

(2018) 03 RAJ CK 0211
In the Rajasthan High Court
Case No : Criminal Appeal No. 238 of 2012
Ladu Lal @APPELLANT@Hash State of Rajasthan

Date of Decision : 16-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 34, 201, 302, 460

Citation : (2018) 03 RAJ CK 0211

Hon'ble Judges : SANGEET LODHA, J; DR. VIRENDRA KUMAR MATHUR, J

Bench : Division Bench

Advocate : Doongar Singh, R.K. Charan, C.S. Ojha

Final Decision : Dismissed

Judgement

Hon'ble Mathur, J

This D.B. Criminal Appeal under Section 374(2) Cr.P.C. has been filed against the judgment of conviction and order of sentence dated 08.02.2012

passed by the learned Additional Sessions Judge, Women Atrocities Cases, Bhilwara in Sessions Case No.33/2010 by which the appellants-accused

were convicted under Sections 302/34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default to further

undergo six months' simple imprisonment. Both the appellants-accused were also convicted for the offence under Section 201 IPC and sentenced

to undergo 7 years' rigorous imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo six months' simple

imprisonment. Both the sentences were ordered to run concurrently.

Briefly stated, appellant-accused Ladulal submitted a written report Ex.P/40 dated 03.03.2010 before the S.H.O., P.S. Bijolia at 1.15 a.m. in the night

and stated that on 02.03.2010 he was sleeping in the drawing room of his house and his son Devendra was also sleeping with him. At about 1.30 a.m.,

when he got up for going to urination, then he found that his room was closed from outside. His wife Aruna was sleeping in a nearby room. He, from

his Mobile No.9982155551, called his wife on her mobile No.9784525211 but she did not respond to his call. Thereafter, he called his brother

Satyanarayan on his Mobile No.9828088484 but he also did not respond. Then he called Shanker Singh Rathore, Diwan, who is posted at P.S. Bijolia.

Thereafter, some people came there and opened his room from outside. Thereafter, all the persons went to the nearby room where his wife was

sleeping and found that she was lying on her bed and sign of injuries was also seen on the left side of the forehead and blood was oozing from her

nose. When they checked her body, it was found that she was dead. The almirah, which was lying near to her body, was found to be opened and Rs.4

lakhs, which were kept in a small beg, was found missing. Some unknown persons caused her death by causing injury on her head etc. and prayed for action.

On this report, Shri Dalpat Singh, SHO, PS Bijolia on spot started investigation by assuming the case under Section 460 IPC and made endorsement

on the report that after reaching the police station, case will be registered and on reaching the police station at about 11.00 a.m., the case was

registered as FIR No.28/2010 under Section 460 IPC. The accused were arrested and recoveries of articles were made and mobile call details were

also obtained. After investigation charge-sheet under Sections 302/34 and 201 IPC was filed. After framing of the charges, the prosecution produced

PW-1 to PW-24 as witnesses and exhibited documents from Ex.P/1 to Ex.P/55.

The appellants-accused were examined under Section 313 Cr.P.C. In their statements, the appellants-accused submitted that they were falsely

implicated.

The appellant-accused Ladulal submitted that he was sleeping in his room, which was closed from outside. He called his wife and also his brother but

they did not respond to his calls. Thereafter, he made call to the police and when some people came to his house with police, then the door was

opened from outside by Satyanarayan. Thereafter, Satyanarayan entered into the room of his wife through window and opened the door from inside

where they found his wife lying dead, and the culprits, after causing murder, stole Rs.4 lakhs.

The appellant-accused Puranmal submitted that Mobile No.9772421229 did not belong to him and no recovery of currency notes and clothes were made from him. He is innocent person.

In defence, statements of DW-1 to DW-3 were recorded and documents Ex.D/1 to Ex.D/3 were exhibited.

After hearing learned Public Prosecutor and defence counsel, the learned trial court passed the judgment of conviction and order of sentence and

convicted the appellants-accused for the offences under Sections 302/34 and 201 IPC and sentenced as aforesaid. Being aggrieved by the judgment

dated 08.02.2012, the appellants-accused have preferred this appeal.

Heard learned counsel for the appellants-accused and the learned Public Prosecutor.

It was contended that the appellant-accused Ladulal was sleeping in his own house in a separate room. His wife Aruna was also sleeping in a

separate room. The room of the appellant-accused Ladulal was bolted from outside. He himself tried to inform his relatives and to the police on phone

and the possibility of any intruder going to Aruna's room and killing her cannot be ruled out. As a matter of fact, there was no motive on the part

of the appellant-accused Ladulal to murder his wife Aruna. He himself attended the cremation of his wife and a report was filed by him. It was also

contended that the recovery of clothes from each of the appellant-accused having a Group of blood is of no relevance to the murder of the

deceased. The possibility of having blood on the clothes of the appellants-accused can be explained that he must have attended the dead body of his

wife. Further there is no evidence that the blood of the accused was not of a Group.

The recovery of Rs.46,000/- from the appellant-accused Puranmal cannot establish the link of murder committed by the accused persons.

There is no evidence to show that this amount was given to appellant-accused Puranmal by the appellant-accused Ladulal. The fact of last seen is

also of no relevance to the murder of the deceased because the appellant-accused Ladulal was living in his house along with his wife. It was further

contended that both the appellants-accused have been convicted under Section 302/34 IPC but nobody has said that both of them were seen

together and that the murder was committed by Puranmal. Legally both of them

cannot be convicted under Section 302/34 IPC. It was contended that there were no finger prints on the Dhowna to establish that who had handled it for committing murder. No accused can be convicted under Section 201 IPC because there was nothing to show that the murder of Aruna was concealed and there is no evidence at all in this connection. The prosecution has failed to prove its case against the appellants-accused beyond reasonable doubt.

The learned Public Prosecutor vehemently opposed the arguments advanced by the learned counsel for the appellants-accused and submitted that the prosecution has successfully proved its case against the appellants-accused beyond reasonable doubt. It was contended that although there is no eye-witness but the circumstantial evidence are so inter-linked that they established the commission of offence by the appellants-accused only and not by any other person. The learned Public Prosecutor argued that the blood stained T-shirt of appellant-accused Ladulal and blood-stained shirt of appellant-accused Puranmal and bloodstained Dhovna were recovered from the appellant-accused Puranmal and the blood-stained pillow-cover of deceased and bedsheet was also recovered and blood group 'O' was found as per the FSL Report Ex.P/49. The money paid to the appellant-accused Puranmal by the appellant-accused Ladulal for committing murder was also recovered. The appellant-accused verified the place of occurrence. The appellant-accused Ladulal was present before the incident, at the time of incident and after the incident and he has raised false defence. From the evidence placed on record, there appears a clear motive for the appellant-accused Ladulal for committing the crime.

We have given our anxious consideration to rival submissions and perused the material on record.

Indisputably, entire case of prosecution is based on circumstantial evidence. It is settled law that for conviction based solely on circumstantial evidence, following triad test must be meted out:

- (i) that the circumstances from which the inference of guilt is sought to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;
- (ii) that the circumstances are of determinative tendency, unerringly pointing towards the guilt of the accused; and

(iii) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

Honâ??ble the Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra*: AIR 1984 SC 1622 held that in a case where there is no eye-witness and the case is based solely on circumstantial evidence then following conditions are required to be fulfilled before the case can be said to be fully established:

- â??1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. 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.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus delicti.â??

In *Ramreddy Rajshekhanna Reddy v. State of Andhra Pradesh*: 2006 (3) Supreme 175, the Apex Court held as under:

- â??26. It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.â??

In *Palvinder Kaur v. State of Punjab*: AIR 1952 SC 354, the Honâ??ble Apex Court held that where there is no direct evidence and the

circumstantial evidence answers the questions, essential to the proof of the offence only vaguely and indefinitely and is not incompatible with the

theory of innocence of the accused, there is no evidence on which the accused can be found guilty.

In *Sarwan Singh v. State of Punjab*: AIR 1957 SC 637, the Apex Court observed:

â??12. It is no doubt a matter of regret that a foul coldblooded and cruel murder like the present should go unpunished. There may also be an element

of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but between 'may be true' and 'must

be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence

before an accused can be convicted.â??

In *Ashish Batham v. State of MP*: (2002) 7 SCC 317, their Lordships of Supreme Court indicated that mere suspicion, however strong it may be,

cannot be take the place of legal proof. It was observed as under:

â??Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of

the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the

question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it

was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to

substantiate the charge of commission of a crime and graver the charge is greater should be the standard of proof required. Courts dealing with

criminal cases at least should constantly remember that there is a long mental distance between `may be true' and `must be true' and this basic and

golden rule only helps to maintain the vital distinction between `conjectures' and `sure conclusions' to be arrived at on the touchstone of a dispassionate

judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence

brought on record.â??

Thus, in the aforesaid backdrop, we have to adjudge as to whether the

circumstances on which the prosecution has relied, are established by clear and cogent evidence beyond reasonable doubt and whether the cumulative effect of the circumstances said to be proved exclude every other hypothesis save the one that the appellants are guilty of the charge.

We have examined entire evidence placed on record as well as documentary evidence. Firstly, we have to see the evidence regarding the recovery of

blood-stained T-shirt from the appellant-accused Ladulal. In this connection, it was submitted by the appellant Ladulal that when the accused was

called in Police Station, at that time, the police took the T-shirt which he was wearing and after two days, the said T-shirt was recovered on the basis

of information from the accused and recovery was shown to be from the house and there were two witnesses of the recovery memo, one is police

personnel and other witness turned hostile before the court. Therefore, the recovery cannot be believed.

From the prosecution evidence, it is evident that the appellant-accused Ladulal was arrested on 03.03.2010 in the night at 9.30 p.m. vide Ex.P/11. On

the next day, i.e. 04.03.2010, the appellant-accused Ladulal gave information vide Ex.P/42 to the Investigating Officer Dalpat Singh and it was stated

that on 02.03.2010, in the night at about 11.00 p.m., he and Puranmal Harijan, caused injury to his wife Aruna by Dhovna, who was sleeping in the

room and the T-shirt, which he was wearing at that time, was kept in a suitcase, which he can get recovered. On this information, on 06.03.2010, in

the morning at about 9.05 a.m., the said T-shirt was recovered vide Ex.P/7 by the Investigating Officer Shri Dalpat Singh (PW-22). Ex.P/7 bears the

signatures of two witnesses, Birbal and Madanlal Suthar. Birbal Banjara was examined as PW-9 and he denied the recovery of T-shirt before him and

he also refused to identify his signature on the map of place of recovery (Ex.P/8). In this connection the signature of Birbal Banjara was compared

with the signature on his statement given before the court and on comparison it was found that Ex.P/7 and Ex.P/8 bear the signature of Birbal Banjara

and his statement that he did not sign Ex.P/7 and Ex.P/8 was found to be false. The other witness Madanlal Suthar was police personnel, who in his

statement stated that on 06.03.2010, S.H.O. Shri Dalpat Singh (PW-22) recovered T-shirt vide Ex.P/7, which bears his signature at place â??Câ?? to

â??Dâ?? and at â??Eâ?? to â??Fâ?? the signature of Ladulal and at the time of

recovery, Birbal Banjara was present. During the recovery of T-shirt, the map Ex.P/8 was prepared, which also bears his signature at the top to the left and at place at the bottom to the right signature of accused Ladulal. This witness identified Article-3 as T-shirt of accused Ladulal. In defence, Ex.D/2 daily newspaper Dainik Bhaskar dated 05.03.2010 was produced and colored photographs are placed on record as Ex.D/1. The learned trial court, after examining the Article-3 by magnifying glass, came to the conclusion that in Ex.D/1 and Ex.D/2, the T-shirt seen to be worn by the accused Ladulal is the T-shirt Article-3. The photograph of accused Ladulal, which was published in the newspaper Dainik Bhaskar on 05.03.2010 and in that photograph the accused Ladulal was seen wearing T-shirt Article-3 and for that reason, the police, after recording his information on 04.03.2010, recovered the T-shirt at his instance on 06.03.2010 vide Ex.P/7 and for that reason, Birbal Banjara has not confirmed the recovery but the defence evidence is placed on record as Ex.D/1 and Ex.D/2, according to which, it is admitted that Article-3 T-shirt was worn by the accused Ladulal. When, as per the photograph Ex.D/2 and Ex.D/1, the T-shirt is Article-3, then there remains no doubt about the Article-3 T-shirt, which was sent for FSL Examination. The Article-3 T-shirt, worn by the accused Ladulal, was recovered by the police and the blood-stained portion was cut from the T-shirt and sent for FSL Examination and Article-3 T-shirt is cut on two places. From the evidence placed on record, Article-3 T-shirt admittedly belongs to accused Ladulal and it was admitted that at the time of arrest, the accused Ladulal was wearing that T-shirt, which was taken by the police at the time of recovery. The accused Ladulal has nowhere denied that Article-3 T-shirt does not belong to him.

The other recovered article is the shirt Article-2, with regard to which it was contended that the accused Puranmal was wearing that shirt at the time of arrest and the police recovered that shirt. After asking the accused Puranmal to open his shirt, he was left in baniyan and was produced in the court in baniyan. In this regard photograph Ex.D/1 and Ex.D/2 were placed on record. In Ex.D/2, in the photograph, the accused Puranmal was seen to be wearing the said shirt. The shirt Article-2 was compared with the photograph placed on record as Ex.D/2 and on comparison, it was found that they do not match. It is also to be noted that in the photographs Ex.D/1 and Ex.D/2,

the accused Puranmal is not wearing any shirt, therefore, it cannot be said that the police personnel have shown false recovery. In respect of recovery of shirt, PW-22 Dalpat Singh stated that the accused Puranmal was arrested vide Ex.P/12, which bears his signature at 'E' and at place 'X' the thumb impression of accused Puranmal. The accused Puranmal gave information on 02.03.2010 that he, along with Ladulal S/o Chaturbhuj Sharma, committed murder of Aruna Sharma, wife of Ladulal. At that time, he was wearing shirt, which he kept in his house in a box which he can get recovered. On his information Ex.P/43, the shirt was recovered from an iron box. The shirt was recovered vide Ex.P/9 and Birbal Banjara PW-9 and Madanlal PW-14 were the witnesses of Ex.P/9 and Ex.P/10. This witness has further stated that accused Puranmal has got recovered the shirt before him and the recovery memo is Ex.P/9 and fard mauka is Ex.P/10. Madanlal and Dalpat Singh were not shown to be having any enmity with accused Puranmal and there is no reason to disbelieve the recovery of Article-2 Shirt, vide Ex.P/9. During the recovery, it is found that accused himself took out the keys of iron box lying under the box itself, opened the box and after opening, took out the shirt and recovered the same. Under these circumstances, there is no effect of the fact that the house from where the recovery was made, was lying open. From the evidence placed on record, the prosecution has been successful to establish the recovery of Article-2 Shirt vide Ex.P/9.

For the recovery of Article-1 blood stained dhovna (wooden bat), PW-1 Chaturbhuh has denied the recovery before but admitted signature on recovery memo Ex.P/1. In cross examination, he has stated that he signed the document when nothing was written on the paper. This witness is the father of accused Ladulal and it is natural that with intention to save his son, he is giving false statement. This witness could not explain as to why he signed the recovery memo when the recovery was not made before him. Similarly, PW-2 Satyanarayan, who is the other witness of recovery memo Ex.P/1, has denied the recovery before him. He is the real brother of the accused Ladulal and it is natural that being the real brother of accused Ladulal, he is making false statement. As per the prosecution story, both these witnesses reached at the scene of occurrence just after the incident which is natural as one of the witness is father-in-law and the other is brother-in-

law of the deceased. Dalpat Singh PW-22, in his statement, stated that from the scene of occurrence, bloodstained Dhovna (wooden bat) was recovered and sealed vide recovery memo Ex.P/1, which bears his signature at place 'E' to 'F' and of accused Ladulal at place 'G' to 'H'. There is no reason to disbelieve the statement of the Investigating Officer. In this particular case, the accused Ladulal himself was the complainant and on his identification, the recovery was made by the police. The accused Ladulal would not have signed the recovery memo if the recovery was not made. From the perusal of Ex.P/21, 26, 27, 31, 33 and 34, which are the colored photographs, it is evident that on the feet side, blood stained Dhovna (wooden bat) was lying on the bed-sheet. The Forensic Science Mobile Unit also examined the scene of occurrence and prepared note Ex.P/29 and colored photo Ex.P/27 and it was observed as under:-

(i) A female dead body was lying in her right turn on a double bed (Photograph No.2 & 3) in a room of the house. It was reported that initially the head of the body was found to be covered with a pillow. MFSU Bhilwara found a bloodstained pillow nearby the dead body.

(ii) Mouth of the victim was found in open condition and her tongue could be seen through her lips (Photograph No.4).

(iii) Grievous injury was observed on the forehead of the victim, near the left eye (Photograph No.4) and pool of blood was found under her head.

(iv) Few bloodstains were found on a refrigerator and in a stone-shelf near the double bed (Photograph No.5, 6 & 7).

(v) A bloodstained wooden bat (Dhovna) was also found on the bed, near the feet of the victim. Some hair, apparently of the victim were found adhering to the bat (Photograph No.8 & 9).

Possibility of using this wooden bat to hit the victim could not be ruled out.

(vi) Clothes and other items were found in well arranged condition in an almirah from which cash money was reportedly stolen (Photograph No.10)

(vii) No indication of forced entry on the main gate of the house, gate of the stairs as well as on the gate of the affected room, was observed

(Photograph No.1 & 2).

The body of the deceased was identified by the accused Ladulal himself. From the panchnama of dead body Ex.P/3 and autopsy report, there is no

doubt about identification of body of wife of accused Ladulal. Hence, from the material placed on record, recovery of Dhovna Article-1 is proved

beyond reasonable doubt.

So far as recovery of bloodstained pillow cover Articles 6 and 7 and bloodstained bed-sheet Article-4 are concerned, in this regard, memo Ex.P/2 was

prepared and Chaturbhuj and Satyanarayan were the witnesses. PW-1 Chaturbhuj and PW-2 Satyanarayan denied the recovery memo but admitted

their signatures. PW-1 Chaturbhuj is the father of accused Ladulal and PW-2 Satyanarayan is the real brother of accused Ladulal and, therefore, they

are making false statements. At the time of preparing Ex.P/2, accused Ladulal was the complainant and at that time, the case was reported to be

under Section 460 IPC and after investigation, accused Ladulal was himself found to be accused and that is the reason, the presence of accused

Ladulal and his signature was there on the memo. Dalpat Singh PW-22 supported the recovery and there is no reason to disbelieve his statement,

although witnesses (PW-1 and PW-2) have turned hostile.

The photographs Ex.P/21, 22, 26 and 31 to 36, were proved by PW-18 Rooplal and PW-17 Dr. Pankaj Purohit. In these colored photographs, blood-

stained Articles 6 and 7 were found. In the recovery memos Ex.P/7 and Ex.P/9, only one witness is police personnel and the other person is Birbal

Banjara, who is an independent witness. PW-19 Mathura Singh has stated that the recovered articles were assigned to FSL in sealed position and

handed over to Surendra Singh. The malkhana register Ex.P/37 was exhibited. Surendra Singh has stated that the recovered articles were taken in

sealed condition. FSL Report was exhibited as Ex.P/18 in which the recovered articles were shown to be received in sealed condition. The other

sealed articles were deposited on 19.03.2010 and no delay was found in depositing the recovered articles before the FSL.

So far as the FSL Report Ex.P/49 is concerned, the Investigating Officer PW-22 Dalpat Singh has stated that the recovered articles were deposited in

a sealed condition. PW-19 Mathura Singh, Malkhana incharge stated that the recovered articles were deposited in malkhana in sealed condition and

copy of malkhana register was exhibited as Ex.P/37 and this witness stated that he gave recovered articles in sealed condition to Surendra Singh for

depositing in FSL. PW-16 Surendra Singh, in his statement, stated that the

sealed articles were taken vide letter Ex.P/16 to the office of the Superintendent of Police, Bhilwara from where forwarding letter Ex.P/17 was prepared and taken to FSL and he deposited the sealed articles and obtained receipt Ex.P/18. Laluram (PW-15), who was posted in the office of the Superintendent of Police, stated that he received the above articles in sealed condition, prepared forwarding letter Ex.P/17. An objection was raised by the appellant that as per Ex.D/3, the recovered articles were handed over to Constable Surendra Singh in sealed condition on 12.03.2010, whereas, in the office of the Superintendent of Police, the sealed articles were received on 18.03.2010. During the period from 12.03.2010 to 18.03.2010, where the sealed articles were kept has not been explained and thus there was deficiency in the sealed articles and, therefore, the office of the Superintendent of Police raised the objections and the real facts were concealed from the court and thus it cannot be denied that on the recovered articles, there was no blood stain and their seal was broken and for this reason the sealed articles were returned back. But, on perusal of the entire evidence, it is found that on memo Ex.D/3, at 'to' to 'from', it is written that 'fnukad 15&3&2010 dks dkaLVscylqjsUnz flag ua-734 dks iSdsV lhy fpV , -ch-lh-, y- ,oa ,e- e; dkxtr ds ,Q-,l-,y- ysvj ugha cuus ls lhy fpV 'kqnk eky okil fnukad 15&3&2010 dks ysdj tek eky[kkuk dj;k x;kA' and, therefore, the objection raised cannot be accepted. The receipt of FSL Ex.P/18 shows that the recovered articles were received in sealed condition. In Ex.P/49, it is stated that the packets five marked A,B,C, L,M enclosed with cloth which are properly sealed bearing impressions which tallied with the specimen seal impression. In Ex.P/49, it is observed that the articles received in Packets marked A, B, C, L and M were found to be stained with human blood of blood-group 'O+'.

So far as recovery of money is concerned, PW-22 Dalpat Singh has stated that Puranmal Harijan was arrested vide memo Ex.P/12. Puranmal, on his own, stated that he along with Ladulal committed murder and Ladulal paid him money out of that he can get recovered Rs.46,000/-, which information was recorded vide memo Ex.P/44. As per the information, Puranmal Harijan got recovered Rs.46,000/- vide recovery memo Ex.P/13, on which he admitted his signature at 'A' to 'F' and the thumb impression of

Puranmal at place â??Xâ??. The recovered amount was sealed. The accused Puranmal stated that the money was paid by Ladulal for helping him in causing murder of Aruna. This witness has identified recovered money Article-7. It was found that the place of house where the recovery was made, was open but wife of the accused was living there. Although ownership document of house of recovery, e.g. registered patta, electricity bill were not taken by the Investigating Officer, but the accused admitted that the house was belonging to him and his wife was residing there. Witness PW13 Hari Singh, in his statement, stated that the accused Puranmal, at his own, got recovered Rs.46,000/- from the house on 07.03.2010 and recovery memo Ex.P/13 was prepared before him and at place â??Câ?? to â??Dâ?? is his signature and thumb impression of Puranmal at place â??Xâ??. The other witness of recovery was PW-14. On scrutiny of evidence, it was found that vide Ex.P/13 recovery of Rs.46,000/- were shown, whereas on counting of the currency notes in Article7 before the court, it was found that Rs.46,145/- was there and there was no mention on the chit Ex.P/52 of excess amount of Rs.145/-, but the papers, which was covered on the packet, was found torn and there was a note of the court in the cross-examination of Dalpat Singh PW-22 and, therefore, the recovery of amount of Rs.46,000/- cannot be doubted on account of increase of Rs.145/-.

So far as verification of place of occurrence by the accused Puranmal vide memo Ex.P/15 is concerned, the investigating officer Dalpat Singh PW-22, in his statement, stated that the accused Puranmal informed that he and his colleague jointly committed murder and he wanted to verify the place of occurrence. His information was taken and recorded as Ex.P/45, which bears his signature at place â??Aâ?? to â??Bâ?? and thumb impression of Puranmal at place â??Xâ??. There are two witnesses of Ex.P/15, viz., PW-13 Hari Singh and PW-11 Arvind Kumar. It has come in the evidence that the house was closed and the key was lying with Satyanarayan, brother of accused Ladulal. He was called and asked to open the house and the Ex.P/13 was prepared. The place, which was shown by Puranmal was the same as was shown in the map Ex.P/5.

So far as the question of presence of accused Ladulal before the incident, at the time of incident and after the incident, his false story is concerned, the accused Puranmal has not raised any story in defence. He kept mum. The

accused Ladulal stated that the room where he was sleeping was closed from outside. Some persons entered in his house and committed murder of his wife and stole Rs.4 lakhs. In defence, the accused Ladulal tried to establish the case as mentioned in Ex.P/40, report. But on perusal of Ex.P/40, it was found that nothing has been mentioned as to whether the room of his wife was closed from inside or window was open nor anything has been mentioned as to whether, in the night, doors and windows at the roof were not closed and remained open and unknown persons entered while breaking open the doors or windows nor the naksha mauka Ex.P/5 supports the contentions of report Ex.P/40. Shanker Singh, the police personnel, was the first person, who reached at the scene of occurrence. He nowhere mentioned that the channel gate at the roof was found broken nor any statement was made by the defence that these doors remained open and were not locked from inside. The accused Ladulal, in his evidence, stated that there is one door and one window in the room where his wife was sleeping. In the naksha mauka Ex.P/5, there is no mention that the window of that room was broken. In the photo Ex.P/3, the window was found to be in order. In these circumstances, the statement of Satyanarayan Prajapat cannot be believed that at the instance of police, he went on the upper side of the house and came inside the house and opened the gate of accused Ladulal. As per the report Ex.P/29, which was prepared by the Forensic Mobile Unit, it was specifically mentioned that there was no sign on the main gate of the house, gate of stairs as well as gate of room of forceful entry. In view of this, the defence story cannot be believed. Generally, if some outside persons enter for committing theft or robbery, then the symptoms of forcible entry is bound to be found at the scene of occurrence. Apart from the colored photographs Ex.P/22, the deceased seem to be wearing gold-chain and in the photograph Ex.P/21, she was seen to be wearing bangles. In the other photographs Ex.,P/26, 31, 32, 33 and 34, jewellery box was seen lying on the bed and the jewellery was also seen lying on the bed. If a thief really enter with the purpose of committing theft, then it is not possible that they only took away the currency notes and left the jewellery. It is also important that in the photographs Ex.P/31 and 32, keys were seen to be hanging in the key-hole of the almirah. Meaning thereby, the almirah was not locked. If the keys were with the deceased and she

was sleeping, then how the thief can know about the place where the keys were kept. The accused Ladulal has stated in his evidence that Dalpat Singh is the person who was involved in the present case and the reasons given by him were not supported by any evidence in this respect in cross-examination. No explanation was given by the accused Ladulal in respect of the evidence found against him.

So far as the report Ex.P/29 of the Forensic Mobile Unit, Bhilwara and related documents Ex.P/30, P/19 and P/28 are concerned, the prosecution

witness PW-17 Dr. Pankaj Purohit, in his statement, stated that on 03.07.2010, he was posted as Junior Scientist and on receiving information from the police control room, he inspected the scene of occurrence and prepared Ex.P/29, as quoted above. In view of the observations made in Ex.P/29 and

the defence evidence, it was argued that when the recoveries as per Ex.P/1 and P/2 were made by the Investigating Officer before 8.00 a.m. on

03.07.2010, then how PW-17 made observations and given details of scene of occurrence as mentioned in Ex.P/29 and thus statement of PW-17 cannot be believed.

On perusal of statement of PW-17, it revealed that no question was put to him that whether he made inspection at 8.00 a.m. or thereafter. There is no

reason to believe that the scene of occurrence was inspected by Dr. Pankaj Purohit PW-17 after 8.00 a.m. The Investigating Officer, PW-22 Dalpat

Singh, in his statement, stated that Forensic Mobile Unit Report was obtained, which is Ex.P/29 and in his cross-examination, nothing has emerged

from which it can be inferred that PW-17 inspected the scene of occurrence after preparation of memo Ex.P/1 and P/2. In Ex.P/29, this fact is

mentioned that Forensic Mobile Unit, Bhilwara inspected the scene of occurrence on 03.03.2010 in the presence of Investigating Officer and nothing

has been mentioned that the site was inspected after 8.00 a.m. In view of this, the plea of defence cannot be believed. The observations made in

Ex.P/29 are fully supported by Ex.P/30 and Ex.P/19 to 28.

So far as motive is concerned, PW-5 Shyam Sunder sharma, in his statement, stated that his sister Aruna told him that Ladulal was having illicit

relations and was generally beating him. It was further stated that her sister also told that Ladulal was sleeping separately in a separate room and she

was also sleeping in a separate room. PW-6 Smt. Ratan Devi also stated that the

accused Ladulal was not having good relations with Arunadeceased.

He was having illicit relations and also used to beat Aruna and Ladulal used to sleep separately in a separate room. Their statements also found

support from the fact that on the day of incident, both husband and wife were sleeping in separate rooms. There is no reason to believe that the

accused Ladulal was having good relations with his wife in view of the fact that as per the statements of PW-5 and PW-6 and the circumstances on

the date of occurrence that they were sleeping separately in separate rooms. PW-22 Dalpat Singh also stated that on inquiry, Ladulal, after changing

the statement as given in the FIR, stated that he along with Puranmal, committed murder of his wife. On investigation, he found that the motive for

committing murder was illicit relation of the accused Ladulal and the opposition by the deceased wife Aruna. The defence raised the objection that

PW-5 Shyam Sunder Sharma and PW-6 Smt. Ratan Devi are interested witnesses being brother-in-law and sister-in-law of the accused Ladulal and

falsely implicated him. The defence contentions cannot be believed in view of the fact that accused Ladulal himself has reported the incident and his

report Ex.P/40 was taken and on his instance, the machinery of law was set in motion. Even after the arrest of accused Shyam Sunder PW-5 and

Smt. Ratan Devi PW-6 did not give any report during investigation. If it is believed that on account of dispute with the accused regarding money they

are biased and falsely implicated the accused, then they would have reported the facts immediately. After the arrest of accused during investigation on

07.03.2010, both these witnesses have stated the facts of their knowledge and stated their apprehension. On the basis of the evidence placed on

record, it cannot be believed that these two witnesses are involving the accused Ladulal falsely. Further, on the basis of evidence placed on record, the

recovery of money from accused Puranmal was proved and the recovery of bloodstained clothes also support existence of motive. On the analysis of

entire evidence, it cannot be said that the prosecution failed to establish motive.

So far as the mobile call details are concerned, on perusing the evidence on record, both the accused before the incident contacted on phone as per

the call details Ex.P/48, P/50, P/23 and P/24. In view of this evidence placed on record, it is the duty of the accused to explain the evidence against

them as to what conspired between them before the occurrence and after the

occurrence. On the fateful night, accused Ladulal talked to accused Puranmal and after the incident talked to Puranmal five times. This shows that he was not sleeping at the time when other persons, thieves or decoits entered forcibly in his house and committed murder. Both the accused have not disclosed or given any explanation or details of their talks. From the evidence placed on record, as per Ex.P/49, the blood stain of Group A+ was found on the clothes of both the accused and the said blood group A+ was also found on Dhovna (wooden bat). This shows that both the accused have common intention and in furtherance of common intention, they committed murder. The call details also show that before the incident, both the accused conspired and in furtherance of this conspiracy, committed murder. The blood group A+ was found on the shirt of Puranmal and T-shirt of Ladulal, pillow cover and pieces of bed-sheet as well as Dhovna. This shows that both the accused were present at the time of commission of offence. The Ex.P/29 also shows that on the fridge as well as on the stone slab near the double-bed, bloodstains were there. On T-shirt and shirt, which were produced before the court, it was found that at the place of blood spots, the cloth of T-shirt and Shirt was cut and sent to FSL. This shows that on the shirt and T-shirt, only small spots of blood was found and the possibility of putting excessive blood on the clothes by any other person is ruled out.

Generally, Dhovna (wooden bat), which is used for cleaning clothes, is kept in bathrooms. How that Dhovna (wooden bat) is put on the bed on which the deceased was sleeping in the night has not been explained. The thief and decoits never bring such Dhovna or bat and enter into a house for committing offence. If such Dhovna or bat is used by the accused coming from outside, then certainly he will take back the bat with him or throw it away at a distance place. The accused Puranmal cannot enter in the house without the permission or connivance of accused Ladulal. There is no evidence as per the report Ex.P/29, submitted by Mobile Forensic Unit from which it can be inferred that there is forceful entry by outsiders for committing offence as alleged. On perusal of call details, it is clear that both the accused were in contact after the incident, which proves that both the accused were in conspiracy. The accused Ladulal has allowed the entry of Puranmal in the house and after commission of crime with the intention to

conceal the act of murder, Ladulal himself has allowed Puranmal to close the door of the room of Ladulal from outside. It is true that from the

Dhovna, which was used for committing murder, no finger-print was recovered. In this respect, there is no evidence on record, in absence of which,

no inference can be drawn as to the fact that which accused used Dhovna to cause injury, which resulted in causing death of deceased Aruna. But,

from the evidence available on record, it is well proved that out of these two accused, Ladulal and Puranmal, none else is involved in the murder of

deceased Aruna. In view of these facts, both the persons are liable to be punished for the offence under Section 302/34 IPC.

From the evidence, it is also apparently clear that admittedly Ladulal has given report Ex.P/40, admitted his signature and he made statement

supporting the contention of report Ex.P/40. This report was not found to be true and the police submitted challan in the present form. Both the

accused concocted a false story in order to save themselves from the act committed by them. Ladulal gave false information and accused Puranmal,

while closing the door of the room of Ladulal from outside and tried to save Ladulal as well as himself and created suspicious circumstances and tried

to give a direction to the investigation so that true culprit could not be convicted for the offence. From the facts and circumstances, the prosecution is

able to prove beyond reasonable doubt that both the accused were also guilty of offence under Section 201 IPC.

In this way, the circumstances, which have been proved by the evidence place on record, taken collectively, are incapable of explanation of any

reasonable hypothesis sought to be proved against the appellants-accused.

There is no ground for interference in the conclusion arrived at by the learned trial court for conviction and punishment. In the result, the appeal failed

and is dismissed. The judgment under appeal is upheld.

The appellant-accused Pooranmal is on bail. His bail bonds are forfeited. The trial court is directed to issue his warrant of arrest for serving the

remaining period of sentence.