

(2017) 02 RAJ CK 0021
In the Rajasthan High Court
Case No : 23 of 2014

Kalu Ram Gurjar S/o Shri Omkar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374\(2\)](#), [Section 437A](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Cod](#)

Citation : (2017) 02 RAJ CK 0021

Hon'ble Judges : Ajay Rastogi, Dinesh Chandra Somani

Bench : DIVISION BENCH

Advocate : Ravi Kasliwal, Praveen Jain, N.S. Shekhawat

Judgement

1. This criminal appeal has been filed under Section 374(2) of Cr.P.C. against the judgment of conviction and order of sentence dated 13-12-2013 passed by the learned Additional Sessions Judge No. 4, Ajmer in Sessions Case No. 81/2012, whereby the accused-appellants have been convicted under Section 302 of IPC and have been sentenced for life imprisonment with fine of Rs. 1,000/- each and in default of payment of fine to further undergo one month's simple imprisonment.
2. Prosecution story in brief is that on 06-11-2011, Gopi Singh Rawat (PW-3), former Sarpanch of Tilora informed by telephone to SHO, Pushkar that a dead body pool in blood, is lying on the Kachcha way from Tilora to Dev Nagar. Then SHO, Pushkar rushed

to the spot, where Gopi Singh submitted a written report Ex.P-4 to him stating therein that today on 06-11-2011 at 7.30 AM, he was going to his field from his village. On the way, he saw a dead body of a young man, near the bank of the river, which was pool in blood and there were scars caused by sharp edged weapon on his face. Thereafter, he informed to Police Station by telephone. Many people assembled on the spot, who told that the dead body is of Laxman S/o Ramchandra R/o Dev Nagar. Possibly unknown culprits have committed murder of Laxman. Report is submitted for legal action.

3. On basis of above written report, FIR No. 182/2011 was registered at Police Station, Pushkar District Ajmer for offence under Section 302 of IPC and investigation commenced.

After completion of investigation, the police filed charge-sheet against accused-appellants for offence under Section 302, 34 of IPC in the Court of Judicial Magistrate, Pushkar District

Ajmer, from where the case was committed to the Court of Sessions Judge, Ajmer and thereafter, the case was transferred to

the Court of Additional Sessions Judge No. 4, Ajmer.

4. Learned trial court framed charges for offence under Section 302 in alternative 302/34 of IPC against the accused-appellants brought before it for trial. Charges were read over and explained to the accused-appellants, who pleaded not guilty and sought to be tried.

5. In order to support it's case, the prosecution examined 26 witnesses and exhibited 75 documents. Thereafter, learned trial court put oral evidence of the prosecution witnesses and documentary evidence produced by the prosecution to the accused-appellants under Section 313 of Cr.P.C. In reply to the prosecution evidence, the accused-appellants stated that they did

not give any information to the police and their signatures were obtained under intimidation. It is also stated that culprit may be Om, who gave false evidence under directions of Investigation Officer. It is further stated that they are innocent and have been falsely implicated, no recovery was made at their instance and they did not confirm the scene of occurrence. In defence, they did not produce any witness and the appellants got exhibited statements of four witnesses recorded by the police. After completion of trial, the learned trial court convicted the accused-appellants for the offence under Section 302 of IPC and sentenced them as indicated hereinabove.

6. Being aggrieved with the judgment of conviction and order of sentence awarded to the accused-appellants, they preferred the present appeal before this court against the judgment of learned trial court dated 13-12-2013.

7. Mr. Ravi Kasliwal, learned counsel for the accused-appellants submitted that the entire prosecution case is based on circumstantial evidence. The prosecution found three circumstances against the accused-appellants in connection with the crime, which are:-

1. Last seen with the deceased;
2. Recovery of blood stained shirts of the appellants; and
3. Recovery of axe and motorcycle from the appellant Kalu Ram and driving licence of the deceased from the appellant Suraj Nath.

8. Learned counsel also submitted that the prosecution could not prove any circumstance against the appellants, even then the learned trial court convicted and sentenced the appellants in an arbitrary manner. Learned counsel also submitted that the prosecution has come out with a case that the appellants have been last seen in the company of the deceased at about 9-10 PM

on 05-11-2011, but the prosecution could not prove the fact that from 10:00 PM till 7:00 AM next day, when dead body was found, the appellants remained in the company of the deceased, as such the prosecution has failed to prove the fact that the accused-appellants are the only person who committed the murder. Learned counsel also submitted that it was duty of the prosecution to prove that in close proximity of time of the death, the deceased was in the company of the appellants. Learned counsel for the appellants further submitted that the investigation of the case was not fair and the appellants have been implicated by the Investigation Officer with ulterior motive.

9. Learned counsel for the appellants also submitted that the second circumstance taken into consideration by the learned trial court is recovery of blood stained shirts from the appellants. The prosecution could not prove the fact that the blood group of the deceased matched with the blood found on the clothes of the accused-appellants, therefore, no reliance can be placed on such circumstance. Learned counsel also submitted that the motorcycle which has been recovered from the accused-appellant Kalu Ram is such a vehicle which is widely available and is being used by lacs of people in the country, therefore, matching of moulds taken from the place of occurrence with the tyre of the motorcycle recovered from the appellant Kalu Ram, is of no consequence, as such, no reliance can be placed on such circumstance.

10. Learned counsel for the appellants further submitted that the prosecution has failed to prove the motive in the present case. The Investigation Officer has recovered driving licence of the deceased from the appellant Suraj Nath. There was no occasion for the appellant Suraj Nath for keeping the driving licence of the deceased with him after committing the murder. The Investigation

Agency has not collected the evidence but created evidences to show their investigation as successful.

11. Learned counsel for the appellants further submitted that the learned trial court has committed error while convicting the appellants on the testimony of interested witnesses. There are material contradictions in the statements of the prosecution witnesses, as such, no reliance can be placed on such statements, therefore, the conviction is against the criminal jurisprudence and prayed to accept the appeal, setting aside the impugned judgment of conviction and order of sentence and to acquit the appellants for the charges levelled against them.

12. Per contra, Mr. N.S. Shekhawat, learned Public Prosecutor has supported the impugned judgment and submitted that the learned trial court has rightly convicted the accused-appellants on the basis of cogent and reliable evidence, which prove their guilt beyond reasonable doubt. Learned Public Prosecutor also contended that the accused-appellants can be convicted only on last seen theory because the time gap between the point of time when the appellants and the deceased were seen last alive and when the deceased Laxman was found dead, is so small that possibility of any person other than the accused persons, being the author of the crime, become impossible. The prosecution has proved the offence against the accused-appellants beyond reasonable doubt and prayed to dismiss the appeal being devoid of substance.

13. We have given our anxious considerations to the rival submissions of learned counsel for the accused-appellants and learned Public Prosecutor for the State and perused the material on record.

14. Dinesh Kumar (PW-26) the then SHO, Pushkar has stated

that he received an information on 06-11-2011 at 7:35 AM on telephone from Gopi Singh Rawat, former Sarpanch of Tilora, that a dead body of a young man is lying on the way from Tilora to Dev Nagar. On receiving the information, he rushed to the place of occurrence with police force and photographer, where Gopi Singh Rawat (PW-3) met him. On right side of the way from Tilora to

Dev Nagar, he saw a dead body of a young man and there were scars on the body of the deceased. Gopi Singh (PW-3) submitted a written report Ex.P-4, whereupon he made his endorsement and sent the same to the Police Station for registration of case. The investigation was handed over to him. He prepared memo of condition of place of occurrence and dead body Ex.P-1 and took the dead body to the hospital. He prepared Panchayatnama Ex.P-2 and thereafter, gave a letter for post mortem of the deceased.

15. Gopi Singh (PW-3) the complainant has stated that on 06-11-2011 at about 7:00-7:30 AM, while he was going to his field, on the way from Tilora to Dev Nagar, he saw a dead body near the bank of the river which was pool in blood and there were scars on his face and head. Age of the deceased appears to be about 22-25 years. Police came there. On the spot, there were marks of tyre of a motorcycle. Blood and hair were lying there. Many people assembled, who told that it was the dead body of Laxman Gurjar of Dev Nagar. He submitted a written report Ex.P-4 which is signed by him. Thereafter, the police took the dead body to the hospital. The witness proved his signatures on written report Ex.P-4, Panchayatnama of dead body Ex.P-2, site plan Ex.P-5 and memo of condition of place of occurrence and dead body Ex.P-1.

16. Pooran Singh (PW-1) has stated that on 06-11-2011, after hearing buzz, he went to the spot, which is lying on the way from Tilora to Dev Nagar. He saw a dead body lying near the road.

There were scars caused by sharp edged weapon on face and head of the dead body. Police prepared memo Ex.P-1. The witness proved his signatures on the memo Ex.P-1.

17. Mohan (PW-2) gave evidence regarding Panchayatnama Ex.P-2 and memo of handing over dead body Ex.P-3 and proved his signatures thereon.

18. Bhagchand (PW-5), who is brother of the deceased Laxman, has stated that on receiving information about the death of his brother Laxman, he went to the hospital and he saw scars caused by sharp edged weapon on the head and near neck of his brother Laxman. The witness proved his signatures on Panchayatnama Ex.P-2 and memo of handing over dead body Ex.P-3.

19. Dr. Bhagwati Prasad Sharma (PW-13) performed autopsy on the corpse of the deceased Laxman on 06-11-2011 in Government Hospital, Pushkar as member of Medical Board and prepared post-mortem report Ex.P-17.

20. From conjoint reading of statement of Dr. Bhagwati Prasad Sharma (PW-13), post-mortem report (Ex.P-17), memo of condition of place of occurrence and inspection of dead body Ex.P-1 and Panchayatnama Ex.P-2, it reveals that on examination of dead body of Laxman, Dr. Bhagwati Prasad Sharma (PW-13) and other members of Medical Board found multiple incised wound approximately 25 to 30 in No., of size 10cm X 4cm X bone & muscle deep all over skull, face and neck at places and varying 2cm X 1cm X muscle and bone deep. Wounds were involving most of the part of Lt. half of face & Rt. half of the face. The articulators of Lt. ear and Rt. eye completely destroyed. Injuries were involving Rt. half of neck & Lt. half neck also. Injuries present on Lt. parietal & Lt. temporal & occipital region. Bony injury present at Lt. chin & part of mandible. All above injuries were ante-

mortem in nature. In the opinion of members of the Medical Board, the cause of death was haemorrhagic shock brought about as a result of combined effect of multiple ante-mortem injuries to skull, face & neck as mentioned in the post-mortem report and are sufficient to cause death in ordinary course of nature. The autopsy was performed on 06-11-2011 at 11:00 AM. In opinion of members of the Medical Board, the death took place 4 to 12 hours prior to post-mortem examination. Therefore, it is proved that it is a homicidal death.

21. The case of prosecution is based on following circumstances:-

A. Motive;

B. Recovery of blood stained shirts of the appellants;

C. Recovery of axe and motorcycle from the appellant Kalu Ram and Driving Licence of the deceased from the appellant Suraj Nath; and

D. Last seen with the deceased.

A. Motive:-

22. The prosecution has come out with two motives. One is, money transaction between the deceased and accused-appellants Mukesh & Suraj Nath. Second is, that the accused-appellant Kalu Ram doubted that the deceased was responsible for murder of his brother. In this respect, Bhagchand (PW-5) who is brother of the deceased Laxman, has stated that Suraj Nath, Mukesh & Kalu had money transactions with Laxman (the deceased). He also stated that Kalu doubted that the deceased was responsible for murder of his brother Gajraj. In cross-examination, the witness admitted that there is no document on record regarding money transactions between Laxman (the deceased) and Suraj Nath (the appellant). The witness also admitted that he did not give any document to the police regarding money transactions between Laxman and

Mukesh (the accused).

23. Jagdish (PW-18) has corroborated the evidence given by Bhagchand (PW-5). In cross-examination, the witness stated that there was no enmity between Laxman and Kalu (the appellant). The witness also admitted that he never saw any document showing that Mukesh borrowed money from Laxman. He also stated that Laxman never told him that Mukesh borrowed money from him. The witness also admitted that he has no certificate or document to show that Mukesh is debtor of Laxman. The witness also admitted that there was friendship between Laxman and Mukesh.

24. In cross-examination, Investigation Officer Dinesh Kumar (PW-26) has stated that Kalu Gurjar doubted that the deceased Laxman Gurjar is responsible for murder of his brother and therefore, Kalu was having enmity with Laxman, in his heart. The witness also admitted that no such fact came in investigation indicating that Laxman was carrying business of money lending but it has come in investigation that he lent money to the accused Kalu.

25. From analyzing the above evidence, it is nowhere proved that any money transaction took place between deceased, Laxman and the accused-appellants. Further, there is not even a tangible evidence placed by the prosecution to prove that the deceased Laxman was involved in the murder of appellant Kalu's brother. Resultantly, the prosecution has failed to prove the motive in support of its case.

B. Recovery of blood stained shirts of the appellants:-

26. The accused-appellants were arrested on 07-11-2011, which fact is not disputed by the accused-appellants also. According to the prosecution, on 12-11-2011, accused-appellant Kalu Ram gave

an information Ex.P-62 under Section 27 of the Evidence Act, with regard to the shirt which he was wearing at the time of the incident, and in consequence of the information, police recovered a blood stained shirt from his house and seized vide Ex.P-23. A site plan of place of recovery of shirt Ex.P-25 was also prepared.

27. Similarly, on 13-11-2011, the accused-appellant Mukesh gave an information Ex.P-64 under Section 27 of the Evidence Act, with regard to the shirt, which he was wearing at the time of the incident. In consequence of the information, the police seized a blood stained shirt of the appellant Mukesh from his house vide Ex.P-12. Site plan of place of recovery of shirt Ex.P-13, was also prepared.

28. Similarly, on 13-11-2011, the accused-appellant Suraj Nath gave an information Ex.P-65 under Section 27 of the Evidence Act, with regard to the shirt, which he was wearing at the time of the incident. In consequence of the information, the police seized a blood stained shirt of Suraj Nath from his house vide Ex.P18A and site plan of place of recovery of shirt Ex.P-20 was also prepared.

29. From above evidence, it is proved that the accused-appellants were arrested on 07-11-2011. After arrest, the police seized shirts of the accused-appellants from their respective houses and were sealed at the place of recovery. This fact has not been disputed by the accused-appellants also, though they said that they did not give any information to the police and their signatures on memos of the alleged informations, were obtained under intimidation.

30. According to the prosecution, seized shirts of the accused-appellants, clothes of the deceased, samples of blood stained and control soil lifted from the place of occurrence, axe seized from the house of the accused-Kalu were sent to Forensic Science

Laboratory (FSL) vide Ex.P-31 for examination and to give opinion that whether the blood found on articles is of human being and if so, of which group? Prosecution has marked the report of Forensic Science Laboratory (FSL) as Ex.P-75. According to FSL report Ex.P-75, origin of blood found on the articles is of human being but the blood grouping is inconclusive on all articles, except on Article-P which is the shirt of accused Suraj Nath. According to Ex.P-75, origin of blood found on the shirt of the accused-appellant Suraj Nath is of human and grouping is "B". Blood stains found on the shirts of the appellants does not lead to any conclusion that the blood stains were those of the accused.

31. It is, therefore, quite possible that the blood stains on the clothes of the accused were his own blood stains and according to FSL report Ex.P-75, grouping of the blood is inconclusive, which was found on the clothes of the deceased, blood smeared soil and stone lifted from the place of occurrence, axe seized from the accused Kalu Ram and shirts of accused Kalu Ram and Mukesh @ Daglu.

32. The prosecution could not prove the fact that the blood group of the deceased, matched with the blood found on the clothes of the accused-appellants. As such, the circumstance of recovery of blood stained shirts from the appellants, cannot be made basis to uphold conviction of the appellants.

C. Recovery of axe, motorcycle and driving licence of the deceased:-

(a). Recovery of an-axe from the appellant Kalu Ram:-

According to Investigation Officer Dinesh Kumar (PW-26), he arrested the accused Kalu Ram on 07-11-2011 and during custody, accused Kalu Ram gave him an information Ex.P-58, with regard to the axe. In consequence of the information, he went

with Kalu to his house, where from Kalu got recovered an axe vide Ex.P-21 in presence of the witness and the site plan of place of recovery Ex.P-22 was also prepared. Rampal (PW-15) and Jagdish (PW-18) also gave similar statement with regard to the seizure of an axe from the house of the accused Kalu Ram. As discussed above, the said axe was also sent to Forensic Science Laboratory (FSL) vide letter Ex.P-31 to find out origin and group of the blood, found on the axe, but the blood group is inconclusive.

33. In cross-examination, Om (PW-9) has stated that he has been kept in police station for 7 days and in the police station, two axes have been shown to him in evening on 06-11-2011, which were not blood stained. From such statement of the witness, it transpires that the investigation of the case was not fair, as such no reliance can be placed on this circumstance.

(b). Recovery of Motorcycle from the appellant Kalu Ram:-

34. Investigation Officer, Dinesh Kumar (PW-26) deposed that during police custody, accused Kalu Ram gave him an information on 12-11-2011 vide Ex.P-63, with regard to motorcycle used in commission of the offence. He went with Kalu Ram to his house. Kalu Ram got recovered a motorcycle. He got it's rear wheel separated from the motorcycle, to be sent for examination. He seized motorcycle and it's rear wheel vide seizure memo Ex.P-24 and prepared a site plan of place of recovery.

35. Nathu (PW-16) and Jagdish (PW-18) also gave a similar statement with regard to the seizure of motorcycle and proved their thumb impression and signature respectively, on seizure memo and site plan of place of recovery.

36. According to the prosecution, Investigation Officer found impressions of tyre of motorcycle on the place of occurrence,

therefore, moulds of tyre tread impressions were prepared and sealed on 06-11-2011. Sealed mould and rear wheel of motorcycle with tyre, were sent to Forensic Science Laboratory (FSL) for examination. According to Forensic Science Laboratory report Ex.P-74, tyre tread impression reproduced in the mould is similar to the tyre tread design and dimension of the tyre, sent for examination. It is pertinent to mention that the motorcycle which has been recovered from the appellant Kalu Ram is such a vehicle which is easily available in the market and the same is being used by lacs of people in the country. The circumstance is not supportive to the case of prosecution.

(c). Recovery of driving licence of the deceased from the appellant Suraj Nath:-

37. Investigation Officer, Dinesh Kumar (PW-26) has deposed that during custody, the accused-appellant Suraj Nath gave him an information vide Ex.P-66, with regard to the driving licence of the deceased Laxman. In consequence of the information, he went with the appellant Suraj Nath to his house on 13-11-2011, where Suraj Nath took out a driving licence from a box and produced before him, which was seized vide memo Ex.P-19 and site plan of place of recovery Ex.P-20 was also prepared.

38. Ex.P-19 is a seizure memo of coloured photostate copy of driving licence of the deceased Laxman Gurjar. The prosecution did not explain as to how the copy of driving licence of the deceased came to the appellant Suraj Nath.

39. It is pertinent to mention that on making search of the body of the deceased, a pocket diary was recovered from the pocket of pant of the deceased and was seized vide Ex.P-11 on 06-11-2011. Name of the deceased was written on first page of the diary. This circumstance shows that the appellant Suraj Nath did not take out

copy of the driving licence, from the pocket of the deceased with intention to hide the identity of the deceased. Therefore, there is no occasion for the appellant Suraj Nath for keeping the copy of driving licence of the deceased with him after committing the crime as alleged. As such no reliance can be placed on this circumstance.

D. Last seen with the deceased:-

40. The prosecution has come out with the case that the deceased Laxman was last seen alive in the company of the accused-appellants on 05-11-2011 at about 10:00 PM on the way from Bansli to Dev Nagar, and on the next day at about 7:30 AM, his dead body pool in blood was found near the Kachcha way from Tilora to Dev Nagar. To prove this circumstance, the prosecution has examined Bhagchand (PW-5), Sanwara (PW-7), Sunil (PW-8), Om (PW-9) and Jagdish (PW-18).

41. Bhagchand (PW-5) is real brother of the deceased Laxman, who deposed that in morning on 06-11-2011, wife of his younger brother Laxman came to him and said that in night, Laxman did not return to home. Thereafter, he searched him in the village. After some time, he received a phone call from Sarpanch of Tilora, who said that dead body of his brother Laxman is lying on Tiraha (three way) and which has been taken to hospital. Thus, he went to the hospital. The witness also deposed that during funeral of the deceased, Sunil (PW-8) told him that between 7:00 to 9:00 PM on 05-11-2011, Laxman, Om Prakash, Kalu, Suraj Nath, Mukesh and Om Rawat were consuming liquor near the water tank. Thereafter, Kishan Singh also told him that Laxman, Mukesh and Suraj Nath came for liquor at about 9-9:30 PM. The witness Bhagchand (PW-5) did not see the deceased Laxman in the company of the accused-appellants on 05-11-2011 and he gave

only hearsay evidence, therefore, he is only a hearsay witness.

42. Sanwara (PW-7) did not support the prosecution case and was declared hostile.

43. Sunil (PW-8) is a shopkeeper and having his shop near the school and water tank in village Dev Nagar. This witness did not support the prosecution case and turned hostile.

44. Om (PW-9) deposed that he and Laxman (the deceased) went in mela (fair) and returned to their village at about 6:00 PM and were sitting in front of the shop of Sindhi (PW-8 Sunil).

Thereafter, Sanwara (PW-7) came with liquor and they started taking liquor. Meanwhile, Suraj, Kalu and Mukesh came to them on a motorcycle. Laxman demanded outstanding money from Mukesh. Mukesh said that he is not having money. Thereafter, Mukesh took Rs.100/- on credit from Kalu and brought a quarter of liquor. Thereafter, Mukesh, Sanwara, Laxman, Kalu and the witness himself consumed liquor. Thereafter, Kalu left Sanwara (PW-7) to his house and told to the witness, Om (PW-9) to go to home. Kalu also told that we Mukesh, Suraj, Laxman etc. will take liquor more. It was 9:00 PM and then he left the place. In morning of next day at about 7-7:30 AM, he heard about the murder of Laxman. In cross-examination, the witness stated that initially he told to the police that he does not know anything. When police inquired about the case of Kalu, then he admitted. The witness also stated that he has been kept in police station for 7 days because police was suspecting him to be the culprit. Thereafter, he was left, when he became ready to become a witness. The said statement of the witness has not only shaken his credibility but made his conduct doubtful also.

45. Jagdish (PW-18) has deposed that on 05-11-2011 at about 10:00 PM, he last saw Laxman with Kalu, Mukesh and Suraj Nath

on the way from Bansli to Dev Nagar, when the witness was going to his house. All were drunk there. The witness also stated that on 06-11-2011, he heard about murder of Laxman. In cross-examination the witness stated that he was present in funeral of Laxman. He reached to the mortuary at 9:00 AM, where Bhagchand (PW-5) and hundreds of person of the village were present. On that day, he did not tell to Bhagchand or any person of the village about taking liquor by the deceased and accused persons together in foregoing night. In mortuary, he did not tell, even to the police about taking liquor. The witness also admitted that Laxman (the deceased) and Bhagchand (PW-5) are his relatives. The witness also stated that after receiving information of murder of Laxman, he did not tell to his wife or members of his family, about taking liquor by Laxman in night.

46. There is no explanation as to why the witness did not disclose the fact of the deceased Laxman taking liquor in night of 05-11-2011 with the accused-appellants, either to police or to brother of the deceased, Bhagchand (PW-5) or to any person of his village or to his wife and family members, though he received information in morning hours of 06-11-2011 about murder of Laxman and more particularly, when the witness is relative of the deceased Laxman. According to witness, he drives motorcycle at the speed of 40-50 Kmph. The witness also stated that there was no electric pole where the deceased and the accused persons were last seen together and they were consuming liquor.

47. The witness further stated that he did not stop there. It creates doubt on the veracity of the witness that he identified the persons sitting on the road and taking liquor, while he was driving motorcycle in the night at the speed of 40-50 Kmph. The deposition of the witness in cross-examination makes his conduct

doubtful. Therefore, it is not safe to rely on the deposition of Jagdish (PW-18) without further corroboration.

48. In addition to above, it is pertinent to take note of the following circumstances also:-

A. The prosecution has come out with the case that the deceased Laxman was last seen alive in the company of the appellants in the night of 05-11-2011, on the way from Bansli to Dev Nagar, and where they consumed liquor together. But the Investigation Officer did not prepare site plan of that place. According to Om (PW-9), in that night, five quarters of liquor were consumed. If the site plan of the place would have been prepared, where the deceased was last seen alive in the company of the appellants and they consumed five quarters of liquor, this circumstance would have strengthened the case of the prosecution. There is no explanation from the prosecution, as to why the site plan of place of last seen, was not prepared.

B. According to Jagdish (PW-18), axes are oftenly found in every house in the village, similar to the axe which has been recovered in this case. Om (PW-9) stated in cross-examination that he was kept in police station for seven days from the evening of 06-11-2011 and he was shown two axes, which were not blood stained. The appellant Kalu denied having given any information to the police under Section 27 of the Evidence Act with regard to the recovery of axe. The said circumstances if taken together, also creates doubt on fairness of the investigation.

C. The prosecution has examined four witnesses i.e., Sanwara (PW-7), Sunil (PW-8), Om (PW-9) and Jagdish (PW-18) regarding the circumstance of last seen, but there is no

evidence that the appellants or any one of them was having any weapon at that time. The prosecution has not explained as to how, when and from where the axe, alleged to be used in commission of murder of the deceased, came to the appellants.

49. These facts lead to the conclusion that the Investigation Officer did not carry out the investigation thoroughly and there are serious lapses in the investigation, which creates doubt on the fairness of the investigation.

50. The entire prosecution story, revolves around the statement of Om (PW-9) & Jagdish (PW-18) whose statements for the reasons mentioned above are not of sterling worth, therefore, the last seen story purported by Om (PW-9) & Jagdish (PW-18) is not convincing in the ordinary course of nature.

It is necessary that all chains of circumstances must be connected together and speaks only one answer that it is the accused persons only, who are responsible for the incident.

51. Hon"ble the Apex Court in the case of Vijay Shankar vs. State of Haryana reported in (2015) 12 SCC 644 (supra), has also held that a normal principle is that in a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn must be established cogently and firmly; that these circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form the chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and he should be incapable of explanation of any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

52. This is settled law that before a case against an accused resting on circumstantial evidence can be said to be fully established, only when the following conditions are fulfilled:-

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established; (ii) The facts so established should be consistent with the hypothesis of guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and. (v) 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.

53. A critical and holistic analysis of the evidence produced by the prosecution reveals that the prosecution has failed to travel the distance between "may be true" and "must be true".

Although the prosecution has produced certain evidences but the circumstances relied upon by the prosecution have failed to establish by convincing evidence which may connect the accused-appellants with the commission of the crime. Therefore it can be concluded that the prosecution has failed to prove the guilt of the accused-appellants beyond reasonable doubt and therefore, benefit of doubt is to be given to the accused/appellants.

54. In the result, the appeal filed by the accused-appellant Kalu Ram Gurjar, Mukesh @ Daglu Gurjar & Suraj Nath, is allowed. Impugned judgment dated 13-12-2013 passed by Additional Sessions Judge No. 4, Ajmer in Sessions Case No. 81/2012 is set aside. Conviction and sentence of accused-appellants for offence under Section 302 of IPC is also set aside. They are acquitted of the charge levelled against them. They are in Jail and be set at liberty forthwith, if not required to be detained in any other case.

55. Keeping, however, in view the provisions of Section 437-A of the Code of Criminal Procedure, the appellants, namely, Kalu

Ram Gurjar, Mukesh @ Daglu & Suraj Nath are directed to forthwith furnish personal bonds in the sum of Rs. 50,000/- and two surety bonds of Rs. 25,000/- each, before the Deputy Registrar (Judl.) of this Court, which shall be effective for a period of six months, undertaking that in the event of Special Leave Petition being filed against this judgment or on grant of leave, he, on receipt of notice thereof, shall appear before the Supreme Court.