
(2015) 02 RAJ CK 0156

In the Rajasthan High Court

Case No : Criminal Jail Appeal No. 4/2008 and Criminal Appeal Nos. 1740/2007, 136, 179, 468 and 1083/2009 and 329/2011

Jatun Begum and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 114(a)

Penal Code, 1860 (IPC) — Section 120-B, 302, 394, 396, 452

Citation : (2015) 02 RAJ CK 0156

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.; R.S. Chauhan, J.

Bench : Division Bench

Advocate : Rohan Jain, for the Appellant; Aladeen Khan, Public Prosecutor, Advocates for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.—On 11.11.2004, around 12:30 PM (afternoon), Radha Devi, a house wife, was murdered in her house, B-39, Sikar House, Jaipur. The occurrence was witnessed by her daughter Kumari Khushboo (P.W.14), who on the date of occurrence was aged about 7 years. Khushboo had relayed the information regarding murder of her mother to her neighbour Smt. Sushila Devi (P.W.3) and Priyank Poddar (P.W.2), grandson of Sushila Devi. Priyank Poddar (P.W.2) along with their family driver Chandra Mohan (P.W.1) visited the house in the neighbourhood where Radha Devi was lying murdered. They saw that almirah of the house was broken and articles of the house were lying scattered. Chandra Mohan (P.W.1) immediately informed Mahesh Patodiya (P.W.5), husband of Radha Devi. At that time, he alongwith his brother, Ramesh Chandra Patodiya (P.W.9), the complainant, was present at their family cloth shop in the city of Jaipur. Priyank Poddar (P.W.2) along with their family driver, Chandra Mohan (P.W.1), also went to the Police Station to lodge the report. The Police of Police Station Shashtri Nagar, Jaipur, arrived at the scene of occurrence and Ramesh Chandra Patodiya (P.W.9) presented the written report (Exhibit-P/17) before the Police, on

the basis of which, a formal FIR (Exhibit-P/108) was registered at the Police Station, Shashtri Nagar, Jaipur, for the offence under Sections 302 and 394 IPC.

2. The investigating agency came to the conclusion that it was a case of murder accompanied by dacoity. During investigation of the case, eight accused namely, Smt. Jatun Begum W/o. Abdul Wahad, Shahzad S/o. Waliguddin, Ashraf S/o. Mohammad Yusuf, Salim @ Kadir S/o. Taj Mohammad, Umar Daraj S/o. Abdul Wajid, Rashid @ Babu S/o. Allanoor, Deen Mohammad S/o. Abdul Rajjak and Shahid S/o. Mohammad Yameen, were arrested.

3. The report of the investigation was presented and after commitment, the report of the investigation and the accused were sent for trial to the court of Sessions and the trial was entrusted to the court of Additional Sessions Judge (Fast Track) No. 2, Jaipur City, Jaipur.

4. By impugned judgment dated 10.7.2007, the trial Judge held the appellant, Jatun Begum W/o. Abdul Wahad, guilty of offence under Sections 302 read with Section 120-B IPC. The appellants, Shahzad S/o. Waliuddin, and Salim @ Kadir S/o. Taj Mohammad were held guilty of offence under Sections 452 and 396 read with Section 120-B IPC. The appellants, Ashraf S/o. Mohammad Yusuf, Deen Mohammad S/o. Abdul Rajjak and Umardaraj S/o. Abdul Wajid were held guilty of offence under Section 396 read with Section 120-B IPC. The appellant, Rashid @ Babu S/o. Allanoor was held guilty of offence under Sections 452, 216(K) and 396 read with Section 120-B IPC. The appellant, Shahid S/o. Mohammad Yameen was held guilty of offence under Sections 302/120-B and 396/120-B IPC.

5. By a separate order of even date, the trial Judge sentenced the appellants for the above offences as under:--

"Appellant, Jatun Begum and Shahid:-

U/s. 302 read with Section 120-B IPC- to undergo life imprisonment and to pay a fine of Rs. 5,000/- each, in default of payment of fine, to further undergo six months" R.I. Appellants Shahzad, Salim @ Kadir and Rashid @ Babu:

U/s. 452 IPC- to undergo two years" S.I., and to pay a fine of Rs. 500/- each, in default of payment of fine, to further undergo six months" S.I. Appellants, Shahjad, Ashraf, Saleem @ Kadir, Umar Daraj, Rashid @ Babu, Deen Mohammad @ Deenu and Shahid:

U/s. 396 read with Section 120-B IPC - to undergo ten years" R.I. and to pay a fine of Rs. 5,000/- each, in default of payment of fine to further undergo six months" R.I. Appellant Rashid @ Babu:

U/s. 216(K) IPC - to undergo four years" R.I. and to pay a fine of Rs. 2,000/-, in default of payment of fine, to further undergo two months" S.I." All the sentences were ordered to run concurrently.

6. Aggrieved against their conviction and sentence, the appellants have filed seven appeals before this Court. By this common judgment, we shall decide all

the seven appeals together, as the same judgment of conviction and order of sentence has been impugned in these appeals.

7. Khushboo (P.W.14) has turned hostile in the court. However, during investigation, she had identified three accused, namely Shahjad, Rashid @ Babu and Salim @ Kadir (vide Exhibit-P/41, 40, 42, respectively), as the one who had entered into the house and had committed the murder.

8. Mahesh Patodiya (P.W.5) had furnished the list (Exhibit-P/125) giving particulars of the articles, which were stolen from the house. The prosecution case further rests upon the recovery of valuable articles from the accused, which were purportedly taken away by them from the house in the day light dacoity, allegedly committed by the accused. Identification proceedings of the articles (Exhibit-P/9 to Exhibit-P/15) and (Exhibit-P/142) were also carried by Ms. Meghna Jain (P.W.31), and Poonam Dargan (P.W.35), who were then posted as Judicial Magistrate No. 22, Jaipur and as Additional Civil Judge, No. 1, Jaipur City, Jaipur, respectively. Finger-prints from the scene of crime (vide Exhibit-P/93-104) were also lifted and Finger-print Expert has also given his report (Exhibit-P/105) that the fingerprints lifted from the house tallied with sample finger-prints of the accused, Rashid @ Babu, and Salim @ Kadir.

9. Before, we notice the details of incriminating evidence, qua each accused, it will be apposite for us to take note of the prosecution evidence, which has emerged in the testimony of the witnesses examined by the prosecution.

10. Ravi Shankar Mishra (P.W.29), on the day of occurrence i.e. 11.11.2004, was posted as SHO, Police Station, Shashtri Nagar, Jaipur. He stated that at 1:15 PM, he received an information from Joni S/o. Narendra Poddar that in his neighbourhood, i.e. in House No. B-39, Sikar House, dacoity has been committed, and some unidentified persons have committed murder of Smt. Radha Devi, and the dead body was lying in the house. Immediately on receipt of information, Ravi Shankar Mishra (P.W.29) informed the Police Control Room and Circle Officer, Superintendent of Police and Inspector General of Police and reached at the spot along with finger-print team of FSL and photographer. On arrival at the scene of occurrence, Ramesh Chandra Patodiya (P.W.9) presented a written report (Exhibit-P/17). When the same is translated into English, reads as under:-

"To

In-charge, Police Station, Shashtri Nagar, Jaipur.

Subject: Lodging of the report.

Sir, it is requested that I Ramesh Chandra Patodiya, am resident of Plot No. 125, Naya Kheda. My younger brother, Mahesh Patodiya is resident of B-39, Sikar House. We are having our shop in the cloth market. Today, my brother was at the shop and in between 12:00 to 1:00 PM, murder of his wife Radha Devi has been committed in her house. We received information at the shop that some

unknown persons, with intention to commit loot, has caused murder of Radha Devi. On arrival at the spot, we found that the goods of the house were lying scattered and Radha Devi was lying dead on the floor of the kitchen. List of the stolen articles will be presented after checking. Legal action be taken.

Jaipur dt. 11.11.2004

Ramesh Chandra Patodiya S/o. Jagdish Ji Patodiya Plot No. 125, Naya Kheda"

11. Smt. Sushila Devi (P.W.3) stated that she is resident of Sikar House. Mahesh Patodiya (P.W.5) was her neighbour. On 11.11.2004, she was in her house. She had asked her driver to pack tiffin for the shop. Meanwhile, she heard noise of Khushboo, daughter of Mahesh Patodiya, who stated that her mother has been killed. Upon which, the witness thought that mother of Khushboo may have fallen due to observing of fast by her. But Khushboo informed that blood is coming out, as injuries have been caused. Khushboo brought her younger brother, whose hands were stained with blood. Persons who have gathered there entered into the house and informed that Radha Devi has been murdered.

12. Priyank Poddar (P.W.2) S/o. of Narendra Kumar Poddar, stated that upon arrival of Khushboo (P.W.14) and information given by her, he had gone into the house. Goods were lying scattered. Almirah was open. Blood was oozing out of the dead body. He along with driver Chandra Mohan (P.W.1) had immediately gone to Police Station, Shashtri Nagar, to inform the police.

13. Chandra Mohan (P.W.1) stated that he had been working as a Driver for Bajrang Lal Poddar for the last twenty years. He was packing the tiffin. He learnt that Radha Devi has been murdered. He went to the house and saw the dead body. He informed Mahesh Patodiya (P.W.5), the husband of Radha Devi. And along with Priyank Poddar (P.W.2), the grandson of Sushila Devi, had gone to the police station to give information to the police.

14. Mahesh Patodiya (P.W.5), husband of the deceased, Radha Devi, stated that he was having a retail cloth shop at Sikar House. He was present in the shop when driver of one neighbourer, informed that somebody had murdered his wife. He immediately arrived at the house. His son and daughter were weeping. Son was in the lap of his daughter. Body was lying at the spot. Many people had gathered. Police arrived at the scene and had taken into possession two iron rods vide recovery memo Exhibit-P/1; one bra, blouse and one towel, stained with blood vide recovery memo Exhibit-P/2; one iron rod (Musali), which was stained with blood along with hair of head vide recovery memo Exhibit-P/3. The Police had also picked cotton swab of blood vide recovery memo Exhibit-P/4. Broken scissor along with iron cutter were taken into possession, by recovery memo Exhibit-P/5 and Exhibit-P/6, respectively. One jeans pant, and one T-shirt left by the accused were taken into possession by memo Exhibit-P/7. Police had also lifted finger-prints from the spot vide memo Exhibit-P/8. This witness presented a list of stolen articles Exhibit-P/125 on 15.11.2004 before SHO, Police Station Shashtri Nagar, Jaipur. The list contained details of the missing jewelery articles,

and further indicated that two pants and two shirts and one towel of the house were also missing.

15. The appellant Shahzad was arrested on 25.12.2004 at 3:30 PM, from Central Jail, Jaipur, by arrest memo Exhibit-P/37. He suffered disclosure statement (Exhibit-P/119), wherein he stated that articles of loot, namely one pair of silver Paijab (anklet), one silver Kada (bracelet), one silver Katori (bowl) and three silver coins have been kept concealed by him in a room rented by him at Shahjah Colony, Meerut. Vide Exhibit-P/29, the appellant Shahzad got these articles recovered from Shahjah Colony falling within the jurisdiction of Police Station Lesari Gate, Meerut. Identification of articles was conducted by Meghna Jain (P.W.31), who was then posted as Judicial Magistrate No. 22 at Jaipur. Mahesh Patodiya (P.W.5) in pursuance of summons issued appeared before her, and by memo Exhibit-P/9 identified one pair of Paijab (anklet), three silver coins and one silver katori (bowl) recovered from the appellant Shahzad, to be of his wife Radha Devi. However, this witness had stated that the silver Kada (bracelet) was not of his wife, Radha Devi.

16. The appellant, Rashid @ Babu was arrested on 25.12.2004 from Central Jail, Jaipur, by arrest memo (Exhibit-P/38). He suffered disclosure statement (Exhibit-P/118), wherein he stated that he had concealed one pair of paijab (anklet), two silver Kada (bracelet), one broken gold bangle, two ear-tops and pant-shirt, worn by him from the house of occurrence and plastic chappal in a house on rent with him at Shahjah Colony, Meerut. The above articles were recovered by memo (Exhibit-P/30) on 28.12.2004, from the rented premises of accused Rashid @ Babu at Meerut.

17. Mahesh Patodiya (P.W.5) was called by Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur to identify these articles. In identification proceedings carried by Ms. Meghna Jain (P.W.31), Mahesh Patodiya (P.W.5) vide memo Exhibit-P/10 had identified broken piece of gold bangle, belonging to his wife. However, remaining articles were not identified by the witness to be of his wife.

18. The appellant, Deen Mohammad @ Deenu, was arrested on 6.12.2004 by arrest memo (Exhibit-P/50). Deen Mohammad @ Deenu on 9.12.2004 suffered disclosure statement (Exhibit-P/58) and stated that one piece of Patala (a kind of broad bracelet worn by ladies) was kept concealed by him in the house of his father-in-law, Gaffar. Vide recovery memo (Exhibit-P/28), this accused got recovered one piece of Patala from the house of his father-in-law. Mahesh Patodiya (P.W.5) while participating in identification proceedings vide memo Exhibit-P/11, identified the piece of Patala recovered at the instance of Deen Mohammad @ Deenu to be of his wife, Radha Devi.

19. The appellant, Jatun Begam, was arrested vide arrest memo Exhibit-P/39 on 12.12.2004. Her personal search was carried and one pair of silver Paijab (anklet) and one gold ear-top were recovered during his personal search. The recovery was noticed in search and seizure memo Exhibit-P/124. Mahesh

Patodiya (P.W.5), during identification proceedings carried on 19.2.2005, before Ms. Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur, vide Exhibit-P/12 identified gold ear-tops to be of his wife. But, had denied that pair of silver Pajjab recovered from the appellant belong to his wife.

20. The appellant, Ashraf S/o. Mohammad Yusuf was arrested on 6.12.2004 vide arrest memo Exhibit-P/51. He suffered disclosure statement (Exhibit-P/57) on 7.12.2004, wherein he stated that he kept concealed one broken piece of gold bangle in a room of his house. This piece of gold bangle was got recovered by Ashraf on 8.12.2004 vide seizure and recovery memo Exhibit-P/26. The piece of gold bangle so recovered was identified by Mahesh Patodiya (P.W.5) on 19.2.2005 before Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur, vide memo (Exhibit-P/14), and it was recorded therein that the witness, Mahesh Patodiya (P.W.5) had identified the piece of gold bangle to be of his wife.

21. Salim @ Kadir was arrested on 6.12.2004 vide arrest memo Exhibit-P/49. He suffered disclosure statement Exhibit-P/56, wherein he stated that he kept concealed one designer bangle and one black colour pant and a shirt of chocolate colour, which he had worn at the house where crime was committed, in the house of Ashraf, the co-accused. In pursuance of disclosure statement (Exhibit-P/56), vide seizure and recovery memo Exhibit-P/27, Salim @ Kadir got recovered on 8.12.2004, one designer bangle and pant-shirt from the house of co-accused Ashraf. Mahesh Patodiya (P.W.5) identified the designer bangle recovered from Salim @ Kadir to be of his wife in identification proceedings noted in memo (Exhibit-P/13) prepared by Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur.

22. The appellant, Umardaraj, was arrested on 23.12.2004 vide arrest memo (Exhibit-P/36). He made a disclosure statement (Exhibit-P/117) on 24.12.2004 and stated that he had kept concealed one piece of gold Patala at his house. Vide recovery memo Exhibit-P/47 got piece of gold Patala recovered and the same was identified by Mahesh Patodiya (P.W.5) vide identification proceedings memo Exhibit-P/15 as the one which belonged to his wife, Radha Devi.

23. In cross-examination, Mahesh Patodiya (P.W.5) admitted that Pajjab, Jhumke, gold ring, Patala, ornaments of gold and silver are available in the market and there was no specific mark of identification on the ornaments identified by him. This witness further stated that when identification proceedings (Exhibit-P/9 to Exhibit-P/15) were carried, police officials and his relations were present alongwith him. He further stated that articles which were identified by him, vide Exhibit-P/9 to Exhibit-P/15, however, he had handed over no bills of the purchase to the police.

24. Ramesh Chandra Patodiya (P.W.9), stated that after receipt of information, he reached at the house of his brother, Mahesh Patodiya (P.W.5). Radha Devi was lying dead in a pool of blood. Articles in the house were lying scattered. Somebody after committing dacoity had murdered Radha Devi. Nobody was

present in the house. He had presented the written report (Exhibit-P/17) to the police. The witness stated that he cannot identify the accused persons in the court.

25. Salim (P.W.4) proved the register of Musafirkhana, wherein an entry was made that Deen Mohammad @ Deenu and Smt. Jatun Begum, after coming from Meerut, had stayed in Dharmshala at Jaipur.

26. Bhawani Singh (P.W.6) stated that in the month of October, two male persons and one woman had taken a room on rent. They stayed there from 19.10.2004 to 11.11.2004 and thereafter, they had vacated the room. This witness was declared hostile and was cross-examined by the prosecution.

27. Smt. Mansha Devi (P.W.7) also stated that two male persons and one woman had taken their house on rent for Rs. 700/- per month. They stayed in the house for about one month and thereafter, they had vacated the house.

28. Kallan Khan (P.W.8) stated that on asking of Umardaraj, accused, he had given his house on rent to Salim @ Kadir at the rate of Rs. 600/- per month. After 15-20 days, when he had gone to his plot, he learnt that the accused had already left by putting a lock. This witness stated that Umardaraj, which had facilitated taking of house on rent by Salim @ Kadir, is not present in the court. This witness was declared hostile by the prosecution.

29. Vikas Verma (P.W.10) stated that a shirt shown to him was stitched at his tailor shop. However, this witness stated that he is not aware of names of each customer, who get their clothes stitched from him.

30. Raghuveer Singh (P.W.11), the constable, stated that he carried sealed packets from Police Station Shashtri Nagar, Jaipur, for their deposit to F.S.L., Jaipur.

31. Banshidhar (P.W.12) stated that on 8.12.2004, he was posted as ASI, at the Police Station Shashtri Nagar. On that day, Ashraf got one piece of bangle recovered from his house vide memo Exhibit-P/26. Accused Salim @ Kadir got recovered one gold bangle, one black colour pant and shirt and one towel from the house of Ashraf vide seizure and recovery memo Exhibit-P/27. On 9.12.2004, accused Deen Mohammad @ Deenu got recovered a piece of gold Patala from the house of his father-in-law, Gaffar, a driver, vide memo Exhibit-P/28. This witness proved recovery of jewelery articles from all the accused, separately vide memo Exhibit-P/26 to Exhibit-P/30, reference of which has already been made while noticing testimony of Mahesh Patodiya (P.W.5).

32. Smt. Sunil Yadav (P.W.13) stated that she was posted as Constable at Mahila Thana (North), Jaipur and she had witnessed the arrest of the accused Jatun Begum vide arrest memo Exhibit-P/39.

33. Khushboo (P.W.14) is the eyewitness of the occurrence. She stated that she was student of 2nd standard in Saraswati Vidhya Niketan School. About one and

a half year ago, she came to the house and saw that two thieves have concealed themselves in the house. Later both the thieves told her not to raise noise, otherwise, she will be killed. They had broken almirah. At that time, mother was in kitchen. They gave knife blow to her mother and as a result of the injuries suffered, her mother had died. Thereafter, thieves changed pant and shirt worn by them, and wore pant and shirt belonging to her father. One thief had suffered injury on right hand. The said thief had cleaned blood with the towel. In kitchen, blood was lying scattered. Initially, brother of the witness was kept in captivity by the thieves, which they had returned later. This witness stated that she went to neighbour's house. She further stated that she had participated in the Test Identification Parade conducted at the instance of police, and had identified the accused. However, the witness stated that he cannot identify the accused persons present in the court. She further admitted her signatures on identification memo Exhibit-P/40 to Exhibit-P/42.

34. It is to be noted that vide memo Exhibit-P/40, Kumari Khushboo (P.W.14) had identified Rashid @ Babu, in test identification parade conducted by Ranjan Singh (P.W.28), who was then posted as Judicial Magistrate No. 11, Jaipur City, Jaipur. This witness had also identified the appellant Shahzad vide memo Exhibit-P/41 before Ranjan Singh (P.W.28). Similarly, this witness vide memo Exhibit-P/42 had identified Salim @ Kadir before Kamal Prakash Saxena (P.W.30), who was then posted as Additional Chief Judicial Magistrate No. 5, Jaipur City, Jaipur.

35. However, this witness (Khushboo, P.W.14) has not identified Deen Mohammad @ Deenu and Ashraf S/o. Mohammad Yusuf in identification proceedings carried by Kamal Prakash Saxena (P.W.30), Additional Chief Judicial Magistrate No. 5, Jaipur City, Jaipur. It is to be noted that in the court this witness, Khushboo (P.W.14) had not identified the accused.

36. Dr. Vijay Singh Fauzdar (P.W.15) had conducted the autopsy on the dead body of the deceased Radha Devi. We need not notice the contents of the testimony of this witness, as there is no dispute that Radha Devi had died due to injuries received by her due to violence.

37. Gulfam (P.W.16) has not supported the prosecution case and was declared hostile. This witness stated that though Exhibit-P/47 and Exhibit-P/48 seizure memo qua Patala at the instance of accused Umardaraj and site plan of place of occurrence respectively contain his signatures, no recovery was made in his presence as his signatures were obtained by the police on blank papers.

38. Surendra Kumar (P.W.17) was then posted as Head Constable at Police Station Kotwali, Jaipur. He had witnessed Exhibit-P/49 to Exhibit-P/51, arrest memo of accused Salim @ Kadir, Deen Mohammad @ Deenu and Ashraf, respectively.

39. Mohammad Hasan (P.W.18) stated that he had witnessed the recovery of piece of bangle from the house of accused Umardaraj. This witness stated that he cannot say in definite terms that the piece of gold bangle recovered was the

same which was shown to him in the court. In cross-examination, this witness has further submitted that the police personnel before entering in the house of Umardaraj were not searched in the presence of the witness.

40. Hanuman Prasad (P.W.19) stated that his sister was staying at Sikar House. On 26.12.2004, he was present at Sikar House when police brought two accused. On the asking of accused, they have prepared the site plan. In cross-examination, this witness stated that the accused got identified spot vide memo Exhibit-P/52, Exhibit-P/53 and Exhibit-P/54. This witness further stated that the accused were not known to him earlier and even he cannot identify them in the court and his signatures were obtained by the police. Exhibit-P/52, Exhibit-P/53 and Exhibit-P/54 are the site plan of the place of occurrence prepared by the police on the basis of disclosure made by Rashid @ Babu, Shahzad and Umardaraj, accused, respectively.

41. Shankar Lal (P.W.20) had attested the recovery memo Exhibit-P/26 and Exhibit-P/27, in pursuance of which the appellant Ashraf and Salim @ Kadir respectively got recovered a broken piece of gold bangle and designer bangle. In cross-examination, this witness stated that he cannot tell which article was recovered at the instance of which accused and he cannot name the accused and identify them from their face.

42. Najma (P.W.21) stated that the accused Rashid @ Babu was not known to her and she never came to Jaipur alongwith Rashid @ Babu. This witness was declared hostile by the prosecution.

43. Kailash Chand (P.W.22), Constable posted at Police Station Shashtri Nagar stated that in his presence, the appellant Salim @ Kadir and Ashraf had made disclosure statement Exhibit-P/56 and Exhibit-P/57, respectively. This witness further stated that he had carried four sealed packets to SMS Hospital vide memo Exhibit-P/59 and had attested arrest memo Exhibit-P/60 pertaining to accused Shahid.

44. Sharwan Singh (P.W.23) stated that he was posted as Police Inspector in Finger-Print Bureau. On 11.11.2004, on the day of occurrence, he had lifted finger-prints from almirah and from other places in the house. This witness stated that he was accompanied by Rajendra Sharma (P.W.25), a Senior Photographer. This witness stated that the finger-prints were lifted from the spot vide Exhibit-P/8. He further stated that he had taken finger-prints of the accused and as per his report Exhibit-P/105, finger-print of right finger of accused Salim @ Kadir tallied with the finger-print lifted from the spot. Similarly, finger-print of right thumb of accused, Rashid @ Babu had tallied with the finger-print lifted from the spot.

45. Manna Lal (P.W.24) stated that he was posted as Press-Photographer in Police Control Room and he had taken photographs of the spot on the day of occurrence, at the asking of Police.

46. Rajendra Sharma (P.W.25) as already stated, had accompanied Finger-Print Expert and had taken photographs of the spot.

47. Om Prakash Singh (P.W.27) stated that he was posted as Duty Officer at Police Station Shashtri Nagar. He had added offence under Sections 394 and 302 IPC in the FIR No. 277/2004 already registered at the police station.

48. As stated earlier, Ranjan Singh (P.W.28) had conducted Test Identification Parade qua the appellant Salim @ Kadir, Deen Mohammad @ Deenu and Ashraf.

49. Ravi Shankar Mishra (P.W.29) being Investigating Officer proved various facets of investigation.

50. Bijendra Singh (P.W.32) had accompanied the police party on the day of occurrence to the spot. This witness stated that he had carried written report (Exhibit-P/17) lodged by Ramesh Chandra Patodiya (P.W.9) to the police, on the basis of which, formal FIR was registered (vide Exhibit-P/108).

51. Roop Singh (P.W.33) being In-charge of Malkhana had proved deposit of various articles in Malkhana and taking out of same from Malkhana for deposit to FSL.

52. Vinod Kumar Gupta (P.W.34) is husband of sister of Mahesh Patodiya (P.W.5). This witness had attested memo Exhibit-P/1 to Exhibit-P/7, lifting of finger prints (Exhibit-P/8), Panchnama of dead body (Exhibit-P/18) and various other memos.

53. Poonam Dargan (P.W.35) is witness to identification proceedings. Recovery of one piece of gold bangle and piece of gold Patala was effected from accused Shahid. It will be pertinent to note that the said accused on 18.12.2005 had suffered disclosure statement Exhibit-P/120, wherein he stated that he had kept concealed a piece of gold bangle and a piece of Patala in the house of his father-in-law, Badrudeen and the said articles were recovered vide seizure and recovery memo Exhibit-P/121, which was duly attested by Raju Gupta (P.W.36).

54. Govind Ram Gupta (P.W.37) stated that in his presence, accused Rashid @ Babu, Shahzad and Umardaraj got identified the place of occurrence vide memo Exhibit-P/52 to Exhibit-P/54.

55. The prosecution closed its evidence and the statement of the accused were recorded under Section 313 Cr.P.C. All incriminating evidence were put to them and they denied the same and pleaded false implication.

56. No witness was examined in defence.

57. Having noted the entire prosecution case, now we will notice incriminating pieces of evidence which have emerged qua each accused during the course of trial.

The case of Jetun Begum:

58. As per prosecution, by memo Exhibit-P/39, on 12.12.2004, the appellant

Jatun Begum was arrested in presence of lady constable Smt. Sunil Yadav (P.W.13) and ASI, Banshidhar (P.W.12). As per personal search and recovery memo Exhibit-P/124, witnessed by Vinod Kumar Gupta (P.W.34) and lady constable Smt. Sunil Yadav (P.W.13), from personal search of Jatun Begum, one pair of silver Pajab and gold ear-tops were recovered. Out of the said two ornaments, Mahesh Patodiya (P.W.5) in identification proceedings carried on 19.2.2005, by Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur, vide (Exhibit-P/12) had only identified gold ear-tops belonging to his wife, Radha Devi, deceased. Mahesh Patodiya (P.W.5) has specifically stated that pair of silver Pajab, recovered from Jatun Begum is not of his wife. Besides, this recovery, another incriminating evidence which has emerged against the appellant Jatun Begum is that as per Salim (P.W.4), an employee of Musafirkhana, she along with Deen Mohammad @ Deenu and Salim @ Kadir had made entry in the register of Musafirkhana on 6.11.2004, wherein it was stated that she alongwith two accused had arrived at Jaipur from Meerut.

59. Besides these two incriminating circumstances, no other evidence has emerged against Jatun Begum in the prosecution case. In her statement recorded under Section 313 Cr.P.C., Jatun Begum had denied that she had stayed in Musafirkhana. It was incumbent for the prosecution to prove signatures of Jatun Begum in the register maintained at Musafirkhana. Furthermore, Salim (P.W.4), an employee of Musafirkhana had not identified Jatun Begum as the one who had stayed in the Musafirkhana. Thus, a mere entry in the register maintained at Musafirkhana cannot be construed as incriminating circumstance against the appellant.

60. So far as the recovery of one gold ear-tops from the appellant, Jatun Begum, which has been identified by Mahesh Patodiya (P.W.5) as one which belonged to her deceased wife, Radha Devi, is concerned, at the most, it may be construed that Jatun Begum is recipient of stolen property. The prosecution has led no evidence that Jatun Begum knew that the gold ear-tops recovered from her was stolen article, and they had come into possession of someone as a result of dacoity committed in the house of deceased Radha Devi. The appellant, Jatun Begum is a lady. The possibility cannot be ruled out that some male accused may have given ear-tops to her as a gift. On mere recovery of ear-tops, we cannot sustain conviction of the appellant Jatun Begum for the offence under Section 302/120-B IPC. We are amazed at the reasoning propounded by the trial court, who has convicted Jatun Begum for the offence under Section 302/120-B IPC and had not convicted other co-accused for offence of murder, who had entered into the house, caused injuries to the deceased Radha Devi. Curiously enough, State has not preferred an appeal against the acquittal of the co-accused for offence under Section 302 or 302/120-B IPC.

61. Consequently, as a matter of abundant caution, we extend the benefit of doubt to the appellant Jatun Begum, by holding that mere recovery of ornament will not complete the chain of circumstances to arrive at conclusion that the

appellant had committed offence of murder. For offence of murder, the presumption u/s. 114(a) of Indian Evidence Act is not attracted. We accept the D.B. Criminal Appeal No. 4/2008 preferred by the appellant Jatun Begum. We set aside the judgment of conviction and order of sentence passed by the trial court qua the appellant Jatun Begum and she is acquitted of all the charges.

The case of Shahid:

62. The appellant Shahid was arrested on 15.12.2005 by arrest and personal search memo (Exhibit-P/60). The arrest of this accused was effected from Central Jail, Jaipur in presence of Constable, Kailash Chand (P.W.22) and Constable, Virendra Kumar. The appellant Shahid had suffered disclosure statement Exhibit-P/120, wherein he stated that he kept concealed one piece of gold bangle and one piece of gold Patala in the house of his father-in-law, Badrudeen. In pursuance of this disclosure statement, vide recovery memo Exhibit-P/121, this witness in the presence of Raju Gupta (P.W.36) got recovered the above said articles. These articles have not been identified by any witness, as the one which were taken away by the accused from the place of occurrence, or as the one which belonged to the deceased, Radha Devi. It is incumbent for the prosecution to prove that the articles allegedly recovered from the appellant Shahid were taken away by the accused while they had committed dacoity. To us, mere recovery of a piece of gold bangle and piece of gold Patala is not sufficient to sustain the conviction of the appellant for the offence under Section 302/120-B IPC. To us, the evidence gathered by the prosecution and proved before the trial court is highly insufficient to uphold life imprisonment qua the appellant, Shahid. As held qua co-accused Jatun Begum, mere recovery of ornament will not complete the chain of circumstances to arrive at conclusion that the appellant was part of conspiracy to commit murder.

63. Consequently, as a matter of abundant caution, we extend the benefit of doubt to the appellant Shahid and we accept the appeal [D.B. Criminal Appeal No. 179/2009] preferred by the appellant, Shahid and we set aside the judgment of conviction and order of sentence passed by the trial court qua the appellant Shahid and he is acquitted of all the charges.

The case of Deen Mohammad @ Deenu:

64. Deen Mohammad @ Deenu was arrested on 6.12.2004 by arrest memo Exhibit-P/50. This accused had suffered disclosure statement on 9.12.2004 vide Exhibit-P/58, wherein he stated that he kept concealed one piece of gold Patala in the house of his father-in-law, Gaffar, at Nitherrao Ji Ka Rast, Chauthey Chauraha. The piece of Patala so recovered was identified by Mahesh Patodiya (P.W.5) before Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur. This fact was noticed in identification proceedings Exhibit-P/11. It is to be noted that Deen Mohammad @ Deenu was not identified by Khushboo (P.W.14) in Test Identification Parade carried by Kamal Prakash Saxena (P.W.30), who was then posted as Additional Chief Judicial Magistrate No. 5, Jaipur City. Thus, the

prosecution has also secured conviction of Deen Mohammad @ Deenu only because of recovery of one piece of gold Patala from him.

65. It is to be noted that one piece of gold Patala, which is an ornament like bracelet, has been shared by many accused. We find it difficult that one gold Patala was broken and was divided among three accused, namely Deen Mohammad @ Deenu, Umardaraj and Shahid. Since there is no evidence except recovery of one piece of gold Patala from Deen @ Mohammad @ Deenu, we are of the view that this alone piece of evidence is not sufficient to sustain the conviction of appellant Deen Mohammad @ Deenu, for offence of dacoity read with Section 120-B IPC.

66. Consequently, as a matter of abundant caution, we extend the benefit of doubt to the appellant Deen Mohammad @ Deenu and we accept the appeal [D.B. Criminal Appeal No. 1083/2009] preferred by the appellant, Deen Mohammad @ Deenu and we set aside the judgment of conviction and order of sentence passed by the trial court qua the appellant Deen Mohammad @ Deenu and he is acquitted of all the charges.

The case of Umardaraj:

67. The appellant, Umardaraj, was arrested on 23.12.2004, by personal search and arrest memo Exhibit-P/36. It is the case of the prosecution that this appellant suffered disclosure statement Exhibit-P/117 and stated that he kept concealed in his house, one piece of gold Patala. The said piece of gold Patala was recovered vide recovery memo Exhibit-P/47 and was identified by Mahesh Patodiya (P.W.5) vide identification proceedings Exhibit-P/15 conducted by Meghna Jain (P.W.31) Judicial Magistrate No. 22, Jaipur. Merely because a piece of gold Patala was recovered from the appellant, Umardaraj, and same was identified by witness Mahesh Patodiya (P.W.5) in identification proceedings, we hold that this is not sufficient piece of evidence to sustain conviction of this appellant for offence of dacoity read with Section 120-B IPC.

68. For the reasons stated for acquittal of Shahid, Jatun Begum and Deen Mohammad @ Deenu and as a matter of abundant caution, we also extend the benefit of doubt to the appellant Umardaraj and we accept the appeal [D.B. Criminal Appeal No. 136/2009] filed by him and set aside the judgment of conviction and order of sentence qua the appellant Umardaraj. He is acquitted of all the charges.

The case of Ashraf:

69. The appellant, Ashraf was arrested on 6.12.2004 vide arrest memo Exhibit-P/51. He suffered disclosure statement Exhibit-P/57 and stated that he can get recovered a broken piece of gold bangle from his house. In pursuance of disclosure statement Exhibit-P/57, vide seizure and recovery memo Exhibit-P/26, a piece of gold bangle was recovered on 8.12.2004 from the house of appellant Ashraf. This was duly identified by Mahesh Patodiya (P.W.5) before Meghna Jain

(P.W.31), Judicial Magistrate No. 22, Jaipur vide identification proceedings memo Exhibit-P/14.

70. It is to be noted that Khushboo (P.W.14) has not identified the appellant, Ashraf during the Test Identification Parade. For the reasons stated against other co-accused for whom we have already recorded acquittal, we are of the view that recovery of piece of gold broken bangle is not sufficient to sustain the conviction of the appellant, Ashraf.

71. Consequently, as a matter of abundant caution, we extend the benefit of doubt to the appellant Ashraf and we accept the appeal [D.B. Criminal Appeal No. 1740/2007] preferred by the appellant, Ashraf and we set aside the judgment of conviction and order of sentence passed by the trial court qua the appellant Ashraf and he is acquitted of all the charges.

The case of Shahzad, Rashid @ Babu and Salim @ Kadir:

72. The appellant, Shahzad was arrested on 25.12.2004 vide arrest memo Exhibit-P/37 from Central Jail, Jaipur. He suffered disclosure statement Exhibit-P/119 and got recovered one pair of Paijab, one silver Kada, three silver coins and one silver Katori vide seizure and recovery memo Exhibit-P/29. Except silver Kada, all other articles recovered from Shahzad were duly identified by Mahesh Patodiya (P.W.5) before Meghna Jain (P.W.31), Judicial Magistrate No. 22, Jaipur.

73. Khushboo (P.W.14) in the Test Identification Parade carried vide Exhibit-P/41 by Ranjan Singh (P.W.28), Judicial Magistrate No. 11, Jaipur City, had identified this accused as the one, who had trespassed into the house and had committed the offence. Though, Khushboo (P.W.14) in the court had stated that she is not able to identify the present appellant, Shahzad, we cannot become oblivious of the fact that Ranjan Singh (P.W.28), Judicial Magistrate No. 11, Jaipur City, in his deposition stated that Khushboo (P.W.14) had identified the present appellant during the Test Identification Parade.

74. The appellant Rashid @ Babu, was arrested on 25.12.2004 vide arrest memo Exhibit-P/38 from Central Jail, Jaipur. One Paijab, two silver kadas, one bangle and a pair of gold ear-tops were recovered from the appellant, Rashid @ Babu, vide memo Exhibit-P/30. As per identification proceedings of ornaments Exhibit-P/10, Mahesh Patodiya (P.W.5) had identified the articles recovered from the appellant Rashid @ Babu as the one which belonged to his wife, Radha Devi. Furthermore, on 3.1.2005, Khushboo (P.W.14) in presence of Ranjan Singh (P.W.28), Judicial Magistrate No. 11, Jaipur City, as per memo Exhibit-P/40, had identified the appellant as the one, who had trespassed into the house and had committed offence. Above all, one circumstance which bind the appellant, Rashid @ Babu as the assailant is the report Exhibit-P/105, submitted by Finger-Print Expert Sharwan Singh (P.W.23). This witness had stated that he had picked up finger-prints from left door of almirah and from locker of the almirah. This witness stated that one finger-print lifted from the almirah tallied with right middle finger of appellant Rashid @ Babu.

75. Furthermore, from the appellant, Rashid @ Babu, one silk shirt and black pant were also recovered. Both these clothes belonged to Mahesh Patodiya (P.W.5). These clothes were worn by the accused on the day of occurrence immediately after occurrence. As per report of FSL, pant and shirt recovered from the appellant Rashid @ Babu, contained human blood of Group-A. Same human blood Group-A was found on the blouse and bra of the deceased, Radha Devi. Thus, not only the finger-prints lifted from the spot tallied with the finger-prints of the accused, but the clothes which he changed at the spot belonging to Mahesh Patodiya (P.W.5), which were recovered in pursuance of disclosure statement made by the accused also contained same human blood group, which was on the clothes of the deceased, Radha Devi.

76. So far, the appellant Salim @ Kadir is concerned, he was arrested on 6.12.2004 vide arrest memo Exhibit-P/49. He had an injury on his hand. As per his disclosure statement, he had wiped blood from this injury by picking a towel from the place of occurrence. This accused has also changed clothes and had worn pant and shirt of the husband of the deceased. This fact is evident from the disclosure statement Exhibit-P/56. The appellant, Salim @ Kadir was duly identified by Khushboo (P.W.14) before Kamal Prakash Saxena (P.W.30), Additional Chief Judicial Magistrate No. 5, Jaipur City, Jaipur. The identification proceedings have been noticed in Exhibit-P/136.

77. Furthermore, as per Sharwan Singh (P.W.23), Finger-Print Expert, as per report Exhibit-P/105, finger-print of right ring finger of the appellant, Salim @ Kadir tallied with the finger-print lifted from the spot. Similarly, pant and shirt belonging to Mahesh Patodiya (P.W.5), which the appellant had worn at the spot, were recovered in pursuance of disclosure statement made by him, clothes contained human blood Group of "A" origin, which was also found on the blouse and bra of the deceased, Radha Devi.

78. Thus, taking into consideration circumstances that the finger-prints lifted from the spot tallied with the ring finger of the accused's right hand and bangle recovered from him was identified in identification proceedings by Mahesh Patodiya (P.W.5) and furthermore, he was identified by eyewitness, Khushboo (P.W.14) before Kamal Prakash Saxena (P.W.30), Additional Chief Judicial Magistrate No. 5, Jaipur City, Jaipur, vide memo Exhibit-P/136, and the clothes contained the same blood group, which is of deceased Radha Devi, we are of the view that there is no escape route for the appellant, Salim @ Kadir.

79. For the reasons stated above, we are of the view that the prosecution has succeeded to prove the participation of the appellants, Shahzad, Rashid @ Babu, and Salim @ Kadir, as the one, who committed dacoity with unknown co-accused. Thus, the evidence prove guilt of the three appellants, namely Shahzad, Rashid @ Babu, and Salim @ Kadir.

80. Consequently, we find no merit in their appeals (D.B. Criminal Appeal Nos. 179/2009 qua appellant Shahzad and 468/2009 and 329/2011) and the same

are, hereby, dismissed by upholding conviction and sentence awarded to appellants, Shahzad, Rashid @ Babu and Salim @ Kadir, by the trial court.

81. As a parting note, we record our anguish that for murder of Radha Devi, an innocent house wife, who was murdered by the accused for their greed, the trial court has not recorded the conviction of these three appellants for the offence of murder or has not awarded life imprisonment to them.

82. Equally, there is no explanation coming forward as to why State of Rajasthan has not preferred any appeal against the acquittal or appeal for enhancement, especially, when State of Rajasthan, miss no opportunity to file appeal against the acquittal, even in those cases, where the prosecution cases are hopelessly bad. Considering the occurrence had taken place eleven years ago, we allow things to rest as they are qua the appellants, Shahzad, Rashid @ Babu, and Salim @ Kadir.

83. Offence of dacoity is completely made out against the appellants, Shahzad, Rashid @ Babu, and Salim @ Kadir, as we have held that these three appellants along with other unknown co-accused, which were more than two in number, had committed offence.

84. As a result of above discussion, we dismiss D.B. Criminal Appeal No. 179/2009 qua Shahzad, D.B. Criminal Appeal No. 468/2009 preferred by Rashid @ Babu and D.B. Criminal Appeal No. 329/2011 instituted by Salim @ Kadir.