

(2017) 01 RAJ CK 0026
In the Rajasthan High Court
Case No : 11 of 2012

Ram Kishore S/o Hadman Ram

APPELLANT

Vs

State of Rajathan

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

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

Citation : (2017) 01 RAJ CK 0026

Hon'ble Judges : Gopal Krishan Vyas, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : J.S. Choudhary, Pradeep Choudhary, Tarun Dhaka,? Amardeep Lamba, S Ojha, Sunil Mehta

Final Decision : Allowed

Judgement

1. In this cr. appeal filed under Section 374(2) Cr.P.C., the judgment dated 25.11.2011 passed by learned Addl. Sessions Judge, Nagaur in Sessions Case No.80/2011 is under challenge whereby the accused appellant Ram Kishore was convicted for offence under Section 302 and 449 IPC and accused appellant Aaichuki was convicted for offence under Section 302 / 34 and 449 IPC and following sentence was passed against them:

ACCUSED APPELLANT RAM KISHORE:

Under Section 302 IPC Life imprisonment with fine of Rs.2,000/- and in default of payment of fine to further undergo six months RI

Under Section 449 IPC 10 years RI with fine of Rs.1,000/- and in default of payment of fine to further undergo three months SI.

ACCUSED APPELLANT AAICHUKI:

Under Section 302 / 34 IPC Life imprisonment with fine of Rs.2,000/- and in default of payment of fine to further undergo six months RI

Under Section 449 IPC 10 years RI with fine of Rs.1,000/- and in default of payment of fine to further undergo three months SI.

Facts of the case:

2. The complainant Bhikhi Devi (PW--13) submitted a written report (Ex.P/21) at Police Station Khivsar, District Nagaur in which an allegation was levelled by her that on 29.11.2008 at about 5-6 pm she went to the house of her sister Aaichuki and stayed there in the night. Next day on 30.11.2008 at about 10.00 am she went to the house of her father Nanu Ram. The door of the house of her father was closed and upon opening the door when she entered inside the house, and found that dead body of her father Nanu Ram was lying in a Tibara and blood was scattered on floor. Upon crying her sister Aaichuki came on spot. The aforesaid incident was reported by the complainant to the police that my father has been murdered by unknown persons, therefore, investigation may kindly be conducted and action may be taken to punish the culprits.

3. Upon aforesaid complaint Ex.P/21, the SHO Police Station, Khivsar, District Nagaur registered the FIR no.131/2008 for offence under Section 302 IPC and commenced investigation.

4. After registration of FIR the SHO, Police Station, Khivsar went on spot immediately and prepared Panchnama (Ex.P/1) site plan (Ex.P/5) and inquest report (Ex.P/7). The photographs of the site were also taken for the purpose of investigation, thereafter, the dead body of deceased was taken to the Primary Health Center, Khivsar, where post mortem was conducted by the

medical board head by Dr. Shiv Prasad Partani (PW--9) and post mortem report (Ex.P/10) was prepared and handed over to the investigating officer on 1.12.2008. In the post mortem report it is reported that five injuries including three incised wounds were found upon the neck of the deceased and as per the opinion of the medical board, the cause of death of deceased Nanu Ram was hemorrhage shock due to injury on the neck. During investigation, the police arrested the accused appellant Ram Kishore S/o accused appellant Aaichuki D/o deceased Nanu Ram on 2.12.2008 vide arrest memo Ex.P/8 and accused appellant Aaichuki D/o deceased Nanu Ram was arrested on 22.4.2009 vide Ex.P/9. On completion of investigation the SHO Police Station Khivsar filed charge-sheet against the accused appellants on the basis of circumstantial evidence of recovery of cloths and Katar so also, upon the evidence of "motive" with regard to land dispute in the court of Judicial Magistrate under Section 302, 302 / 34 and 449 IPC.

5. The learned Magistrate committed the case for trial to the court of Addl. Sessions Judge, Nagaur. The learned trial court after hearing arguments on charge, framed charge against the accused appellant Ram Kishore for the offence under Section 302 and 449 IPC whereas charge under Section 302 / 34 and 449 IPC was framed against the accused appellant Aaichuki, mother of the accused appellant Ram Kishore and daughter of deceased Nanu Ram. Both the accused appellants denied the charges framed against them and claimed for trial.

6. In the trial, statements of 26 witnesses were recorded from prosecution side and 42 documents were exhibited in support of the case and, thereafter, prosecution evidence was closed. After recording evidence of prosecution, the learned trial court

proceeded to record statement of the accused appellants under Section 313 Cr.P.C. in which accused appellants denied all the allegations made by the prosecution witnesses and said that they have been falsely implicated in this case due to ulterior motive by the relatives. In defence three witnesses DW-1 Bhagwana Ram, DW-2 Ramjeevan and DW-3 Jitendra Singh were produced before the court and 25 documents were exhibited from defence side.

7. The learned trial court after hearing the arguments of both the sides, convicted the accused appellant Ram Kishore for offence under Section 302 and 449 IPC and convicted accused appellant Aaichuki for the offence under Section 302 / 34 and 449 IPC and passed sentence mentioned above vide judgment impugned dated 25.11.2011.

8. Being aggrieved and dissatisfied with the aforesaid judgment, the instant appeal has been filed by the accused appellants.

9. The learned Senior Counsel Mr. Jagmal Singh with Tarun Dhaka vehemently argued that the conviction of the accused appellants for aforesaid offences is totally erroneous because there is no eye witnesses of the case and entire case is based upon circumstantial evidence of recovery of blood stained cloths and weapon (Katar) which is not reliable and trustworthy. Learned counsel for the appellants further argued that in absence of eye witness of the incident it is true that the accused can be convicted on the basis of circumstantial evidence but as per settled principle of law, the chain of circumstances are required to be proved beyond reasonable doubt, but in this case, PW--2 Om Prakash, PW--2 Prem Sukh, PW--4 Durga Ram, PW--5 Ugara Ram, PW--6 Hardeen Ram and PW--8 Dayal Ram all witnesses of Panchnama and inquest report and site plant have not made any allegation

against the accused appellants to connect them with the crime. The whole prosecution case is based upon recovery of blood stained cloths which is shirt and pent of the accused appellant Ram Kishore and Odhani of accused appellant Aaichuki, so also, weapon of offence (Katar), which is said to be recovered as per the information given by the accused appellant Ram Kishore. The learned counsel for the appellants submits that out of two witnesses of recovery, PW--10 Kishana Ram and PW--16 Mala Ram, the witness PW--16 Mala Ram turned hostile and did not support the prosecution case and PW--10 ishna Ram admitted that cloths and Katar were recovered from open place assessable to all, therefore, it is obvious that recovery of above articles has not been proved by the prosecution beyond reasonable doubt.

10. Learned counsel for the appellants invited attention towards statements of PW--8 Dayal Ram and PW--11 Smt. Shanti in which both the witnesses admitted that pent, shirt and Katar were lying on spot and those articles were taken in possession by the police from the spot, therefore, has wrongly been relied upon by the trial court because recovery of above articles is totally fabricated and false. As per prosecution case on 22.12.2008 an Odhani was produced by accused appellant Aaichuki before the investigating officer in the presence of motbir Hukama Ram and Madan Lal and said Odhani was seized vide recovery memo Ex.P/21 but it is very strange that without arresting Aaichuki, the said Odhani was sent to the FSL and after four months on 22.4.2009 the accused appellant Aaichuki was arrested vide Ex.P/1, but in the trial the witness Madan Lal, before whom the said Odhani produce by the Smt. Aaichuki was taken in possession by the police. Smt. Aaichuki, turned hostile and did not support the prosecution case and other witness Hukma Ram is interested witness.

11. According to the learned counsel for the appellants it is a totally false case in which the accused appellant Aaichuki was arrested after more than 4 months from the date of incident on 22.4.2009 and after arrest there is no recovery of any article from her, more so, as per prosecution case, the so called Odhani was produced by accused appellant Aaichuki on 22.12.2008 but it is best known to the prosecution what was the reason that accused appellant Aaichuki produced the said Odhani for the purpose of investigation. The learned counsel for the appellants submits that although prosecution has failed to prove the recovery of articles but the learned trial court convicted the accused appellants on the basis of wrong assessment of entire evidence.

12. Learned counsel for the appellants submits that the learned trial court has erroneously relied upon the statements of PW--1 Smt. Keshar Devi, PW--10 Kishana Ram and PW--17 Hukma Ram because they are interested witnesses and Smt. Kehar Devi improved her statement to falsely implicate the appellant for the crime of murder. As per the prosecution story, the deceased Nanu Ram was having four daughters including PW--1 Smt. Keshar Devi and there was some dispute with regard to the land in between them, so also accused appellant Ram Kishore was claiming that he is adopted son of Nanu Ram, but in the litigation upon objection by Nanu Ram matter was settled, therefore, it is stated by the learned counsel for the appellant that there was no motive with the accused appellant Ram Kishore to commit murder of his Nana (Nanu Ram). The deceased Nanu Ram was having four daughters namely PW--13 Bhikhi, PW--11 Shanti, PW--1 Keshar Devi and accused appellant Aaichuki. The accused appellant Aaichuki was arrested on the basis of recovery of Odhani upon which blood was found after more than four months upon allegation levelled by the

PW--1 Keshar Devi, the 4th daughter of deceased, but during trial, two sisters PW--11 Shanti and PW--13 Bhikhi turned hostile and did not support the prosecution case whereas PW--1 Keshar Devi, 4th daughter of the deceased Nanu Ram made allegation against the accused appellants that relations of accused appellant Ram Kishore and his father Nanu Ram were not good due to the land dispute, but she admitted the fact of compromise in between the parties. It is also argued that there is no evidence on record for motive to connect the accused appellant Ram Kishore and accused appellant Aaichuki to kill Nanu Ram, therefore, the finding of the learned trial court deserves to be quashed and set aside.

13. It is true that accused appellant Ram Kishore was claiming his right as adopted son and for the purpose of partition of land, some litigation took place, but matter was settled in between the parties prior to the alleged incident, so also compromise took place in between them as per evidence on record, therefore, it is a case in which prosecution has failed to establish any motive against the accused appellants for committing offence of murder. Lastly, it is argued that no conviction can be based only on the basis of recovery of article if other evidence is not supporting the prosecution case, in view of the judgment rendered by the Hon"ble Court in the case of Mani Vs. State of Tamilnadu reported in 2008(2) CJ (SC) Cri. 523, Varun Choudhary Vs. State of Rajasthan reported in 2012(2) CJ (Cri.) (SC) 352, Sharad Birdhichand Sarda Vs. State of Maharastra reported in AIR 1984 (SC) 1622, and Ram Lal @ Ramu Vs. State of Rajasthan reported in 2014 Law Suit (Raj.) 1398, the conviction of the accused appellants is not sustainable in law. More so, argued that it is a case in which prosecution has failed to prove its case beyond reasonable doubt against the accused appellant Ram Kishore and as per simple

assessment of evidence, accused appellant Aaichuki daughter of the deceased Nanu Ram has been implicated falsely in this case only on the basis of so called recovery of Odhani upon which blood of 'O' group was found.

14. With regard to the fact that blood of 'O' group was found in the FSL report (Ex.P/38 and P/39), it is submitted that the accused appellant Aaichuki is the daughter of the deceased and at the time of incident, she was at spot and as per statement of PW--8 Dayal Ram, when Aaichuki was sitting the Odhani was sustained with blood, therefore, there is no question to implicate her for crime on the ground that in FSL report blood of 'B' group was found upon Odhani. Similarly, if recovery of articles is false then there is no question to accept the circumstantial evidence of recovery to connect the accused appellant Ram Kishore with the alleged crime of his own maternal grand-father Nanu Ram. There is no evidence on record to prove the fact that accused appellant Ram Kishore was even present at the time when occurrence took place, therefore, the judgment impugned based upon so called evidence of recovery of articles may kindly be quashed and accused appellants may be acquitted from the charge.

15. Per contra learned Public Prosecutor and learned counsel for the complainant Sh. Sunil Mehta submits that there was motive left with the accused appellant Ram Kishore to kill Nanu Ram because accused appellant Ram Kishore was claiming his right as adopted son of Nanu Ram being son of his Aaichuki but in the litigation initiated by the accused appellant Ram Kishore and sisters in the revenue court as well as in the civil court, deceased Nanu Ram refused to accept the fact that he is adopted son of him, therefore, it cannot be said that prosecution has failed to prove motive, more so, there are number of documents with

regard to litigation of land in between deceased Nanu Ram and accused appellants Ram Kishore and Aaichuki. It is obvious that there was enmity in between the deceased and the accused appellants and their relations was not cordial.

16. Learned Public Prosecutor vehemently argued that conviction can be based upon recovery of articles and in this case blood stained "Katar", shirt and pent of accused appellant Ram Kishore were recovered as per information given by him under Section 27 of the Evidence Act and blood stained Baniyan of the deceased was taken in possession after post mortem and all the articles were sent for chemical examination to ascertain the blood group upon the articles. In FSL report (Ex.P/38 and P/39) it is reported that upon cloths except pent blood of 'B' group was found upon the articles, as such prosecution has proved the case beyond reasonable doubt, therefore, there is no question to say that entire prosecution case, which is based upon circumstantial evidence of recovery has not been proved.

17. According to the learned Public Prosecutor and learned counsel for the complainant the deceased Nanu Ram was having four daughters, out of which, accused appellant Aaichuki is one of the daughter and Ram Kishore is son of Aaichuki. Out of remaining three sisters, although two sisters did not level any allegation against the accused appellants for commission of offence but PW--1 Keshar Devi has categorically stated in her statement that there was motive with the accused appellants to commit murder of her father. The deceased was not accepting accused appellant Ram Kishore as his adopted son, so also accused appellants Ram Kishore and Aaichuki were forcibly cultivating the land of deceased Nanu Ram and due to land dispute, there was bad intention of the accused appellants to grab

the land of the deceased, therefore, the committed offence to kill her father Nanu Ram. It is argued that on the basis of entire evidence on record, there is no doubt that prosecution has proved its case beyond reasonable doubt on the basis of circumstantial evidence of recovery of articles and weapon, which connects the accused appellants with the crime of committing murder of Nanu Ram in his own house, therefore, the judgment cited by the learned counsel for the appellants are not relevant and applicable to set aside the judgment impugned.

18. Learned Public Prosecutor, initiated our attention towards the judgment in the case of Budhram Vs. State of Chhattisgarh reported in (2012) 11 SCC 588 and said that circumstantial evidence of recovery can be relied on so as to convict the accused appellants for the alleged offence of murder, therefore, the instant appeal may kindly be dismissed.

19. After hearing the learned counsel for the parties, first of all, we are assessing evidence upon which accused appellant Aaichuki has been convicted. It is admitted fact that accused appellant Aaichuki is one of the daughter of deceased Nanu Ram. As per statement of another daughter PW--1 Keshar Devi no person was adopted as son by her father, my sister Aaichuki and her husband Hanuman Ram and son Ram Kishore were residing in Dhani they were forcibly cultivating the land of her father but her father was objecting to it, therefore, quarrel took place in between them for which police action is going on. It is also stated by the said witness that litigation is going on in between accused appellant Ram Kishore, Aaichuki and my father.

20. It is also stated on oath before the court that before 15 days of his death my father informed me that Ram Kishore is giving threatening to him that he will kill him, but this witness

specifically stated that when my father died, Ram Kishore was not present, but I am making allegation against Ram Kishore and my sister for the reason that blood was found upon the cloths of Ram Kishore and Odhani of her sister. A detailed cross-examination was made by the counsel for the accused and specific questions were put to the witness PW--1 Keshar Devi whether you have made all these allegations in the statement recorded under Section 161 Cr.P.C, it is replied by her that although all these facts were disclosed by her to the police, but police has not recorded the said facts in her statement (Ex.D/4) recorded under Section 161 Cr.P.C. on 1.12.2008. We have perused the statement of Keshar recorded under Section 161 Cr.P.C.. In the said statement, it is nowhere stated by PW--1 Keshar Devi that any blood was found upon the cloths of Ram Kishore and Aaichuki, therefore, it is obvious that this witness has completely improved her statement and made allegation against the accused appellants to connect and involve them with the crime on the basis of so called recovery of blood stained cloths.

21. It is also admitted fact of the case that accused appellant Aaichuki is daughter of the deceased and in the statement of PW--8 Dayal Ram it is specifically stated by him that when I sent on site, all the four daughters of the deceased, which are Bhikhi, Kehsar, Shanti and Aaichuki (accused appellant) were sitting there and the blood was scattered on floor, therefore, the Odhani of the accused appellant Aaichuki, who was sitting there, was sustained with blood. The learned trial court disbelieved the testimony of this witness PW--8 Dayal Ram in spite of fact that he was present on spot after the death of the deceased.

22. As per prosecution case, the accused appellant Aaichuki was arrested after four months on 22.4.2009 without any evidence and

her conviction is based upon the recovery of Odhani, which is said to be given by accused appellant Aaichuki herself to the police on 22.12.2008 just three days of the occurrence in the presence of two persons Hukama Ram and Madan Lal. The said Odhani was not recovered after arrest of Aaichuki on the basis of information given by her under Section 27 of the Evidence Act, therefore, it is obvious that said recovery of Odhani upon which blood of ?B? group was found as per FSL report (Ex.P/28) cannot be relied upon so as to connect the accused appellants with the crime. It is also very important to mention here that there is no other evidence, direct or circumstantial, against the accused appellants except the evidence of so called blood upon Odhani, which is said to be taken in possession prior to five months by the police, which is produced by the accused appellant Aaichuki herself.

23. On the basis of above facts and evidence on record, we have no hesitation to hold that finding of conviction recorded against the accused appellant Aaichuki is based upon false and irrelevant evidence, therefore, the said evidence cannot be relied upon so as to convict any accused appellant for alleged offence of murder. The accused appellant Aaichuki being daughter of the deceased Nanu Ram was having right over the property in question, therefore, the evidence of litigation to prove ?motive? is not sustainable in law. There is another set of evidence on record that deceased Nanu Ram was living with another lady while treating her as wife and all children were objecting to it. Therefore, the reason for litigation was altogether different for which accused appellant Aaichuki cannot be blamed.

24. Upon assessment of entire evidence on record, we have no hesitation to hold that conviction of the accused appellant Aaichuki is not sustainable in law.

25. We have considered the case of the accused appellant Ram Kishore in the light of evidence and the arguments advanced by the learned counsel for the parties. Admittedly, there is no direct evidence to prove the prosecution case against the accused appellant Ram Kishore. The accused appellant Ram Kishore was arrested vide Ex.P/8 on 2.12.2008 at 3.00 pm and information under Section 27 of the Evidence Act (Ex.P/36 and P/37) were given by him on 2.12.2008 at 3.30 pm and on 3.12.2008 at 7.00 am respectively. In pursuance of the said information, the cloths (pent and shirt) were recovered vide Ex.P/1 at 4.30 pm on 2.12.2008 in the presence of two witnesses Kishana Ram and Sabu Ram. Similarly, the weapon Katar was recovered vide Ex.P/13 in presence of two witnesses Kishana Ram and Sabu Ram from open place at 8.00 am on 3.12.2008.

26. Out of two witnesses of recovery of the cloths and Katar, PW--26 Sabu Ram turned hostile and did not support the prosecution case, more so, specifically said in examination-in-chief that no pent, Kamiz and Katar was recovered in front of him and further said that my thumb impression was taken by the police in police station. In the cross-examination made by the Addl. Public Prosecution it is specifically said by this witness that Kishana Ram was not present when my thumb impressions were taken at police station. Meaning thereby, the witness of recovery PW--26 Sabu Ram completely denied the recovery of cloths in front of him. We have perused the statement of PW--10 Kishana Ram, another witness of recovery. Following statement is given by him which reads as under:

VERNACULAR MATTER OMITTED

27. In the cross-examination it is stated by this witness that deceased Nanu Ram was my cousin brother and deceased Nanu

Ram was not having any issue. We have perused the information of cloths (Ex.P/36) in which it is observed by the Investigating Officer, which reads as under :

VERNACULAR MATTER OMITTED

28. Upon perusal of the above information given by the accused appellants, it is obvious that it is nowhere stated by him that I was wearing shirt and Kamiz. The only information given that cloths which I was wearing, I identify the place from where those cloths can be recovered, but it is very strange that at the time of recovery, two cloths, Kamiz and pent was recovered and as per FSL report upon pent no blood of ?B? group was found. It is also admitted position of the case that the place from where shirt and pent as well as weapon Katar was recovered is an open place. Meaning thereby, it is a case in which out of two witnesses of recovery, one Sabu Ram (PW--26) turned hostile and other witness Kishna Ram though stated before the court that recovery of cloths and Katar was made in front of him but it is not in dispute that those recoveries were made from open place, so also, the witness Kishana Ram is relative of the deceased. Therefore, we are of the view that recovery of cloths and Katar is doubtful.

29. To assess the finding of the learned trial court with regard to involvement of the accused appellant Ram Kishore, we have perused the statement of PW--1 Keshar Devi. The statement (Ex.PD/4) of witness Keshar Devi under Section 161 Cr.P.C. were recorded in the trial on 1.12.2008 in which she raised suspicion against accused appellant Ram Kishore and gave following statement, which reads as underL

VERNACULAR MATTER OMITTED

30. It is admitted position of the case that Smt. Keshar (PW--1) is one of the daughter of the deceased Nanu Ram. Out of four

daughters, two other daughters Bhikhi and Santi has not levelled any allegations against the accused appellant Ram Kishore or accused appellant Aaichuki, only Keshar Devi (PW--1) made certain allegations in her statement under Section 161 Cr.P.C. and raised doubt upon the accused appellant Ram Kishore on the ground he was annoyed with Nanu Ram because he has refused to accept him as adopted son. In the statement of PW--1 Keshar Devi recorded during trial certain allegations are levelled by her and raised doubt against the accused appellants but no specific fact is disclosed by her with regard to any incident in past. More so, in the cross-examination, when she was confronted from her statement recorded under Section 161 Cr.P.C. (Ex.D/4), it is stated by her that whatever statement given in the court were narrated to the police but why in her statement (Ex.D/4) recorded under Section 161 Cr.P.C. those facts were not incorporated by the police.

31. In our opinion, on the basis of improved statement of PW--1 Keshar Devi it cannot be said that testimony of this witness is reliable so as to hold accused appellant guilty for offence and to accept the evidence of motive. In para no.2 of the statement on the one hand, Smt. Keshar Devi said that at the time of occurrence, accused appellant Ram Kishore was not there but in second line, it is stated by her that I found blood upon the cloths of Ram Kishore and Aaichuki, therefore, she is having doubt against them. The following assertion was made by the witness Keshar (PW--1) in her statement recorded in the court, which reads as under:

VERNACULAR MATTER OMITTED

32. In view of the above statement, we are of the view that her statements cannot be treated trustworthy. It is true that some

litigation took place with regard to dispute that Ram Kishore is not adopted son of Nanu Ram and upon reply filed by Nanu Ram learned Civil Judge (Jr.Div.)-cum-Judicial Magistrate decided the suit on 16.9.2006 in which an issue was framed whether Ram Kishore is adopted son of the deceased Nanu Ram or not. The learned trial court gave finding that as per reply and evidence on record Ram Kishore is not adopted son of Nanu Ram. In our opinion, once the verdict was given by the civil court that Ram Kishore is not adopted son of Nanu Ram, then obviously, Ram Kishore was to be treated as son of accused appellant Aaichuki daughter of the deceased only. In our opinion, when mother of the accused appellant Ram Kishore was having right and share in the property of Nanu Ram with other then there is no question to accept the allegation of motive levelled by the PW--1 Keshar Devi, one of the daughter of the deceased Nanu Ram.

33. Undisputedly, recovery of cloths and weapon Katar was made from open place, therefore, it is not safe to uphold the finding of conviction of the learned trial court so as to hold accused appellants guilty for the said offence only on the basis of recovery of cloths and weapon Katar from the open place.

34. The Hon''ble Supreme Court in following cases categorically laid down the law that in absence of direct evidence although on circumstantial evidence accused can be convicted, but at the same time, the conviction cannot be based only on the basis of recovery of articles recovered from open place. The judgments are as follows:

35. In case of Mani Vs. State of Tamilnadu (supra), the Hon''ble Supreme Court held that evidentiary value of recovery is a weak kind of evidence and that cannot be relied upon so as to hold accused appellants guilty. The para no.21 of the said judgment is

as follows:

"21. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case. We have already held that the prosecution has failed to prove that the house where alleged blood stains were found belonged exclusively or was possessed exclusively by the appellant, we have further pointed out that the discovery was absolutely farcical. There is one other very relevant factor ignored by both the courts that the prosecution never made any attempts to prove that the clothes belonged to the appellants. There is literally no evidence to suggest anything to that effect. Therefore, even if we accept the discovery, it does not take us anywhere near the crime. Both the Courts below have ignored this very important aspect. Once these two important circumstances are disbelieved, there is nothing which would remain to support the prosecution theory. We also fail to understand the finding of the High Court in respect of the motive. In our opinion, there was no motive whatsoever much less entertainable by the present appellant. He had nothing to do with the straying cattle nor was he a party to subsequent altercation between P.W.1 Arunachalam and the accused No. 2 Moyyasamy. Lastly, there is nothing on record to show that he was a henchman set up to take revenge by accused no. 2 Moyyasamy and he was set up by the accused no. 1 to revenge. We also did not understand that if there was no motive for Moyyasamy, how could there be any motive entertainable by the appellant. Therefore, even for

that circumstance has to go.

36. Similarly, in the case of Varun Choudhary Vs. State of Rajasthan (supra), the Hon"ble Supreme Court while considering evidence to hold that in absence of any evidence of identification and upon the fact that prosecution has failed to establish the evidence to complete the evidence which would lead to a conclusion that accused was the only person who could have commit offence none-else, no conviction can be based. Paras nos.21, 24 and 25 of the said judgment are relevant, which reads as under:

"(21) In our opinion, so called recovery of knife and blood stained clothes would not help the prosecution. Recovery of the motor cycle can not be said to be proved because Bhanwar Singh, PW-9 admitted the fact that he had signed the recovery panchnama in the police station whereas another witness, Madan Lal, P.W.25 could not establish recovery of the knife as he was not present at the time and place from which the knife had been recovered. Moreover, the knife

was never produced before the court and was never shown to the accused and, therefore, in our opinion, the said evidence could not have been relied upon by the courts below for passing the order of conviction.

(24) It is a settled legal position that in case of circumstantial evidence, there must be a complete chain of evidence which would lead to a conclusion that the accused was the only person, who could have committed the offence and none else. In the instant case, there is nothing to show that the accused had committed the offence and on the basis of the aforesaid material, in our opinion, it would be dangerous to convict the accused. In the case of *G. Parashwanath vs. State of Karnataka*, (2010)8 SCC 593, para 24, it has been stated that

"in deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken

together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved..... 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, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court".

(25) In another case of *C. Chenga Reddy v. State of A.P .*, reported in (1996) 10 SCC 193, this Court has held that

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

37. In case of *Ram Lal @ Ramu Vs. State of Rajasthan* reported in 2014 Law Suit (Raj.) 1398 in identical case based upon circumstantial evidence, following adjudication was made by this Court, which reads as under:

"18. The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances

so proved must form a chain of events for which the only irresistible conclusion that can be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take legal proof. This court will have to satisfy itself that various circumstances in the chain of events have been established clearly and such complete chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. This court has to be watchful and avoid allowing the suspicion to take place of

the legal proof. There is a long distance between 'may be true' and 'must be true'. When a case rests squarely on circumstantial evidence, an inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. Cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offence beyond any reasonable doubt. The circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one to be proved. In other words 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 it must show that in all human probabilities the act must have been done by the accused.

38. In view of the above discussion, we are of the opinion that the conviction of the accused appellant Ram Kishore based upon only recovery of cloths and Katar, that too, has not been proved beyond doubt, is not sustainable because out of two witnesses of recovery, PW--26 Sabu Ram turned hostile and specifically said that other witness Kishana Ram was not present at the time of putting thumb impression in the police station and story of motive narrated by PW--1 Keshar Devi cannot be treated as piece of evidence so as to hold accused appellant Ram Kishore guilty, therefore, his conviction is also not sustainable in law.

39. Consequently, the cr. appeal is allowed. The judgment dated 25.11.2011 passed by the learned Addl. Sessions Judge, Nagaur in Sessions Case NO.80/2011 convicting and sentencing the accused appellant Ram Kishore for the offences under Section 302 and 449 IPC and accused appellant Aaichuki for the offences under Sections 302 / 34 and 449 IPC is hereby quashed. The

accused appellant Aaichuki is already on bail, therefore, she is not required to surrender and her bail bonds are hereby discharge.

40. The accused appellant Ram Kishore be set at liberty unless required in any other case.

41. Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellants are directed to forthwith furnish personal bonds in the sum of Rs.20,000/- each and a surety bond in the like amount, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellants, on receipt of notice thereof, shall appear before Hon''ble the Supreme Court.