
(2019) 04 RAJ CK 0037

In the Rajasthan High Court

Case No : Criminal Appeal No. 415, 600 Of 2015, 82 Of 2016

Madan Lal And Anr. And Ors

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 347(2)

Indian Penal Code, 1860 — Section 34, 302, 380, 460

Evidence Act, 1872 — Section 27, 114(a)

Citation : (2019) 04 RAJ CK 0037

Hon'ble Judges : Sandeep Mehta, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Vineet Jain, R.K.Charan, Kalu Ram Bhati, C.S. Ojha

Final Decision : Allowed

Judgement

The accused appellants Madan Lal, Shiv Lal, Samundar Lal and Mahendra have been convicted and sentenced as below vide the judgment dated 31.3.2015 passed by learned Additional Sessions Judge No.1, Bhilwara in Sessions Case No.20/2012:

For offence under Section 302 read with 34 I.P.C.

Imprisonment for Life with a fine of Rs.5000/- each

In default of payment of fine, to further undergo Six months Rigorous Imprisonment

For offence under Section 460 I.P.C.

10 Years' Rigorous Imprisonment with a fine of Rs.5000/- each

In default of payment of fine, to further undergo six months Rigorous Imprisonment

Substantive sentences have been ordered to run concurrently.

They have preferred these three separate appeals under Section 374(2) Cr.P.C. for assailing their conviction.

Since all the three appeals are directed against a common judgment, the same are being heard and decided together.

Facts in brief are that Prakash Chandra Dangi P.W.1 lodged a report at the Police Station Raipur, District Bhilwara alleging inter-alia that his uncle Gehrilal Jain resided alone in the village Bagad. He was a moneylender involved in the business of advancing loans to the villagers by keeping their ornaments and other valuables pledged. On 15.12.2011 at about 9 AM, Prakash Chandra was informed by one Gheesu Pokharna that his uncle was not opening the door of the house and that he should come and search there. He reached the village at about 10 AM and found that the villagers had gathered outside his uncle's house. He peeked through the crevice of the door and saw his uncle lying prone on the floor and was not responding to the calls. Information was sent to the Police Station Raipur upon which, the Police officials came and forced the gate open whereupon, it was found that his uncle's hands and legs were tied up with a turban; his body was covered with a shawl and his mouth was gagged with a muffler. The safe box lying in the room had been broken open and the ornaments stored therein had been looted. He alleged that his uncle had been murdered by unknown persons who had looted the pledged valuables/ornaments the list whereof, he proposed to submit later on. On the basis of this report, an F.I.R. No.108/2011 was registered at the Police Station Raipur District Bhilwara for the offences under Sections 460 and 302 I.P.C. and investigation was commenced. The accused-appellants were arrested and it is alleged that recoveries of a large number of ornaments was made in furtherance of the informations provided by them to the Investigating Officer under Section 27 of the Evidence Act.

Finally, after completion of investigation, a charge-sheet came to be filed against the accused appellants in the court of the Magistrate concerned for the offences under Sections 302 and 460 I.P.C. As the offences were triable by Sessions, the case was committed to the court of the Sessions Judge, Bhilwara from where, the same was transferred for trial to the court of the learned Additional Sessions Judge No.1, Bhilwara.

The trial court framed charges against the accused appellants for the above-mentioned offences. They pleaded not guilty and claimed trial. The prosecution examined as many as 44 witnesses and got 84 documents exhibited in support of its case. When questioned under Section 313 Cr.P.C. and upon being confronted with the circumstances appearing against them in the prosecution evidence, the accused refuted the same and claimed to have been falsely implicated. Two documents were exhibited but no oral evidence was led in defence.

Upon conclusion of the trial; after hearing the arguments advanced by the defence and the prosecution and appreciating the evidence available on record, the trial court proceeded to convict and sentence the appellants as above. Hence,

these appeals.

Since the case is based purely on circumstantial evidence, we hereby summarize the circumstances pressed in service by the prosecution against the accused on the basis whereof, their conviction was recorded by the learned trial court:

1. That ornaments purportedly kept pledged by the villagers with the deceased Gehrilal were recovered on the informations provided by the accused to the Investigating Officer under Section 27 of the Evidence Act.
2. Recovery of the mobile phone of the deceased at the instance of the accused Madan Lal.
3. Recovery of handwritten slips scribed by the deceased Shri Gehrilal made in furtherance of the information provided by the accused Shiv Lal to the Investigating Officer under Section 27 of the Evidence Act.
4. Identification of the recovered articles by the respective pledgors for proving that the same were mortgaged with the deceased.
5. Identification of the place of occurrence by the accused in furtherance of the informations supplied by them to the Investigating Officer under Section 27 of the Evidence Act.

Learned counsel representing the appellants minutely took us through the record and vehemently urged that the entire prosecution evidence is flimsy, concocted and contrived and as such, no inference can be drawn therefrom that the appellants were unexceptionally responsible for the offences for which, they were charged. They urged that the proceedings of recovery of the ornaments are totally fake and fabricated. They further urged that the accused were arrested without there being any significant material or evidence to inculcate them for the crime. The circumstance of pointing out of the place of occurrence by the accused to the Investigating Officer in furtherance of the information provided by them under Section 27 of the Evidence Act, is absolutely irrelevant, immaterial and inadmissible as the place of incident was already known to the Investigating Officer well before the accused were apprehended and thus, a fact already known could not have been rediscovered as a purported incriminating discovery under Section 27 of the Evidence Act and hence, this circumstance deserves to be discarded. They submitted that the entire sequence and procedure of recoveries of ornaments made at the instance of the accused appellants is fabricated and illegal. There is no evidence worth acceptance that the locations from which the recoveries were effected, were in the exclusive or conscious possession of the accused. The ornaments were allegedly recovered at the instance of the accused Shivilal on 22.12.2011 and later on from the very same room, the Investigating Officer claims to have recovered the chits which, the deceased allegedly was in a practice of affixing on the pledged ornaments. They urged that the recovery of the chits was shown to have been effected on 24.12.2011 from the very same room from where, the ornaments had been recovered on 22.12.2011 and thus,

this recovery seems on the face of it to be a fraudulent design of the Investigating Officer in order to somehow or the other, create a link of the recovered ornaments with those pledged with the deceased because otherwise, the recovered ornaments are of the shape, size and design as commonly worn by the women folk of the area. They further urged that the motorcycle allegedly recovered at the instance of the accused Madan Lal provides no incriminating link whatsoever because no witness examined during investigation or trial, stated that the accused had used the recovered motorcycle in commission of the offences. They further urged that manifestly, the recoveries made at the instance of the accused are planted in light of the categorical admission made by the first informant Shri Prakash Chandra in his testimony that he gave the list of pledged articles to the Investigating Officer after the ornaments had been recovered. The register/ledger maintained by the deceased was for making entries of the pledged ornaments was intentionally withheld and thus, there is no material on record so as to satisfy the Court that the recovered ornaments were actually pledged with him. They thus urged that no sanctity can be attached to the recoveries allegedly made from the accused. They further urged that evidence about the identification of the recovered ornaments is highly doubtful. They referred to the statements of P.W.14 Gordhan, P.W.17 Shrawan, P.W.18 magna, P.W.20 Uda, P.W.21 Roda, P.W.22 Ramu, P.W.23 Narayan, P.W.24 Narayan Singh, P.W.25 Chatru, P.W.26 Kana, P.W.29 Sohan, P.W.30 Bhanwar, P.W.31 Chhaju the alleged pledgors and the Tehsildar P.W.33 Gopilal and urged that the entire exercise carried out during investigation for the identification of the recovered ornaments in an endeavour to prove that they were the very same, which were pledged by these witnesses with the deceased, is totally farcical. They referred to the statements of P.W.20 Uda, P.W.26 Kana and P.W.29 Sohan who admitted that the identification memos were signed at the Police Station and that the ornaments had been pointed out by the Police. Learned counsel urged that the ornaments had no distinctive identification marks and thus it is absolutely impossible to believe that the witnesses would be in a position to identify the same in the test identification proceedings. They further submitted that the identification memos Ex.P33, Ex.P34, Ex.P35 and Ex.P36 prepared by the Tehsildar Gopilal P.W.33 are worthless pieces of paper have no evidentiary value whatsoever, inasmuch as, in none of these memos, was it specified as to which of the identifying witnesses identified the particular piece/pieces of ornaments put up for test identification. They referred to the statement of the Investigating Officer P.W.44 Narendra Pareek more particularly, the part of his testimony wherein, he admitted that the Magistrate refused to grant Police custody remand of the accused on the ground that the list of stolen articles had not been submitted by the first informant and the recoveries had been effected in absence thereof. They further contended that the recovery of the mobile phone made at the instance of the accused Madan Lal is also a worthless piece of evidence, inasmuch as, there is no satisfactory evidence on record to conclude that the mobile phone and the SIM inserted therein was ever in possession, control or use of the deceased. They contended that the SIM inserted in the mobile phone was

issued by P.W.43 Surendra Sharma in the name of one Narayan, who was examined as P.W. 35 during trial but did not support the prosecution case. They further submitted that the mobile phone recovered at the instance of the accused Madan Lal was of Spice brand whereas, the bill submitted on record by the prosecution regarding the Cell Phone purchased by Gehriral portrays that the mobile was of LG brand. They thus contended that the entire prosecution case is based on flimsy, farcical and unconvincing pieces of circumstantial evidence which cannot be linked together so as to be considered sufficient to prove the charges and hence, the accused deserve to be acquitted by giving them the benefit of doubt.

Per contra, learned Public Prosecutor vehemently and fervently opposed the submissions advanced by the appellants' counsel. He contended that there is wholesome evidence on record and the appellants were rightly held guilty by the trial court for committing murder of the elderly spinster Shri Gehriral with the motive of looting the ornaments which had been pledged by the villagers with him. He contended that hyper-technical objections raised by the defence counsel regarding identification of the recovered ornaments etc. by the pledgors/owners thereof, cannot dilute or nullify the strong and conclusive prosecution evidence which is sufficient to establish guilt of the accused beyond all manner of doubt. He further urged that mere delay in submitting the list of the stolen articles would not by any stretch of imagination, prejudice or dilute the prosecution case because the pledgors of the ornaments have given positive evidence while identifying the ornaments recovered in furtherance of the informations provided by the accused as being the ones which had been pledged by them with the deceased Gehriral. The accused failed to offer even a semblance of explanation for the huge caches of ornaments recovered from their respective houses in furtherance of the informations provided to the Investigating Officer under Section 27 of the Evidence Act. On the basis of these submissions, learned Public Prosecutor urged that the prosecution has been able to prove its case against the accused beyond all manner of doubt and no interference is warranted in the well reasoned judgment passed by the trial court.

We have given our thoughtful consideration to the submissions advanced at Bar and have carefully perused the impugned judgment and have sifted through the entire material available on record.

The case involves the blind murder of the deceased Gherilal, who was engaged in the business of money lending by keeping ornaments pledged while extending loan facility to the pledgors. The written report (Ex.P1) submitted by Prakash Chandra P.W.1 on 15.12.2011 does not enlist details of the ornaments allegedly looted from the house of the deceased after his murder. The typed list of the looted ornaments (which bears a hand written date 19.12.2011 but has no date of endorsement by the Investigating Officer) was submitted by Prakash Chandra P.W.1 at a later stage and no explanation is forthcoming for this delay. Prakash Chandra P.W.1 candidly conceded in his cross examination, that he submitted the

list after the ornaments had been recovered by the Investigating Officer. This admission made by Prakash Chandra P.W.1 brings the entire exercise of recovery and identification of the ornaments under a grave cloud of doubt. The admission made by the Investigating Officer Narendra Pareek P.W.44 in his cross-examination that the Magistrate concerned refused to give police custody remand of the accused for the reason that no list of stolen articles had been filed, is also a strong indication which raises a doubt on the bonafides of the Investigating Officer's actions. A genuine doubt is created that the ornaments were recovered first and the list was prepared thereafter matching the details of the recovered items. The circumstance of recovery of the mobile phone on which, strong reliance was placed by the trial court is also a totally flimsy piece of evidence, inasmuch as, there is a grave discrepancy regarding identity and ownership thereof. They urged that as per the bill (Ex.P42) proved by witness Narendra P.W.44, the mobile phone which was sold to the deceased was of LG brand whereas, as per the seizure memo (Ex.P10), the mobile phone recovered from the accused as of Spice brand. Furthermore, the IMEI number of the mobile phone recovered from the accused was not specified by the Investigating Officer in the seizure memo. The trial court held that the two Motbir witnesses P.W.2 Girdhari Lal and P.W.16 Parasmal supported the recovery memos of the ornaments which were prepared by the Investigating Officer and thus, the prosecution was able to prove the circumstance of recovery of ornaments against the accused. The trial court further held that a significant quantity of ornaments was recovered at the instance of the accused for which, they failed to offer any explanation whatsoever which persuaded the court to draw a presumption under Section 114(a) of Indian Evidence Act against the accused. The trial court discussed the important aspect of identification of the ornaments at Paras No.62 to 64 of its judgment. However, on a careful perusal of the impugned judgment and the evidence of all the concerned witnesses, who claim to have pledged the ornaments with the deceased and the proceedings of identification, it is manifest that the trial court, relied only upon the test identification memos as a substantive piece of evidence rather than having the recovered ornaments identified through the witnesses during their evidence in the court so as to seek substantive proof of identification.

For the sake of convenience, the evidence of the material prosecution witnesses is discussed briefly in the chart below:

Gopal Lal (pledgor)

P.W.12

This witness was not made to identify any of the recovered ornaments during his sworn testimony nor did he claim that he identified the ornaments in the test identification proceedings.

Gordhan Lal

P.W.14

Panch Witness of recovery of ornaments from the accused Mahendra Singh vide recovery memo Ex.P.31.

Parasmal

P.W.9

Witness of arrest memo of accused Samundra Singh vide Ex.P.27 and recovery of a mobile phone, Ramnavami and a Madaliya vide recovery memo Ex.P.28.

Mahaveer Singh

P.W.15

Panch witness of the arrest of proceedings of arrest of Mahendra Singh and the recovery of ornaments made at his instance vide recovery memo Ex.P.31.

Parasmal

P.W.16

Panch witness pertaining to recovery of ornaments made at the instance of accused Samundra Chamar vide recovery memo Ex.P.8. He also stood Panch witness in the recoveries carried out at the instance of accused Shiv Lal vide recovery memo Ex.P.9. He also stood a witness in the recovery of ornaments effected from Madan Lal vide recovery memo Ex.P.10.

Shrawan Nath (pledgor)

P.W.17

The witness did not state that he identified the recovered ornaments in the test identification proceedings nor was he made to identify the same in his sworn testimony.

Magna (pledgor)

P.W.18

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Gordhan (pledgor)

P.W.19

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Uda (pledgor)

P.W.20

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Roda (pledgor)

P.W.21

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Ramu (pledgor)

P.W.22

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Narayan (pledgor)

P.W.23

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Narayan Singh (pledgor)

P.W.24

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Chatur (pledgor)

P.W.25

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Kana (pledgor)

P.W.26

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in the court during his sworn testimony.

Badri Rawal (pledgor)

P.W.28

The witness did not claim that he neither identified the valuables in the test identification proceedings nor was he made to identify the same in the court proceedings.

Sohan (pledgor)

P.W.29

This witness also stated that he could identify the ornaments in the test identification proceedings but he was not made to identify the ornaments in his sworn testimony.

Bhanwar (pledgor)

P.W.30

He stated that he identified his ornaments in the Police Station but no ornament was exhibited and got identified in the court during his testimony.

Chhaggu (pledgor)

P.W.31

The witness denied that he identified the pledged ornaments at any point of time.

Jagdish (pledgor)

P.W.32

The witness stated that the Police got the recovered ornaments identified but the witness was not made to identify the same during his sworn testimony.

Gopi Lal

P.W.33

The witness was posted as the Tehsildar Raipur by whom, the test identification proceedings were conducted. In his crossexamination, the witness stated that neither the letter sent by the S.H.O. to him for carrying out the identification proceedings nor the query sent from the office of the Tehsildar were available on the record of the case. The witness also stated that he did not note the number of ornaments which were packed in the particular packet out of the four produced by the Investigating Officer. The witness further admitted in his cross-examination that the details of the persons who identified the ornaments were not available in his office nor did he bring the details with him. The notices sent to these persons from his office were also not proved on record. He did not weigh the ornaments before subjecting them to identification. He undertook the identification proceedings of the four packets containing ornaments presented to him by the S.H.O. separately. The most significant part of the testimony of this

can be attached to the test identification proceedings of the ornaments as conducted by the Tehsildar P.W.33 Gopi Lal. The trial Court attached much significance to the recovery of chits which the deceased allegedly used to affix on the pledged articles made from the accused Shiv Lal on 24.12.2011. Suffice it to say that this recovery on the face of it appears to be concocted and cooked up.

The accused appellants were arrested in the following order:

Accused Appellants:

Date of Arrest:

Exhibit

Madan Lal

19.12.2011

Ex.P30

Shiv Lal

19.12.2011

Ex.P29

Samundar Lal

19.12.2011

Ex.P27

Mahendra

21.12.2011

Ex.P26

It may be stated that the Investigating Officer has not given any evidence whatsoever as to what was the basis of arresting these accused on the dates mentioned above. The accused Shiv Lal allegedly gave an information under Section 27 of the Evidence Act to the Investigating Officer on 22.12.2011 Ex.P.47 in furtherance whereof, the Investigating Officer claims to have recovered a bunch of ornaments and a mobile of LG Company and a few documents bearing the name of Gehrilal from the room of the accused Shiv Lal located in the village Gaurilakua on 22.12.2011. The Investigating Officer recorded yet another information of Shiv Lal on 24.12.2011 under Section 27 of the Evidence Act and in furtherance of such information, he claims to have recovered a bunch of paper slips written in the handwriting of the deceased which were allegedly placed with the ornaments so as to identify the same with the pledgor. These recoveries on the face of it appear to be concocted for the simple reason that if the Investigating Officer had searched the room of the accused on 22.12.2011, then he would not have missed out the slips which were also lying in the same room

from where the ornaments and the mobile handset were recovered. In the application submitted by Prakash Chandra to the Investigating Officer with the list of documents, it is categorically mentioned that he had prepared the list of documents on the basis of the account books maintained by Shri Gehrilal. However, these account books which could have given significant insight and substantive proof about the ornaments pledged with Shri Gehrilal, were neither produced during investigation nor brought on record during evidence before the trial court. The Investigating Officer admitted that he did not get handwriting of the slips compared so as to match the same with the handwriting of the deceased.

The evidence of recovery of the ornaments also becomes doubtful when we consider the fact that the list of stolen articles was provided to the Investigating Officer by P.W.1 Prakash Chandra after a significant delay. The endorsement marked on the application Ex.P-55 does not bear any date of presentation. The list is in a computerized chart form. Surprisingly enough, the first informant Prakash Chandra was not made to prove this list of stolen articles in his evidence.

A perusal of the trial court's remand sheet dated 26.12.2011 reveals that till that date, no list of stolen articles had been presented by the complainant and thus manifestly, the list Ex.P55 which otherwise was not gotten proved through its scribe Prakash Chandra, loses all significance. In this perspective, we are of the firm opinion that the prosecution miserably failed in its endeavor to prove that the articles recovered from the accused were the same which were looted from the house of the deceased after murdering him and that the robbery and murder formed parts of one transaction. It could not be proved, beyond all manner of doubt as no substantive and satisfactory evidence was led before the trial court to establish that the ornaments, which were allegedly recovered at the instance of the accused, were actually the same, which were pledged by various villagers with the deceased. The failure of the prosecution and the trial court to seek substantive proof by having the articles identified in the court during evidence of the material witnesses being the owners of such articles, makes the entire exercise of identification futile, frivolous, hollow and laconic.

Now, we come to the recovery of the mobile phone effected by the Investigating Officer in furtherance of the information provided by the accused Shiv Lal under Section 27 of the Evidence Act. Firstly, we find that the mobile instrument was not subjected to identification during the evidence of Prakash Chandra P.W.1. That apart, the SIM which was found inserted in the mobile phone was issued in the name of Narayan P.W.35 who did not support the prosecution case without being declared hostile and made no such assertion that he had purchased the SIM for the deceased. The witness Surendra Ram P.W.43, who sold the SIM to Gehrilal did not specify the number thereof in his evidence.

In this view of the matter, manifestly, the recovery of the mobile phone made at the instance of accused Shiv Lal also becomes redundant and does not help the prosecution in any manner whatsoever. The circumstance regarding accused

having pointed out the place of the occurrence to the Investigating Officer is also a worthless piece of evidence because the place of occurrence was also known by the Investigating Officer from before and there was nothing for him to discover afresh when the accused supplied him the information to this effect under Section 27 of the Evidence Act.

We have carefully seen the chits articles-9 and the documents in the name of Gehrilal allegedly recovered from the room of accused Shiv Lal in furtherance of the informations provided by him to the Investigating Officer under Section 27 of the Evidence Act and find that these are worthless pieces of paper and it would be absolutely futile to believe that the accused would safely preserve and save these worthless pieces of paper so that the same could be recovered and used in evidence against him at a later stage.

The facts of the case at hand are almost identical with those considered by the Hon'ble Supreme Court in the case of Ashish Jain Vs. Makrand Singh & Ors. passed in Cr.Appeal No.1980/2008 decided on 14.1.2019 wherein, it was observed as below:

"23.Furthermore, the prosecution has examined many witnesses who were alleged to be the pledgors of the said ornaments, who identified their ornaments in an identification conducted by the Naib Tehsildar. This was to prove that the recovered ornaments were in fact the ornaments which were robbed from the house of the deceased Premchand and later recovered from the accused persons. We find substance in the argument of the learned Amicus Curiae that this identification was not done in accordance with due procedure. It is evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28, that the identification procedure was conducted without mixing the recovered jewellery with similar or identical ornaments. Additionally, there is nothing on record to show the identity of the pledgors and to prove that the identified ornaments were pledged by them to the deceased Premchand, except for the account books maintained by the deceased Premchand for his business, but these cannot be relied upon. This is because these account books were seized by the police from the possession of Shailendra Kumar Jain, PW11, who is the soninlaw of the deceased. Incidentally, he also runs a similar moneylending business as a pawn broker in another town. No valid reason is accredited to the recovery of deceased Premchand's alleged account books from the possession of his soninlaw. Moreover, these account books were returned to him without any prayer for the same and without following any procedure. Later, it was found that there were additional entries made in the account book after the date of the incident. Moreover, none of the witnesses have spoken about the particular entry relating to them in the account books. No signature of any witness is identified and marked in the account books. In other words, none of the witnesses have deposed about any relevant entry found in the account books with reference to their respective gold/silver articles. All these issues discussed above, coupled with the fact that the investigation officer has put forth an artificial and got up

story in the matter of identification of the ornaments, creates grave suspicion with regard to the recovery of the ornaments, as well as their identification by the different pledgors. Hence, learned Amicus Curiae may be justified in contending, as held by the High Court, that the aspect of recovery is a got up story, only to suit the purposes of the prosecution."

The above observations apply to the present scenario on all fours.

Law is well settled by a catena of judgments that in cases of circumstantial evidence, the prosecution is required to prove every link by convincing, admissible and substantive evidence so as to form a complete chain of circumstances unexceptionally establishing the guilt of the accused. Even if one link in the chain is snapped, the broken chain of circumstances cannot be considered sufficient to hold an accused guilty for the charge of murder.

However, the evidence of the Investigating Officer is sufficient to prove that huge caches of ornaments was recovered from each of the accused from their respective premises in furtherance of the informations provided by them to the Investigating Officer under Section 27 of the Evidence Act. We have already held that there is no evidence either direct or circumstantial on record to prove that the robbery and murder form parts of one transaction. Thus, the only circumstance of recovery of ornaments remains in vogue against the accused, who neither claimed the ornaments to be their own nor did they offer any explanation for the possession thereof. In this background, and keeping in view the ratio of the Hon'ble Supreme Court decision in the case of Sanwat Khan & Ors. Vs. State of Rajasthan reported in AIR 1956 SC 54, we feel that the accused deserve to be convicted for the offence under Section 380 I.P.C.

Accordingly, the appeals deserve to be and is hereby accepted in part. The impugned judgment dated 31.3.2015 passed by learned Additional Sessions Judge No.1, Bhilwara in Sessions Case No.20/2012 is set aside. The accused are acquitted of the charges for offences under Sections 302 read with 34 I.P.C. and Section 460 I.P.C. and instead, they are convicted for the offence under Section 380 I.P.C.

We hereby sentence each of the accused appellants to 7 years' rigorous imprisonment and a fine of Rs.1000/- each, in default of payment of fine, to further undergo one month's additional imprisonment.

Record be sent back forthwith.

A copy of this judgment be kept in each file.