on the statement of Paras and convicting the accused of the aforesaid charges. 14. Consequently, the appeal of the appellant Rami is accepted and judgment dated 18.8.1983 passed by learned Sessions Judge Pratapgarh camp Chittorgarh, by which he convicted the accused appellant under Sec. 302, 307 and 403 IPC is set aside. The accused appellant is on bail. Her bail bond stands cancelled and she need not to surrender. "

46. Similarly, in the case of Varun Choudhary Vs. State of Rajasthan (supra), the Hon"ble Supreme Court while considering evidence to hold that in absence of any evidence of identification and upon the fact that prosecution has failed to establish the evidence to complete the evidence which would lead to a conclusion that accused was the only person who could have commit offence none-else, no conviction can be based. Paras nos.21, 24 and 25 of the said judgment are relevant, which reads as under:

"(21) In our opinion, so called recovery of knife and blood stained clothes would not help the prosecution.

Recovery of the motor cycle can not be said to be proved because Bhanwar Singh, PW-9 admitted the fact that he had signed the recovery panchnama in the police station whereas another witness, Madan Lal, P.W.25 could not establish recovery of the knife as he was not present at the time and place from which the knife had been recovered. Moreover, the knife was never produced before the court and was never shown

to the accused and, therefore, in our opinion, the said evidence could not have been relied upon by the courts below for passing the order of conviction.

(24) It is a settled legal position that in case of circumstantial evidence, there must be a complete chain of evidence which would lead to a conclusion that the accused was the only person, who could have committed the offence and none else. In the instant case, there is nothing to show that the accused had

committed the offence and on the basis of the aforesaid material, in our opinion, it would be dangerous to convict the accused. In the case of *G. Parashwanath vs. State of Karnataka*, (2010)8 SCC 593, para 24, it has been stated that

"in deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved..... There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court".

(25) In another case of *C. Chenga Reddy v. State of A.P .*, reported in (1996) 10 SCC 193, this Court has held that

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

47. In case of *Ram Lal @ Ramu Vs. State of Rajasthan* reported

in 2014 Law Suit (Raj.) 1398 in identical case based upon

circumstantial evidence, following adjudication was made by this

Court, which reads as under:

"18. The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events for which the only irresistible conclusion that can be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take legal proof. This court will have to satisfy itself that various circumstances in the chain of events have been established clearly and such complete chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. This court has to be watchful and avoid allowing the suspicion to take place of

the legal proof. There is a long distance between 'may be true' and 'must be true'. When a case rests squarely on circumstantial evidence, an inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. Cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offence beyond any reasonable doubt. The circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved. In other words there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and it must show that in all human probabilities the act must have been done by the accused.

48. In view of the above discussion, we are of the opinion that the finding of conviction arrived at by the learned trial court against the accused appellants is not sustainable in law because prosecution has failed to prove its case beyond reasonable doubt on the basis of so called evidence of recovery for which all witnesses turned hostile and no identification parade was conducted during investigation and ornaments and articles were brought before the witness PW--19 Smt.Roshani Devi for the first time when her statement were recorded in the court during trial.

49. Consequently, both the cr. appeal are allowed. The judgment dated 24.8.2006 passed by the learned Addl. Sessions Judge (FT) No.1, Bhilwara in Sessions Case NO.34/2006 convicting and sentencing the accused appellants for the offences under Section 302 / 34 and 460 / 34 IPC is hereby quashed. The accused appellants be set at liberty unless required in any other case.

50. Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellants are directed to forthwith furnish personal bonds in the sum of Rs.20,000/- each and a surety bond in the like amount, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition

against the judgment or for grant of leave, the appellants, on receipt of notice thereof, shall appear before Hon"ble the Supreme Court.