

(2021) 12 RAJ CK 0023

In the Rajasthan High Court

Case No : D.B. Criminal Appeal No. 522 Of 2015, 70 Of 2020

Kishan @ Kishan Lal S/O. Mangla Ram And Others

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 03-12-2021

Acts Referred:

Citation : Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2), 437AEvidence Act, 1872 — Section 27Indian Penal Code, 1860 — Section 34, 302

Hon'ble Judges : Arun Bhansali, J;Anoop Kumar Dhand, J

Bench : Division Bench

Advocate : H.S.S. Kharlia, Deependra Rajpurohit, Kinjal Purohit. B.R. Bishnoi

Final Decision : Allowed

Judgement

Arun Bhansali, J

The accused-appellants have preferred the instant appeals under Section 374(2) Cr.P.C. aggrieved against the judgment dated 30.04.2015 passed by Additional Sessions Judge, Anoopgarh, District - Sriganganagar ('the trial court') in Sessions Case No. 26/2012, whereby appellants - Kishan @ Kishan Lal and Satish have been convicted and sentenced as under:-

OFFENCE U/S

SENTENCE

FINE

IN DEFAULT

302

Life Imprisonment

Rs. 10,000/-

1 Year S.I

Brief facts relevant and essential for disposal of the appeals are as under:-

On 03.08.2012, an FIR No. 433/2012 (Exhibit - 25) was registered at Police Station - Anoopgarh, District - Sriganaganagar on the basis of written report (Exhibit - 10) submitted by Teeja Devi (PW-2); in the written report, she alleged that on 01.08.2012, wallet of her son Rupī @ Rooplal was picked up by Kishan Balmiki s/o. Mangla Ram, Govind s/o. Gopal and Satish s/o. Bugga Ram. On getting information regarding the pick-pocketing by them, in the morning at about 12 O'clock these persons were called and inquired about the wallet. After taking meals at about 4 PM, Rupī @ Rooplal went with Kishan, Govind and Satish on the motorcycle, driven by Kishan Balmiki, they went to her brother Bansilal at Banda Colony, stayed there for some time and went off; her son did not return home in the night and at 8.30 AM in the morning, her nephew Sethi s/o. Bansilal informed her that Rupī's dead body was lying at 79 GB, which was lying in the channel near the road. Then she alongwith her brother Bansilal and her father Nathu Ram and other members of the family went to the site, where Kishan Balmiki, Govind Balmiki and Satish Dhanak had together killed her son Rupī, aged 25 years by inflicting injuries and, therefore, action be taken.

After registration of the FIR, investigation was undertaken by Amarjeet Chawla, SHO, Police Station - Anoopgarh, who went to the site prepared Panchnama of the dead body (Exhibit - P/5), collected evidence from the site i.e. bloodstained soil, piece of broken brick, which appeared to be bloodstained, prepared site map, the dead body was subjected to autopsy by the Medical Board, which issued the postmortem report (Exhibit - 24), statements of witnesses were recorded and pictures from the site were taken. On 09.08.2012, both the accused - Satish and Kishan @ Kishan Lal were arrested vide Exhibit - P/11 and P/12 respectively. Kishan gave information under Section 27 of the Evidence Act and got recovered the motorcycle from his house; on 11.08.2012, Kishan gave information about the place of altercation. On the information of Kishan, wallet was recovered. Kishan & Satish also got recovered brick pieces, which were seized and were sealed.

After concluding investigation, a charge-sheet was filed against the appellants for offence punishable under Section 302 and in the alternative 302/34 IPC.

The trial court framed charges against both the accused-appellants under Section 302 and in the alternative 302/34 IPC.

The accused-appellants pleaded not guilty and claimed trial. The prosecution examined 15 witnesses and exhibited 39 documents to prove its case. The accused-appellants, upon being questioned under Section 313 Cr.P.C. and when confronted with the circumstances appearing against them in the prosecution evidence denied the same, claimed to be innocent and made a prayer for leading defence evidence, but finally no oral evidence was led in defence.

After hearing the arguments advanced by the learned Public Prosecutor and the learned defence counsel and upon appreciating the evidence available on record, the trial court proceeded to convict and sentence the appellants as indicated hereinbefore.

The accused-appellants have preferred the present appeals being aggrieved of the judgment dated 30.04.2015.

Learned counsel for the appellants vehemently contended that the entire prosecution case is false and fabricated. The prosecution has failed to bring home the charges against the accused on the strength of circumstance of last seen as deposed by PW-2 Teeja Devi-complainant and mother of the deceased, PW-8 Phoolwanti and PW-12 Bado Bai, sisters of the deceased, which evidence on their part, cannot be even termed as last seen evidence, inasmuch as, as per the complaint (Exhibit - 10) and statement of PW-2 Teeja Devi, the deceased alongwith the accused, went to the house of his maternal uncle Bansilal and from there, they left, however, PW-1 Bansilal, real maternal uncle of the deceased has turned hostile, the said Bansilal (PW-1) alone could have deposed about last seen as per the prosecution story, in absence thereof, theory of last seen is baseless.

Further submissions were made that the entire story of recovery of weapon of offence i.e. brick pieces at the instance of the accused is wholly cooked up and on its face improbable as from the same place at the instance of accused - Kishan, recovery is shown at 8.30 AM and on the same day, at the instance of Satish at 10 AM, recovery from the same place is shown. Further, the malkhana register (Exhibit - 39A) reveals clear-cut interpolation.

Important witness - Sethi son of Bansilal, who claims to have informed the complainant - Teeja Devi about seeing the dead body, has been withheld. PW-9 Jaspal, who claims to be eye-witness of the altercation between the accused-appellants and the deceased, clearly admitted that he did not know the accused-appellants prior to the incident, however, no test identification parade was held. Further, his conduct in not informing the family of the deceased about the altercation itself creates doubt on veracity of his presence.

With reference to the various exhibited documents prepared by the police and time indicated thereon, learned counsel submitted that apparently the entire story is cooked-up, the documents clearly show that they have been prepared sitting at one place and the accused-appellants have been implicated.

Further submissions were made that the postmortem report (Exhibit - 24) indicates incised wounds and Dr. K.S. Kamra (PW- 11) in his statement indicated that the same were from a sharp edged weapon, however, the allegations and the recovery pertains to pieces of brick, which can only create lacerated wound and not incised wound and, therefore, the allegations are wholly baseless. Qua the recovery made, there are no independent witnesses and that a look at the mechanical report (Exhibit - 15) of the motorcycle indicates that the motorcycle was badly damaged, which indicates that the death probably occurred on account

of some accident.

It was vehemently submitted qua the appellant - Satish that in the complaint (Exhibit -10), it was the specific case that Satish Dhanak s/o. Buggaram went with deceased Rupī, whereas the appellant - Satish is son of Hari Kishan, he has been implicated and there is no explanation whatsoever in this regard as to how instead of Satish Dhanak s/o. Buggaram, the appellant - Satish s/o. Hari Kishan came to be implicated.

Reliance has been placed on *Brijesh Mavi v. State (NCT of Delhi)* : (2012) 7 SCC 45; *Musheer Khan @ Badshah Khan & Anr. v. State of Maharashtra* : AIR 2010 SC 762 and *Mani v. State of Tamil Nadu* : AIR 2008 SC 1021.

On the above grounds, learned counsel for the appellants submitted that the appeals be allowed, the impugned judgment be set aside and the appellants be acquitted from all the charges.

Per contra, learned Public Prosecutor, vehemently opposed the submissions advanced by learned counsel for the appellants and submitted that the prosecution has proved its case as against the appellants by leading cogent and convincing evidence forming a complete unbroken chain of circumstantial evidence.

The witness PW-2 Teeja Devi, PW-8 Phoolwanti and PW-12 Bado Bai, clearly stated that the deceased went with the appellants and PW-9 Jaspal saw the altercation between the appellants and the deceased Rupī. Further, the recovery of brick pieces at the information of the appellants complete the chain of circumstance.

Further submissions were made that no suggestion was given to Dr. K.S. Kamra (PW-11) that the injuries suffered by the deceased were not from brick and that the FSL report (Exhibit - P/38) clearly indicates the Blood Group 'B' of the deceased on the blood smeared soil, bloodstained brick and pieces of brick recovered at the instance of appellants, which clearly proves the case beyond any reasonable doubt.

On these submissions, learned Public Prosecutor sought dismissal of the appeals and affirmation of the impugned judgment.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and carefully re-appreciated the evidence available on record.

Suffice it to say that the case of the prosecution is based purely on circumstantial evidence in the form of last seen and recovery of pieces of broken brick at the instance of appellants.

The prosecution has mainly relied on the last seen theory. PW-2 Teeja Devi, mother of the deceased in her statement indicated that Rupī informed her that he alongwith Kishan, Govind and Satish was going to Banda Colony and when in

the evening Rupī did not returned back, she telephone her brother Bansilal, resident of Banda Colony, he informed her that Rupī alongwith 3 boys has left his place and on the next day, her nephew Sethi s/o. Bansilal informed her that dead body of Rupī was lying at 79 GB and that Satish and Kishan have murdered him.

PW-8 Phoolwanti, sister of the deceased stated that her uncle resides at Banda Colony and that Rupī alongwith Satish and Govind left on motorcycle toward Banda, Rupī did not return home back and on the next day, they telephone her maternal uncle, who informed that Rupī had came to him and 3 boys had also come and that he had left yesterday.

PW-12 Bado Bai, another sister of the deceased, also deposed that in the Banda Colony her maternal uncle resides, all the 4 left on motorcycle and the brother did not return back till night, they kept waiting for him and on the next day morning, son of uncle informed that Rupī has died.

From the above three statements, it is more than apparent that the deceased alongwith three persons left his house for his uncle's house, stayed there and then it is claimed that Rupī left with three of them. The said fact, which is also indicated in the complaint (Exhibit - 10) regarding the deceased going to Banda Colony and from there leaving with three persons including the accused-appellants, clearly signifies that witnesses PW-2, PW-8 and PW-12 in one voice deposed about the deceased victim leaving for Banda Colony, as to from Banda Colony, with whom the deceased left, it is only Bansilal, the maternal uncle of the deceased, who could have deposed so as to complete the chain of events in the three persons leaving with the deceased from his house as its the consistent case that Rupī had left with the accused to his uncle's house and from there they left together.

However, said Bansilal, maternal uncle of the deceased, who was examined as PW-1, was declared hostile, who denied that the documents (Exhibits - P/2, P/3 and P/4) were prepared in his presence, claimed that signatures were taken on blank papers, the police did not take his statements and that Exhibit - P/8, PW-1's statement under Section 161 Cr.P.C. were fake. It is also significant to note that while confronting PW-1 with his statements recorded under Section 161 Cr.P.C., the entire statement was marked from A to B i.e. the witness was apparently not confronted with material portions of the statement.

Hon'ble Supreme Court in *Kanhaiyalal v. State of Rajasthan* : (2014) 4 SCC 715 on the circumstance of last seen, inter alia, laid down as under:-

"12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

Further, in *Nizam & Ors. v. State of Rajasthan* : (2016) 1 SCC 550, again it was

observed as under:-

"14. Undoubtedly, "last seen theory" is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The "last seen theory" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "last seen theory". "Last seen theory" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen."

In view of the above missing link in the evidence of last seen as relied on by the prosecution, it is not safe to rely solely on the last seen.

The other important evidence relied on by the prosecution pertains to the alleged recovery of pieces of broken brick from the appellants.

A perusal of the postmortem report (Exhibit - 24), reveals incised wound on forehead right side 4 cm X 0.5 cm, bone deep, incised wound on forehead near the said injury 3 cm X 0.5 cm, bone deep, incised wound on head left parietal region and the cause of death has been indicated as shock and injury to the most vital part of body - Brain. Dr. K.S. Kamra (PW-11) clearly opined that on the head of the deceased, there was injury from a sharp edged weapon.

The allegation in the present case pertains to the accused-appellants using brick for causing injury to the deceased.

The submission made that only lacerated wound could be caused by a brick and that the same cannot lead to an incised wound, is essentially based on surmises, inasmuch as, the said aspect, was not put to Dr. K.S. Kamra (PW-11) and that the postmortem report clearly indicated that the injury had resulted in fracture in skull and due to injury to the brain, the deceased died, as such the plea, sought to be raised based on the nature of injury and the use of alleged weapon, cannot be accepted.

Coming to most important aspect of the recovery of pieces of broken brick allegedly recovered at the instance of the appellants, used for committing the offence and relied on to complete chain of circumstance, it is important to notice that the dead body was recovered on 03.08.2012 from the site as indicated in the site map (Exhibit - P/9) and in the site description (Exhibit - P/9A), the indication made is that near the dead body, one bloodstained brick was lying, which was recovered.

The claim made is that the recovery of broken piece of brick at the instance of Satish was made on 13.08.2012 i.e. after 10 days from the date of incident, at 10 AM vide Exhibit - 13 and site map (Exhibit - P/21) was prepared, the brick piece was not bloodstained. Surprisingly, same morning on 13.08.2012, at 8.30 AM vide Exhibit - 14 at the instance of Kishan @ Kishan Lal, another broken

piece of brick was recovered from the same place, from where the body was recovered on 03.08.2012 as is evident from comparison of Exhibit - P/9 site map dated 03.08.2012 & site map dated 13.08.2012 (Exhibit - P/20).

It is incomprehensible as to how, when on 03.08.2012, the police had surveyed/ searched the site of incidence, though one brick, which was bloodstained was recovered, the other piece of broken brick, which were lying around the same area only could not be recovered and even when on 13.08.2012 at 8.30 AM, one brick was recovered at the instance of accused - Kishan, the other brick, was recovered at the instance of accused - Satish on the same day at 10 AM. Both the accused were admittedly arrested on 09.08.2012 while Kishan was arrested at 2.05 PM and Satish was arrested at 2.15 PM.

The claim of recovery at the instance of the accused of the broken pieces of brick, the purported weapons of offence on 13.08.2012, is highly doubtful in view of the statement of Kamal Lal Meena (PW-14), Malkhana in-charge and the extract of malkhana register (Exhibit - P/39A). The said witness indicated that on 03.08.2012, he was posted at the Malkhana, on which date, the SHO Amarjeet Chawla handed over 7 packets and motorcycle, which were registered by him at No. 194/711 and on 04.09.2012, the said packets - A, B, C, D, E and F were handed over to one Chhail Singh for FSL examination and he gave back the receipt on 05.09.2012 regarding deposit of the articles with the FSL.

Exhibit - P/39A, indicates the following 7 items from mark-A to mark-G and another entry made at item No.8, as under:-

While in front of item Nos. 1 to 4 in the form, date 03.08.2012 has been indicated, item No.5, date in the form 13.08.2012 as the date of deposit has been indicated and at item No.8 in the form date of 11.08.2012 as the date of deposit has been indicated. The item at No.8 is the motorcycle, which was recovered on 11.08.2012 by Exhibit - P/15.

As such the fact that the purported broken pieces of brick, which are claimed to have been recovered at the instance of the accused-appellants on 13.08.2012 vide Exhibit - P/13 & P/14, from the above documentary evidence becomes highly doubtful, as though the said bricks have been claimed to have been deposited on 13.08.2012, the said entry appears above, the date 11.08.2012 when the motorcycle was recovered vide Exhibit - P/15 & deposited and the statement of Malkhana in-charge (PW-

14) that all the 7 articles were deposited on 03.08.2012, clearly indicates that the said brick pieces, which have purportedly been recovered at the instance of appellants, cannot be connected to them, rather the submissions made by counsel for the appellant that the same were collected from the site from around the dead body and have been planted on the said appellants gains credence. As such the above evidence can't be relied against the appellants.

The reliance place on the statement of PW-9, who is stated to be eye-witness of

the altercation between the deceased and the appellants needs to be examined closely.

The witness Jaspal Singh (PW-9), indicated that he knew Rooplal, whose land was near his land; on 02.08.2012, the land, which is near Banda Colony, which he has given on contract, he went to look after it, when at about 9-9.30 PM, while he was returning back and reached 79 GB, he saw that on side of the road, 3 boys were fighting and a motorcycle was standing nearby and one more boy was standing, when under the light of motorcycle, he looked at them, one was Rupri @ Rooplal and other 2 boys, who were beating him were drunk and miscreants type, the boy standing near the motorcycle, was saying don't beat and after seeing them fighting, he left the place and went to his house. Next day, he came to know that out of 3 boys fighting, one has been murdered, subsequently, he came to know that the deceased was Rupri and after looking at the appellants present in the Court identified them as those who were fighting with Rooplal. In the cross-examination, he admitted that when he saw the boys in the light of motorcycle, he only knew Rupri @ Rooplal and prior to the date of his statement i.e. 01.07.2014, he has not seen the accused.

From the statement of PW-9 Jaspal Singh, it is apparent that he did not know the accused-appellants from before the date of incident i.e. 02.08.2012 and saw them briefly under light of his motorcycle at 9 - 9.30 PM and again saw them after passage of 2½ years on 01.07.2014 in the Court, no identification parade of accused for the said witness, who claimed to be the eye-witness of the altercation was done, which apparently is fatal to case of the prosecution.

In view of the above fact situation regarding the statements of PW-9, having seen the appellants 2½ years back at 9 - 9.30 PM under light of his motorcycle and thereafter identifying them in the Court, the plea, apparently cannot be accepted.

Hon'ble Supreme Court in *Dana Yadav v. State of Bihar* : (2002) 7 SCC 295, inter alia, laid down the importance of test identification parade as under:-

"6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in the Court for the first time, the probative value of such uncorroborated evidence

becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence."

Hon'ble Court has, inter alia laid down that if the witness identifies the accused in the Court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence.

In view of the above, apparently the evidence of PW-9 as a purported eye-witness of altercation between the accused-appellants and the deceased, cannot be relied on.

The non-examination of Sethi, the son of Bansilal (PW-1), who essentially was the first person, who had seen the dead body and informed mother of the deceased regarding the dead body at 79 GB, is also significant, apparently, the said material witness has been withheld by the prosecution.

The Hon'ble Supreme Court in Brijesh Mavi (supra), while dealing with a case of circumstantial evidence, inter alia, observed as under:-

"27. The principles of law governing proof of a criminal charge by circumstantial evidence need hardly any reiteration. From the several decisions of this Court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is the accused and nobody else who had committed the crime. The above principle is deducible from the five propositions laid down by this Court in Sharad Birdhichand Sarda v. State of Maharashtra which principles have been consistently followed in Tanviben Pankajkumar Divetia v. State of Gujarat, Vikram Singh v. State of Punjab, Aftab Ahmad Anasari v. State of Uttaranchal, Sanatan Naskar v. State of W.B. and Mohd. Arif v. State (NCT of Delhi)."

In the case of Nizam (supra), the Hon'ble Supreme Court also dealing with a case of circumstantial evidence, inter alia, observed as under:-

"8. Case of the prosecution is entirely based on the circumstantial evidence. In a case based on circumstantial evidence, 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, forming a chain 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 totally inconsistent with his evidence.

9. The principle of circumstantial evidence has been reiterated by this Court in a plethora of cases. In Bodhraj @ Bodha and Ors. v. State of Jammu & Kashmir MANU/SC/0723/2002 : (2002) 8 SCC 45, wherein this Court quoted number of judgments and held as under:

10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the 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 or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* MANU/SC/0094/1977 : (1977) 2 SCC 99, *Eradu v. State of Hyderabad* MANU/SC/0116/1955 : AIR 1956 SC 316, *Earabhadrapa v. State of Karnataka* MANU/SC/0530/1983 : (1983) 2 SCC 330, *State of U.P. v. Sukhbasi* MANU/SC/0115/1985 : (1985) Suppl. SCC 79, *Balwinder Singh v. State of Punjab* MANU/SC/0160/1986 : (1987) 1 SCC 1 and *Ashok Kumar Chatterjee v. State of M.P.* MANU/SC/0035/1989 : 1989 Suppl. (1) SCC 560) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* MANU/SC/0158/1954 : AIR 1954 SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* MANU/SC/0928/1996 : (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

21. 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.

10. In *Trimukh Maroti Kirkan v. State of Maharashtra* MANU/SC/8543/2006 : (2006) 10 SCC 681, this Court held as under:

12. In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.

The same principles were reiterated in *Sunil Clifford Daniel v. State of Punjab* MANU/SC/0740/2012 : (2012) 11 SCC 205, *Sampath Kumar v. Inspector of Police, Krishnagiri* MANU/ SC/0188/2012 : (2012) 4 SCC 124 and *Mohd. Arif @*

Ashfaq v. State (NCT of Delhi) MANU/SC/0919/2011 : (2011) 13 SCC 621 and a number of other decisions.

In the case of Kanhaiyalal (supra), it was again observed by Hon'ble Supreme Court as under:-

"8.....It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the 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 or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances."

In view of the above discussion, we are of the firm opinion that the evidence lead pertaining to the last seen is apparently incomplete in absence of the statement of PW-1 Bansilal in this regard.

Further, the prosecution theory regarding the recovery of weapon of offence i.e. bricks in furtherance of information provided by the appellants-accused to the investigating officer under Section 27 of the Evidence Act, is totally cooked-up and in such circumstance, cannot be read in evidence against the accused-appellants.

The trial court committed a grave error while appreciating the evidence and recording the findings of guilt against the accused-appellants and convicting them by the impugned judgment, which does not stand to scrutiny.

As a consequence, the instant appeals deserve to be and are hereby allowed. The impugned judgment dated 30.04.2015 passed by learned Additional Sessions Judge, Anoopgarh, District - Sriganganagar in Sessions Case No. 26/2012 is hereby quashed and set aside. The accused-appellants are acquitted of all the charges. They are in custody and shall be released from prison forthwith, if not wanted in any other case.

However, keeping in view the provisions of Section 437-A Cr.P.C., the appellants are directed to furnish a personal bond in the sum of Rs. 40,000/- 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 present judgment, on receipt of notice thereof, the appellants shall appear before the Supreme Court.