
(2015) 01 RAJ CK 0216

In the Rajasthan High Court

Case No : Criminal Appeal Nos. 496 and 497 of 2004

Noor Mohamad and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437A
Penal Code, 1860 (IPC) — Section 201, 302, 323, 34, 365

Citation : (2015) 01 RAJ CK 0216

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

Bench : Division Bench

Advocate : Biri Singh, Senior Counsel assisted by Rajesh Choudhary, for the Appellant; Sonia Shandilya, PP, Advocates for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.

1. The appellants, Noor Mohamad, Chhaju, Suleman and Basheer, are aggrieved by the judgment dated 23.3.2004, passed by the Additional Sessions Judge (Fast Track) No. 1, Alwar, whereby the learned Judge has convicted all the four appellants for the offences under Sections 302/34 and 365 IPC. For the offence under Section 302/34, the learned Judge has sentenced them to life imprisonment, imposed them with a fine of Rs. 5,000/-, and directed that they shall further undergo a sentence of one year of R.I. in default thereof. For the offence under Section 365 IPC, the learned Judge has sentenced them for seven years of R.I., imposed them with a fine of Rs. 1,000/- and directed that they shall further undergo six months" R.I. in default thereof.

2. The appellants have filed two different appeals before this Court. While Noor Mohamad and Chhaju have filed D.B. Criminal Appeal No. 496/2004, Suleman and Basheer have filed D.B. Criminal Appeal No. 497/2004. Since both these appeals challenge the same impugned judgment, they are being decided by this common judgment.

3. Briefly the facts of the case are that Hakam S/o. Sallu (P.W.2) had submitted a written report (Exhibit-P/2) before the S.H.O., Police Station M.I.A., Alwar, which when translated in English is as under:--

"To,

Subject: For the purpose of registering a FIR and for arresting the accused persons.

Sir,

It is submitted that I am resident of village Badi Pokhar, Tehsil Ramgarh. My brother Faqarrudin, works as a labourer in Alwar. My three sisters, Fajji, Chandi and Rukki are married in village Bhajit. There is a matrimonial dispute about these three sisters. My sister Rukki and Chandi were assaulted and were thrown out of the matrimonial homes. Therefore, my brother Faqarrudin went to meet my sister Fajji, wife of Munna on 16.8.2002. At that time, Suleman S/o. Dawood, Chhaju S/o. Chandmal, Basheer S/o. Dawood and Noor Mohamad S/o. Chandmal assaulted him badly with chain and belt. As a result of which, he was seriously injured. At night, my brother stayed at my sister's house. On 17.8.2002, for the purpose of doing labour, he came to the Chauraha situated at the Bijlighar. There he met villagers from our village, namely Dhammali S/o. Niwaja, Pappu S/o. Niwaja, Sabu S/o. Nijjar, Nabbu S/o. Bhaggu, residents of Badi Pokhar. These persons had gathered there to be hired as labour for the day. They were all sitting there. Faqarrudin was telling them as to what had transpired him day before. Suddenly, Suleman S/o. Dawood, Chhaju S/o. Chandmal, Basheer S/o. Dawood and Noor Mohamad S/o. Chandmal (Fakir) came on three different motorcycles. They forcefully took Faqarrudin away. They assaulted him. They took him to the village Bhajit and assaulted him with belts, chains of bicycle and with knife. They assaulted him before Fajji. After killing him, they threw him into a well. They pulled him out of the well and pretended as though he had fallen into the well. They informed the Police. The Police called me around 1 o'clock. I along with other villagers have come to file this report. Action be taken.

Sd/- Hakam @ Billu S/o. Sallu Fakir, Badi Pokhar, Tehsil Ramgarh, Police Station Ramgarh. Date: 17.8.2002."

4. On the basis of this report (Exhibit-P/2), the Police chalked out a FIR (Exhibit-P/3), namely FIR No. 236/02 for the offences under Sections 302, 365, 201 and 323 read with Section 34 IPC. The Police initiated the investigation. After completing the investigation, the Police arrested the four appellants. The charge-sheet was submitted before the Civil Judge (Jr. Division) and Judicial Magistrate No. 2, Alwar. The learned Magistrate committed the case to the Sessions court. The Sessions Court transferred the case to the court of Additional Sessions Judge (Fast Track) No. 1, Alwar. The learned Judge framed the charges for the offences under Sections 302 and 365 IPC against the appellants.

5. In order to buttress its case, the prosecution examined ten witnesses, and

submitted fourteen documents. In order to support its case, the defence, in turn, examined three witnesses and submitted five documents. After completing the trial, the learned Judge convicted and sentenced the appellants as aforementioned. Hence, these two appeals before this Court.

6. Before dealing with the contentions raised by the learned counsel for the appellants and by the learned Public Prosecutor, it would be pertinent to quickly browse through the evidence produced by the prosecution as well as by the defence.

7. Hakam (P.W.2) is the complainant. He states that "Buddu and Nijja Khan are my uncles. Ruksina is Buddu's daughter and Fajji is Nijja Khan's daughter. Both of them are married in village Bhajit. It is about one and a half years ago that my brother had gone to village Bhajit to meet his sisters. At that time, Chhaju, Basheer, Noor Mohamad and Suleman had tied Faqarrudin. They kept him tied up for two days. On the third day, he came back to Alwar for driving his rickshaw. Four persons from my village, namely Dhammali, Pappu, Sabu and Nabbu had come to Alwar for doing labour work. They called up and informed us that five to six persons had come on three different motorcycles and have taken away my brother. Before we could reach the village, we were informed by Alaudeen, by phone, that someone has killed our brother Faqarrudin and thrown him into a well. About ten to twenty persons came along with us. We went to the hospital, where we saw the dead body of Faqarrudin. His body had injuries upon it. I had give a report in the court along with ten to twenty person, which is Exhibit-P/2. It contains my signatures from A to B". This witness then went on to prove the FIR (Exhibit-P/3), the site plan (Exhibit-P/4), Panchayatnama (Exhibit-P/6), the corpse memo (Exhibit-P/7) and the receipt of returning of the corpse (Exhibit-P/8).

8. In his cross-examination, he has stated that "it is true that on 17.8.2002, I was in my village Badi Pokhar. The first information, I received was from Alaudeen over the telephone with regard to the incident. It is true that Faqarrudin used to drive a rickshaw. Faqarrudin had gone to Chauraha. I received the phone call around 11:00 - 11:30 in the morning. Nabbu, Dhammali etc. reached my village around 12:00 - 1:00 o'clock in the evening (sic). Two days prior to his death, on 15.8.2002, the deceased (Faqarrudin) had gone to the village. It is true that on 15th, he was tied up and kept in a room. This fact was told to me by my sister Fajji. We came to know about the fact that he was tied up on the 17th, when Fajji came along with the dead body. I had gotten the report written along with five to ten persons and this also included my sister. All of us wrote the report together. It is true that in Exhibit-P/2, I have given the date as 16th and not as 15th, because my sister had told me that he had reached her place on 16th. But it is 15th, that my brother had told me that he is going to go and meet his sister. It is true that whatever my sister told me at the hospital, I have written in the report. I have not stated anything extra. My sister did not tell me that on 15th and 16th, Faqarrudin was tied up and kept in room.

Earlier the date 15th as the date when he reached and the date when he was tied up, has wrongly been written. I did not mention in Exhibit-P/2 the fact that on 15th my brother had gone and on 15th he was tied up. Who informed Alaudeen at his house in village Bhajit, I cannot tell. In Exhibit-P/2, I did not mention the fact that prior to coming of Dhammali, Pappu etc., I had already received a telephone from Alaudeen. The fact that Suleman had informed the Police that Faqarrudin had fallen in the well, was not told to me by anyone. The fact that he was taken to village Bhajit and assaulted with belts, cycles chains and knife and that they had assaulted him before Fajji and had thrown him into the well and that they had pulled him out of the well and informed Police, all these facts I have written on the basis of what Fajji told me. When I had gotten the report typed, Fajji was with me. But Fajji was not with me when we had gone to give the report. When I was getting the report typed, there were eight to ten persons from village Badi Pokhar. These people included Buddu, Dhammali, Batuna, Ramjan, Rudar, Yakub and my father Sallu and my three brothers. Exhibit-P/2 does not contain Fajji's signatures. Besides Exhibit-P/2, no one from my village had lodged any report. The Police did not tell me that they had already received any information about Faqarrudin being in the well. When I went to Police Station, people from our village were already there. Prior to submitting the report, I did not meet the Police at Badi Pokhar. I left Badi Pokhar along with eight to ten persons around 12:00 - 1:00 o'clock and had come to this hospital. I stayed back in the hospital for about forty-five minutes to an hour. The Police had reached the hospital while I was there. Then about eight to ten people and Fajji had come to the court around 2:30 PM. We had consulted the lawyers. The way we were told by the lawyers and by Fajji, we jotted down the report. We had consulted Akhtar Hussain Advocate. Between Rukki and Chandi, Chandi had come back about one and a half months ago, and Rukki had come back about fifteen to twenty days back. They did not run away from their homes, but came peacefully on their own. They are not my real sisters. But they are daughters of my uncles. My uncle's name is Buddi. Since Basheer and Barkat did not come to take them up, they did not go back. Basheer did not come to drop these girls either. They came on their own. The distance from the village Bhajit and the village Jhopadi is about 1 1/2 - 2 kms. It is true that even on the 15th and 16th, when Faqarrudin was detained, he was assaulted with knife, belt and cycle chain. I had seen enough injuries on his feet and on his head, and the injury caused by chain on his waist. There were two injuries caused by knife on his foot and on his head. It is true that Nabbu is a rickshaw driver. All these four had reached my village at 11 o'clock or 12 o'clock. On the 15th, when Faqarrudin had gone, he had not taken his rickshaw. My sister Fajji told me that Faqarrudin had come back to Alwar, around 4 o'clock. He had come back walking. There were about three to four other persons, who had come along with the accused for taking away my brother Faqarrudin. Dhammali and others had told me that Faqarrudin was taken away around 7:00 - 7:30 in the morning from Alwar. It is true that none of the incidents which occurred in Alwar, or in Bhajit, occurred before me. Whatever people have told me, I have only said that."

9. Fajji (P.W.4) is the star witness of the prosecution. She is the only eyewitness to the alleged incident. Therefore, it is important to quote her entire evidence. In her examination-in-chief, she states that "Faqarrudin was my brother. About two years ago, Barkat had assaulted his wife Chandi and thrown her out. Then Basheer had assaulted his wife Rukki and sent her to parental place. Then Rahiman, Basheer and Barkat assaulted me. Then Faqarrudin came to meet me. Basheer, Suleman and Noor Mohamad, tied up my brother to a Neem Tree. I also kept on sitting there. For two days, they really assaulted him and at night Faqarrudin ran away. Then Chhaju, Suleman, Basheer and Noor Mohamad picked up Faqarrudin from Alwar and brought him back on motorcycles. They brought him back around 10:00 - 12:00 in the morning. They first assaulted him on the way with lathis, then at home, they assaulted him with lathis. Then they threw him into a room. I was standing there. Then they took him out of the room and put him on Charpai in front of the house. I kept on weeping and kept on pleading them that we must take him to the hospital. But nobody took him to the hospital. Then the Police came and took Faqarrudin to the hospital. I also accompanied him. The Police got him admitted at the hospital. Faqarrudin died in the hospital. I told the Police everything that I knew. The Police called up my brother. My brother Billu @ Hakam came to the hospital along with Dhammali, Buddu, Sadir etc. I told them that they have killed Faqarrudin. No report was written in front of me on that day. The Police came to our village and drew up the site plan of the place, where he had been assaulted. Faqarrudin's sister Rukki was married to Basheer. They were saying that first bring back Rukki only then we will let you go. It is was the reason that they kept on assaulting him."

10. In her cross-examination, she admits that "it is true that I came to the hospital by Police Jeep. There were two persons in the Jeep. Whether the SHO was in the Jeep, I cannot tell. It is true that after I told the Police personnel about how Faqarrudin was assaulted, they called up my home. I told the Police everything. As to who are the persons, who had assaulted Faqarrudin, I told them everything, as we were going from village to the hospital. It is then, the Police called and then Hakam and others came to the hospital. The entire proceedings took about three hours. Prior to Hakam's arrival at the hospital, the Police had done some writing and drawn up some documents under a Neem Tree in front of Mortuary. They continued this proceedings even after his arrival. Two days before Faqarrudin died, he had come to our place and he was caught when he came. When Faqarrudin came, Chandi and Rukki were at Badi Pokhar. I do not know whether Faqarrudin came from Badi Pokhar or not. When Faqarrudin came, my husband Azad was not there. My husband came around 10:00 -11:00 o'clock at night. He had gone out for work. The day Faqarrudin came, my husband came back around 10:00 - 11:00 o'clock at night. That day Barkat was present in the village. Barkat is Chandi's husband. Barkat did not stop anyone from assaulting. In fact, he was one of the persons, who assaulted. Chhaju, Basheer and other accused did not permit my husband to meet Faqarrudin. They did not lock up Faqarrudin in my room, but locked him in Suleman's room. Faqarrudin was tied

down with ropes to a Neem Tree. When they tied him under the Neem Tree, my husband was not there. He had gone out for work. My village Bhajit has about 500-700 people. It is true that when they tied him to the Neem tree, they assaulted him with lathis. They also kicked him and slapped him. No blood came out. They had hit him on ankle. Then they took him to Suleman's house and they tied him with chain. Even there they kept on hitting him. There was blood on his body and there was even impression of belt. They tied him to the Neem tree in my house because my house is the only house, which has Neem tree. The distance between my house and Suleman's house is as much as the distance between the court and the outer gate. When my husband came back, Faqarrudin was tied to a Charpai at Suleman's house. I and my husband went to Suleman's house to meet Faqarrudin, but the accused persons did not permit us to do so. I do not know anyone with a telephone. We did not inform the Sarpanch. We did not inform my parental family. Even my husband did not inform anyone. My husband was prevented by Suleman and others from going and informing anyone. There are sufficient numbers of telephones in the village. It is true that even on the second day, Faqarrudin was tied down with chains and he was beaten up with lathis. It is true that due to repeated assaults, Faqarrudin had become half-dead. It is true that the second day my husband was at home. But these accused did not let him go out anywhere. Even on the third day, my husband was at home. It is in the night of second day, that Faqarrudin ran away and on third day they brought him back. I did not tell the Police that Faqarrudin had stayed with me for three days. The part marked as "A" to "B" in Exhibit-P/2 has wrongly been recorded. The reason why I told the Police that for three days my brother was tied down is because on the third day they brought him back. Faqarrudin did not ran away in front of me. The accused did come to my house searching for Faqarrudin and told us that he ran away. They had come to my house around 4 o'clock in the morning. When brought him back around 10:00 - 12:00 o'clock, they did not tie him up. They assaulted him at Suleman's house and then they dumped him at my house. When they were assaulting in Suleman's house, I was there. I had gone to Suleman's house. I do not know whether my husband, Munna was at Suleman's house or not. These people came looking for Faqarrudin in the morning. At that time, I and my husband were at home. It is true that girls from my village Badi Pokhar are married in the village Bhajit. It is true that when Suleman had tied up my brother at Suleman's house, we did not sleep at his house. But had slept at our own. It is true that when Faqarrudin was tied up, no person came there for two or three days. It is true that my house is "Kachcha" house and has lanes on three sides. People come and go. I have opened my shop of bangles near the house of Suleman. When the police came, I told them everything and showed the place where Faqarrudin was tied, where he was assaulted, and in which room he was locked up. It is true that Rukki and Chandi are not Faqarrudin's real sisters. He is the son of their elder uncle (Tau). It is true that Barkat was with other accused persons for all the three days. Neither I told the Police that they had assaulted me, nor did I show my teeth to a dentist. The assault to which I was subjected, neither my husband,

nor I reported about it. It is true that they have not assaulted my husband, Munna. When they took the dead body of Faqarrudin from the hospital to my village, I had accompanied them. I did not go to the Police Station. There are about two to four telephones in my village. I know that Chhutmal has a telephone. The house of Leela is not close to my house, but it is slightly far. It is true that house belonging to Chhutmal is closer to my house. His children stays in his room. It is true that when the site plan was being drawn up by Police, I showed them the house of Suleman and Basheer. When they tied up Faqarrudin, there were lot of villagers. But I cannot tell whether Usman, Leela etc. were present or not. There are only ten to twenty persons and not fifty to hundred. When they were assaulting Faqarrudin, I had raised hue and cry. But the wives of Barkat, Rahisan and Suleman had caught hold of me. It is true that when the police brought Faqarrudin in its Jeep, at that time I and Barkat were with him. I did not have the telephone numbers of my parental home, nor did I gave these numbers to the Police."

11. Dhammali (P.W.5), Pappu (P.W.6) and Nabbu (P.W.7) are the witnesses of the last seen.

12. Dhammali (P.W.5) in his examination-in-chief states that "when he had reached the Chauraha at Bijlighar, at that time, Chhaju, Basheer, Suleman, Noor Mohamad and three other persons had come on a motorcycles. They had picked up Faqarrudin and took him away". He claims that "he had returned to the village and he had informed Hakam (P.W.2) around 10 or 11 o'clock in the morning that Faqarrudin had been taken away. Hakam told them that he will go. But then Police informed Hakam that his brother Faqarrudin has died".

13. In his cross-examination, he admits that "when he met Faqarrudin at Alwar, Faqarrudin did not tell anything. The moment they were about to speak, the accused persons had come there". He further admits that "when he reached the hospital, the Police was already there and at that time Pappu, Nabbu and Sabu were with him". He further admits that "at that time, they did not reveal to the police that the accused had taken away Faqarrudin. For, at that time, there was too much chaos. They could neither speak to the Police, nor the Police asked anything". He also admits that "from the hospital, they had come to the court, and then came to the Police Station". He admits that "Faqarrudin was his nephew".

14. Similar statements have also been given by Pappu (P.W.6) and Nabbu (P.W.7). Therefore, their testimonies are not being reproduced.

15. Balwant Singh (P.W.8) is the Investigating Officer, who has proven different documents, which were prepared during the investigation.

16. Mahru Khan (P.W.9) also informs the court that "on 13.8.2003, he was with Faqarrudin in village Bhajit". According to him, "on 13.8.03, he had gone with Faqarrudin to Bhajit. There he saw that Basheer, Suleman, Chhaju and Noor Mohamad had tied Faqarrudin to a Peeple tree. He intervened and asked to let

him go, as he is a kid". According to him, "they assaulted Faqarrudin at night, and let him go around 8 o'clock at night, but told this witness and Faqarrudin to sleep at Suleman's house". According to him "he had even pleaded to Suleman's father to let them go, but at night Chhaju took Faqarrudin away to his house". According to this witness, "he had gone to Chhaju's house also and pleaded that he also wanted to sleep there, but he was turned down". Further, according to him, "on the next day at 7:00 AM, having stayed at village Bhajit, with Munna, Fajji's husband. He came back to his village Badi Pokhar. There he informed Hakam and his family members that Faqarrudin is being assaulted by the appellants. They told him that they would go, and he was asked to get back to his house".

17. Girdhari Singh (P.W.10), ASI at the Police Station M.I.A., Alwar, claims that "on 17.8.2002, Police Station had received a telephonic call around 10:00 AM. The Police Station was informed that a person had fallen in a well in village Bhajit. They should rush as he is likely to die. Therefore, he and Lalaram, and one more constable rushed to the village Bhajit. They discovered that a man was lying on a cot near a well and he was covered with a Razai". According to him, "when he inquired, he met a woman there by the name of Fajji. The woman also accompanied the Police to the hospital. When the police brought Faqarrudin to the hospital, according to this witness, he had tried to get a dying declaration of Faqarrudin recorded. However, doctor told him that he is not in a fit condition to make a statement". The witness then went on to prove the Panchnama (Exhibit-P/6), memo about the dead body (Exhibit-P/7) and handing over the corpse (Exhibit-P/8). In his cross-examination, he admits that at the time of making of Panchnama, he was told by the witness that Faqarrudin had fallen into the well, and the injuries sustained by him were either because of his falling into the well, or because he was assaulted. He also admits that when Panchnama was being drawn, Hakam, Pappu and Dhammali were present.

18. Dr. Phool Singh Choudhary (P.W.1) was a member of the Medical Board, which carried out the autopsy on Faqarrudin. According to Dr. Choudhary, the Board had discovered six injuries on the body which are as under:--

"1. Lacerated wound on face head Lt. side near eyebrow at lateral aspect 2cmx1/2 cm x Muscle deep.

2. Lacerated wound on forehead just left to the center of 2 cm x 1/2 cm x muscle deep.

3. Lacerated wound on Lt front at medial aspect? 14 Cm x 4 cm x muscle deep.

4. Lacerated wound on Lt front at the head 2 cm x 1cm x 1/2 cm.

5. Abrasion on Rt Ankle Jt. Medial aspect 1 x 1 cm c hard scab formation.

6. On dissection of Head there is sub cutaneous Haematoma on Lt frontal region beneath the wound. In center on left side there is also sub cut. Haematoma in surrounding skull area of wound bones meninges are normal area of wound.

The injuries are ante mortem in nature."

19. Upon dissection, the Medical Board had also discovered a haematoma on left frontal region beneath the wound. Large intestine contains haematoma of 18 cm x 4 cm red in colour. There was an injury to mesenteric vessels at the entry of large intestine from the beginning to 18 cm on distal end. The mesenteric vessels are ruptured at placed. According to the Medical Board, the cause of death was shock due to hemorrhage from mesenteric vessels, sufficient in ordinary course of nature to cause death.

20. In his cross-examination, Dr. Choudhary admits that "it is true that the injuries discovered on the body were five days old and injury No. 1 and 6 were old injuries. It is true that only these two injuries were really old. There was no indication on the body that body has been hit with chain, or that an injury was caused by sharp edged weapon. There was no indication that he had been hit even with an old chain or old Farsi. It is true that the cause of death was the rupture of mesenteric vessel. It is true that if a person were to fall in the well, and if there is a stone or an engine and if he were to fall on it, the injury can be caused to the mesenteric vessel. There was no cut injury on his stomach at the time of post mortem."

21. Saddiq (D.W.1) happens to be teacher in the village. In his examination-in-chief, he claims that "on 17.8.2002, he had left the children of school around 8:30 in the morning. He claims that the well where Faqarrudin fell is about 25 feet away from his room, where he stays. From his room, one can even see the well". He further claims that "he saw Faqarrudin running before his room. One of his sleepers came off in front of his room, and the other sleeper came off on the boundary of the well". According to him, "he saw Faqarrudin jump into the well. But none of the accused persons in the court were present there. He claims that he had seen Faqarrudin when he was pulled out of the well. At that time he was speaking when he was pulled out. When he was pulled out, there were injuries on his feet, head, elbow, backbone". According to him, "when he saw Faqarrudin running, he did not see any of the injuries. Therefore, these injuries were due to his fall in the well". He further claims that "his house is right next to the house of Suleman. But he did not see anyone crying or being tied up to a tree". Similar testimony has also been given by Usman (D.W.3).

22. Mr. Biri Singh, Senior Counsel for the appellants has raised the following contentions before this Court: firstly, Dhammali (P.W.5), Pappu (P.W.6) and Nabbu (P.W.7) are the witnesses, who claim to have seen Faqarrudin on the last occasion with the appellants. However, evidence of last seen is weak sort of evidence. Moreover, the evidence of last seen is separated by time and place. According to these witnesses, Faqarrudin was picked up at 7:00 - 7:30 AM in the morning. Yet according to Girdhari Singh (P.W.10), the body was recovered after 10:00 PM on 17.8.2002. Moreover, body was recovered from village Bhajit, whereas Faqarrudin was picked up by the appellants from Alwar. Therefore, there is no evidence of last seen. None of the witnesses claim that they had actually

seen the appellants throw Faqarrudin into the well, or that they had seen the appellants anywhere near the said well, where his body was discovered and pulled out. Even the first information given to the Police over the phone, according to Girdhary Singh (P.W.10) is that a person had fallen in the well in village Bhajit. There was not even a hint that he had been pushed into the well at the village by the appellants.

23. Secondly, the entire case is based on the testimony of sole eyewitness namely Fajji (P.W.4). However, she is an unreliable witness. For, she and her family have an animosity against the appellants as the appellants had thrown out Chandi and Rukki. Further, since she is related to Faqarrudin, as they are cousin brother and sister, she is an interested witness. Furthermore, the story narrated by her that Faqarrudin was tied up at Neem tree and was assaulted for two days, is an unbelievable story. According to her while her own brother was assaulted, neither she nor her husband intervened. Neither she, nor her husband informed anyone in the village, such as Panchas or the ward members. Moreover, she does not claim that Faqarrudin was thrown into the well by the appellants. She merely claims that she had seen them assaulting Faqarrudin. Therefore, she does not explain as to how Faqarrudin died, nor gives any evidence about his death. Most importantly, her testimony is not corroborated by the testimony of Dr. Phool Singh Choudhary (P.W.1). According to Dr. Phool Singh Choudhary (P.W.1), first six injuries were old and they were not the cause of Faqarrudin's death. According to doctor, the cause of death was rupture of mesenteric vessel.

24. Fourthly, Hakam (P.W.2) is equally unreliable witness. For, whatever he has stated in the written report and in the court, is based on hearsay evidence.

25. Fifthly, even the written report, according to Hakam (P.W.2), was drafted after consulting lawyers in the court. Therefore, the very foundation of the prosecution case is based on tainted information. Hence, the prosecution has failed to prove that Faqarrudin's death was homicidal in nature.

26. Mr. Rajesh Choudhary, has echoed the pleas raised by Mr. Biri Singh, while arguing the case of behalf of Noor Mohamad and Chhaju. Therefore, his pleas are not being reproduced.

27. On the other hand, the learned Public Prosecutor has vehemently, contended that: firstly, Dhammali (P.W.5), Pappu (P.W.6) and Nabbu (P.W.7) had clearly stated that while they were standing at the Chauraha, near the Bijlighar, in Alwar, the appellants along with three other persons had picked up Faqarrudin and carried him away. Thus, there is evidence of last seen.

28. Secondly, despite the fact that Fajji is related to Hakam and Faqarrudin, she has given truthful version of the story. The injuries found on the body of Faqarrudin relate to the fact that he had been assaulted by the appellants when they had tied him up in the house. Moreover, even the mesenteric vessel could have ruptured only due to the injuries received by Faqarrudin at the hands of the appellants.

29. Thirdly, even according to the defence witnesses, Faqarrudin had been pulled out of the well and according to the site plan (Exhibit-P/5), the well is situated very close to the house of the appellants. Thus, obviously having assaulted him, they had pushed him into the well and in order to make it look as a case of suicide. They had pulled out his body and put it in a cot and informed the police. Thus, it was merely a clever ploy on behalf of the appellants to save their skin. Therefore, the prosecution has succeeded in proving that Faqarrudin was killed by the appellants. Hence, the learned Public Prosecutor has supported the impugned judgment.

30. Heard the learned counsel for the parties and perused the impugned judgment as well as the record.

31. Admittedly, the case is based on the sole testimony of Fajji (P.W.4). Of course, an accused person can be convicted on the basis of testimony of sole eyewitness. However, the sole eyewitness should not only be a natural witness, but most importantly should also be a witness of sterling worth. In order to test the trustworthiness of such witness, by way of prudence, the court looks for corroboration from other evidence. It is only when the testimony of a sole eyewitness is supported by other evidence, that it is safe to convict the accused on the testimony of the sole eyewitness.

32. Fajji (P.W.4) would have the court believe that the appellants had caught hold of her brother Faqarrudin, had tied him up to a Neem tree, and had assaulted him with knife, motorcycle chain, kicks and fists, while he was in their custody. In the night of 16th August, 2002, he somehow managed to escape from their custody and came back to Alwar. But on the morning of 17th August, 2002, again he was picked up by the appellants and carried back to village Bhajit. According to her, again on the way, Faqarrudin was assaulted by the appellants. However, this part of her testimony is not supported by the testimony of Dr. Phool Singh Choudhary (P.W.1). For, according to Dr. Choudhary (P.W.1), there were no sign on the body of Faqarrudin to show that he had been assaulted by belt or by motorcycle chain or by knife. There were only six injuries on his body. That too, about four to five days old. Therefore, the medical evidence does not corroborate the testimony of this witness.

33. Moreover, according to Fajji (P.W.4), while she had accompanied Faqarrudin from her village to the hospital, along with police personnels, she had told everything to the police personnels. However, Girdhari Singh (P.W.10), who had brought the injured Faqarrudin to the Police Station along with Fajji (P.W.4), does not corroborate her testimony. He does not tell the court that on the way from village to the hospital, Fajji (P.W.4) had told him about the entire incident. Therefore, one does not even find corroboration of her testimony from other witnesses.

34. Most importantly, according to the prosecution, Faqarrudin had been pushed into the well by the appellants. Yet, about this crucial issue, Fajji is absolutely

silent. In her testimony, she nowhere states that she has seen the appellants take Faqarrudin to the well and that she had seen them pushing him into the well. Although, Girdhari Singh (P.W.10) claims that he had met Fajji (P.W.4) on the well and he was told by her that she happens to be the sister of the person who had been pulled out of the well. Yet Fajji (P.W.4) does not reveal her presence at the well. Her silence about this crucial point of the story is rather puzzling.

35. According to the testimony of Dr. Phool Singh Choudhary (P.W.1) and according to the opinion of the Medical Board, Faqarrudin had died due to rupture of mesenteric vessel, which was sufficient in the ordinary course of nature to cause death. According to Dr. Phool Singh Choudhary (P.W.1), his death was not caused by six injuries noticed on his body including haematoma in the left frontal region beneath the wound. Therefore, the question is who caused the rupture of mesenteric vessel. Dr. Phool Singh Choudhary (P.W.1) in his cross-examination admits that if a person were to fall in a well and his stomach were to hit either a slab or an engine in the well, hemorrhage in the mesenteric vessel can be caused. There is no evidence produced by the prosecution to prove that Faqarrudin was actually pushed into the well by the appellants. Neither they were seen near the well, nor has anyone seen them directly pushing Faqarrudin into the well.

36. However, according to Saddiq (D.W.1), he had seen Faqarrudin running towards well and jumping into the well. The same evidence has been stated by Usman (D.W.3). It is indeed trite to state that the evidence of the defence witnesses would have to be accepted on the same footing as the evidence of the prosecution witnesses. Neither of these witnesses have been shattered in their cross-examination. Thus, there is no reason to disbelieve their testimonies that Faqarrudin had jumped into the well on his own. Their testimony is further corroborated by the opinion of the Medical Board.

37. It may be true that Faqarrudin was picked up by the appellants at Alwar, as testified by Dhammali (P.W.5), Pappu (P.W.6) and Nabbu (P.W.7) and may have been taken back to the village. But there is hardly any evidence that on 17.8.2002, he was assaulted by the appellants as claimed by Fajji (P.W.4). For, the injuries on his person were not recent, but were four to five days old. Yet post-mortem was performed on 17.8.2002 itself. There is a great possibility that Faqarrudin wanted to escape from the clutches of the appellants, therefore, he ran towards the well and jumped into it. The existence of old injuries prove the point that he may be assaulted a day or two prior to 17.8.2002. Thus, Faqarrudin may have been afraid of being caught and subjected to the same assault as on an earlier occasion. However, by no stretch of imagination can it be said that the appellants have caused any injuries upon Faqarrudin with an intention to cause his death or any injury which would be sufficient, in ordinary course of nature, to cause his death. The prosecution has, thus, failed to prove that the appellants had caused the death of Faqarrudin.

38. For the reasons stated above, both the appeals are allowed. The impugned judgment dated 23.3.2004 passed by the learned Additional Sessions Judge (Fast Track) No. 1, Alwar, in Sessions Case No. 103/2003 is set aside. Appellants namely, Suleman S/o. Dawood, Basheer S/o. Dawood, Noor Mohamad S/o. Chandmal, and Chhaju S/o. Chandmal are acquitted of the offence under Sections 302/34 and 365 IPC. They shall be released forthwith, if not warranted in any other case.

39. Keeping in view, however, the provisions of Section 437A of the Code of Criminal Procedure, 1973, accused-appellants Suleman, Basheer, Noor Mohamad and Chhaju are directed to forthwith furnish a personal bond in the sum of Rs. 20,000/- and a surety bond in the like amount, before the Deputy Registrar (Judicial) of this 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 this Judgment or on grant of leave, the said appellants, on receipt of notice thereof, shall appear before the Supreme Court.