

(2015) 12 GUJ CK 0002
In the Gujarat High Court

Case No : Criminal Appeal Nos. 1012 of 1993 and 949 of 1994

Thakore Laxmansing Halsing and Others	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 306, 34, 392, 395

Citation : (2015) 12 GUJ CK 0002

Hon'ble Judges : M.R. Shah and Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : N.K. Majmudar, Advocate, for the Appellant; H.K. Patel, Addl. Public Prosecutor, for the Respondent

Judgement

M.R. Shah, J.

1.0. As both these appeals arise out of the impugned judgment and order passed by the learned Additional Sessions Judge, Banaskantha, at Palanpur in Sessions Case Nos. 107/1990 with 143/1990, both these appeals are decided and disposed of by the common judgment and order.

2.0. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 21.08.1993 passed by the learned Additional Sessions Judge, Banaskantha, at Palanpur (hereinafter referred to as "learned trial Court") in Sessions Case Nos. 107/1990 with 143/1990 by which the learned trial Court has convicted the original accused Nos. 1, 2, 3 and 5 for the offence punishable under section 392 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and has sentenced to undergo 10 years" RI with fine of Rs. 5000/- and in default to undergo further 3 months" SI, the original accused Nos. 1, 2, 3 and 5 have preferred the Criminal Appeal No. 1012/1993.

2.1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned trial Court in Sessions Case Nos. 107/1990 and 143/1990

by which the learned trial Court has acquitted the respondents herein - original accused Nos. 1, 2, 3 and 5 for the offence punishable under sections 302 , 395 and 397 of the IPC, the State has preferred the Criminal Appeal No. 949/1994.

3.0. The prosecution case in nut-shell is as under:

3.1. That on 01.03.1998, one Vitthalbhai Kachrabhai Barot of Gadh Police Station of Palanpur Taluka lodged a complaint/FIR that his son Bharatbhai was driving one Jeep No. GJ-08-114 has been murdered and his dead body is lying in the field of one Nizamkhan at village Dangiya on Dantiwada road. According to the case of the prosecution the deceased Bharatbhai was plying his jeep as a taxi and was taking passengers at various places and his dead body was found at village Dangiya in the field of one Nizamkhan and the said Nizamkhan informed the police about the same. That the police started investigation and started recording the statements of several witnesses.

3.2. As per the case of the prosecution, on 02.03.1990, in early morning at Ahmedabad near Chharanagar, PSI Shri Chaudhary of Sardarnagar Police Station saw one Jeep coming in speed and he tried to stop the same. The jeep speed away and was stopped at some distance and from there four persons who were in the jeep, ran away. The police chased them and found original accused No. 1 trying to run away from the jeep and he was arrested on the spot and interrogated. According to the prosecution case subsequently the police of Gadh Police Station came to know about the same and therefore, they came down to Ahmedabad. During interrogation of original accused No. 1, names of four other co-accused were revealed to the effect that they were also traveling in the same jeep. Therefore, Gadh Police Station arrested original accused No. 1 and started investigation in respect of other co-accused. That the original accused No. 1 - Laxmansingh was taken on remand. That original accused No. 2 came to be arrested on 07.03.1990 in connection with another case and thereafter he came to be arrested in connection with the present offence. The Investigating Officers started investigation, prepared the panchnama of the tyres of the jeep etc. One knife used in committing the offence came to be discovered/recovered at the instance of original accused No. 2 - Pravinsingh from one Nala near Gujarat Hotel, Siddhpur on 10.03.1990. The Investigating Officer prepared the panchnama of the recovery/discovery of the knife used in committing the offence which was having blood stains. That thereafter other two accused came to be arrested. The clothes of the accused Umedsingh came to be discovered at the instance of Umedsingh from the house of one Kanji Chhara (Chharanagar, Ahmedabad). The said clothes/pants were also having blood stains. That one another accused Prabhatsingh came to be arrested on 04.04.1990. That one knife was also produced by one Shobhnaben, wife of one Kanji Chhara. The statement of Kanjibhai Chhara came to be recorded and it revealed that original accused Nos. 3 and 5 - Thakor Umedsingh Nathusingh and Thakor Khemsingh Halsingh come to its place on 01.03.1990. Further investigation revealed that the tyre marks of the jeep tallied with the tyre mark at the place of offence. That

after conclusion of the investigation the Investigating Officer filed the charge-sheet initially against the original accused Nos. 1, 2, 3 and 5 in the Court of learned JMFC. That as original accused No. 5 Khemsingh was arrested subsequently, additional charge-sheet came to be filed against him in the Court of learned Chief Judicial Magistrate, Palanpur. That as the case was exclusively triable by the learned Court of Sessions, the learned Chief Judicial Magistrate, Palanpur committed the case to the Sessions Court, Banaskantha, at Palanpur, which was numbered as Sessions Case Nos. 107/1990 and 143/1990. That all the accused pleaded not guilty and therefore, they came to be tried by the learned Sessions Judge. That the learned trial Court framed the charge against accused one (1) Thakor Laxmansingh Halsingh, (2) Thakor Pravinsingh Rajsingh, (3) Thakor Umedsingh Nathusingh and (4) Thakor Prabhatsingh Kapursingh at Exh.5 in Sessions Case No. 107/1990 for the offence punishable under section 302 read with section 34 of the IPC and sections 396 , 397 of the IPC. A similar charge came to be framed against the accused Thakor Khemsingh Halsingh in Sessions Case No. 143/1990 also for the aforesaid offences.

As observed hereinabove, all the accused pleaded not guilty and therefore, all of them came to be tried by the learned trial Court for the aforesaid offences.

3.3. To prove the case against the accused, the prosecution examined as many as following 25 witnesses.

Through the aforesaid witnesses the prosecution also brought on record following documentary evidences.

3.4. That after closure of the evidence by the prosecution, further statement of all the accused under section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") came to be recorded. The defence of the original accused No. 1 in his further statement was that as he wanted to go to Palanpur he was standing at Gitamandir Bus Stand and at that time one jeep was taking passengers to Palanpur and he was offered to sit in the same on payment of charges and, therefore he along with other passengers sat in the said jeep. On the road near Sardarpura, the police tried to stop the jeep which was stopped at some distance and therefore, the passengers and the driver ran away and when he alighted from the jeep, the police arrested him. It was therefore his defence that he had nothing to do with the offence of dacoity or the murder of the jeep driver Bharatbhai.

3.5. In the further statement under section 313 of the CrPC, the defence of original accused No. 2 was of denial. In the further statement under section 313 of the CrPC, the defence of original accused No. 3 was that he received some injury in the accident and therefore, his pant had become blood stained and therefore, he had gone to the house of Kanjibhai who was his friend for changing the clothes. The defence of original accused Nos. 4 and 5 was that they were not at all present and that they are falsely implicated. That thereafter on appreciation of evidence, by impugned judgment and order the learned trial

Court has acquitted the original accused for the offence punishable under section 302 read with sections 34 and 396 of the IPC, however has convicted the original accused Nos. 1, 2, 3 and 5 for the offence punishable under section 392 of the IPC and has sentenced to undergo 10 years" RI with fine of Rs. 5000/- and in default to undergo further 3 months" SI. That by impugned judgment and order the learned trial Court has acquitted the accused for the offences for which they came to be tried. The learned trial Court has also acquitted the original accused Nos. 1, 2, 3 and 5 for the offences punishable under section 397 of the IPC also.

3.6. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction passed by the learned trial Court convicting the original accused Nos. 1, 2, 3 and 5 for offence punishable under section 392 of IPC, original accused Nos. 1, 2, 3 and 5 have preferred the Criminal Appeal No. 1012/1993.

3.7. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned trial Court acquitting the original accused for the offences punishable under section 302 read with section 34 and sections 396 and 397 of the IPC, the State has preferred the Criminal Appeal No. 949/1994.

4.0. Shri N.K. Majmudar, learned advocate appearing on behalf of the original accused Nos. 1, 2, 3 and 5 in both the appeals and Shri H.K. Patel, learned APP has appeared on behalf of the State in both the appeals.

4.1. Now, so far as appeal preferred by the original accused against their conviction for the offence punishable under section 392 of the IPC is concerned, Shri Majmudar, learned advocate appearing on behalf of the original accused has vehemently submitted that the learned trial Court has materially erred in convicting the accused for the offence punishable under section 392 of the IPC more particularly when the learned trial Court has acquitted the accused for the offence punishable under section 302 read with section 34 and sections 396 and 397 of the Indian Penal Code, 1860. It is submitted that while convicting the accused the learned trial Court has not properly appreciated the defence so stated by them in their further statement under section 313 of the CrPC.

4.2. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the original accused that as such the case rest on circumstantial evidences only and therefore, unless and until the complete chain of events is established and proved beyond doubt by the prosecution, the learned trial Court is not justified in convicting the accused.

4.3. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the original accused that in the present case on the basis of the evidence led by the prosecution, it cannot be said that the prosecution has been successful in proving/establishing the complete chain of events and has failed to prove beyond doubt by leading cogent evidences that the appellants herein - original accused alone and alone have committed the offences. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the original accused that the learned trial Court has committed grave error of law in

relying upon the alleged confession of original accused No. 1 before the police which is the only connecting link with the other accused. It is submitted that the statement made before the police in the course of investigation or any confession of accused made before the police is inadmissible in evidence. It is submitted that therefore learned trial Court has committed serious error of law in accepting confession before the police and has erred in drawing the inference of will against the accused.

4.4. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the original accused that the learned trial Court has strongly relied upon the only circumstance that the original accused No. 1 was trying to run away on 02.03.1990 on seeing the police and he was apprehended there. It is submitted that with respect to the aforesaid, the original accused No. 1 had given cogent and reasonable explanation about his conduct which ought to have been accepted by the learned trial Court. It is submitted that the learned trial Court has observed that if he was innocent, he had no reason to run away. It is submitted that with respect to that as others run away seeing the police, the original accused No. 1 also tried run but he was apprehended and therefore, merely from that, the inference of having committed the murder and looted the jeep, would not have been drawn.

4.5. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the original accused that as such the prosecution has failed to establish and prove any motive for the accused to commit the murder of the deceased. It is submitted that as such there was no enmity alleged between the deceased and the accused and as such they were quite unknown to each others. It is submitted that in cases of circumstantial evidence, absence of motive is always plus point in favour of the accused which has been ignored by the learned trial Court.

4.6. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the accused that the learned trial Court has committed serious error in law in believing the evidence of panch witnesses regarding discovery of knife by accused No. 1. It is further submitted that even the learned advocate has committed a grave error in believing discovery in respect of original accused No. 3. It is submitted that same was discovered on 14.03.1990 from the house of one Kanjibhai. One knife was pointed out by wife of Kanjibhai. It is submitted that despite of the above, the aforesaid alleged discovery has been used to convict the original accused No. 3. It is further submitted by Shri Majmudar, learned advocate appearing on behalf of the accused that the learned trial Court has materially erred in observing/taking judicial notice that there was no way leading from Chhara to Palanpur and the people would always use the road via Sabarmati. It is submitted that such an approach/reasoning is only on presumption and therefore, such an approach has caused grave prejudice to the accused.

4.7. Shri Majmudar, learned advocate appearing on behalf of the original accused has heavily relied upon the following decisions of the Hon"ble Supreme Court in

support of his submissions and request to acquit the accused for all the offences for which they came to be tried.

1. (2014)2 SCC 133 Rakesh & Anr. v. State of U.P. & Anr.

2. Vijay Kumar Vs. State of Rajasthan,

3. Kanhaiya Lal Vs. State of Rajasthan,

Making above submissions and relying upon above decisions it is requested to allow the Criminal Appeal No. 1012/1993 and quash and set aside the impugned judgment and order of conviction passed by the learned trial Court.

5.0. Criminal Appeal No. 1012/1993 is vehemently opposed by Shri Patel, learned advocate appearing on behalf of the State. He has also made submissions in Criminal Appeal No. 949/1994 in which the impugned judgment and order passed by the learned trial Court acquitting the accused for the offences punishable under sections 302 , 396 and 397 of the IPC is challenged.

5.1. It is vehemently submitted by Shri H.K. Patel, learned APP that in the present case as such the learned trial Court has not committed any error in convicting the accused for the offence punishable under section 392 of the IPC. It is submitted that as such the learned trial Court has committed a grave error in acquitting the original accused for the offences punishable under sections 302 , 396 and 397 of the IPC. It is further submitted that once the learned trial Court has convicted the accused for the offence under section 392 of the IPC, there is no justification in acquitting the accused for the offences punishable under sections 396 and 397 of the IPC and even for the offences punishable under section 302 of the IPC.

5.2. It is further submitted that initially the original accused No. 1 Laxmansingh was caught on the spot while he was driving the jeep at Sardarnagar/ Chharanagar area, Ahmedabad in a most suspicious manner. It is submitted that the jeep which was used at the time of committing the offence/murder of the deceased Bharatbhai was found with the original accused No. 1 when he was driving the same along with other accused persons at Chharanagar, Ahmedabad. It is submitted that the explanation given by the original accused No. 1 was absolutely found to be false. It is submitted that the original accused No. 1 Laxmansingh tried to explain in his further statement recorded under section 313 of the CrPC that he wanted to go to Palanpur and therefore, he boarded the jeep from Gitanmandir Bus Stand and while going to Palanpur the police apprehend the jeep and, other persons traveling in the jeep including the driver of the jeep ran away and therefore, he also tried to run away and at that time he was apprehended. It is submitted that the same has not been rightly accepted by the learned trial Court by observing that while going to Palanpur, Chharanagar was not the route at all. It is submitted that therefore when the original accused No. 1 gave the wrong/false explanation in his further statement under section 313 of the CrPC and considering the other evidence on record and having held and

observed that the prosecution has been successful in proving the complete chain of events, no error has been committed by the learned trial Court in acquitting the accused. It is further submitted that so far as other accused are concerned, there are recoveries of the weapon/knife used in committing the offence as well as recovery of their clothes having blood stain of deceased. It is further submitted that in the present case there is a discovery/recovery of the knife used in committing the offence at the instance of original accused No. 2. It is submitted that in the present case there is recovery of clothes/pants of the original accused Nos. 3 and 5 and even the knife at the instance of Umedsingh - original accused Nos. 3 and 5. It is further submitted that original accused Nos. 3 and 5 have failed to explain the blood stains on their trousers, in their further statement under section 313 of the CrPC.

5.3. It is further submitted that even the injuries were found on the accused Khemsingh - original accused No. 5, which has not been believed by him. It is further submitted that even the design of the sandal or foot mark of original accused No. 1 tallied with the design of foot prints found at the place of incident. It is submitted that even the tyre marks of the jeep are tallied with the tyre marks which were found at the place of incident. It is further submitted that Kanjibhai who was examined as PW-18 at Exh.77 has fully supported the case of the prosecution. He, therefore, submitted that the learned trial Court has not committed any error in convicting the accused for the offence punishable under section 392 of the IPC in view of the overwhelming evidence on record and when the prosecution has been successful in proving and/or establishing the complete chain of events.

5.4. It is further submitted by Shri Patel, learned APP that the learned trial Court has materially erred in acquitting the accused for the offences punishable under sections 396 and 397 of the IPC mainly on the ground that out of five accused, original accused No. 4 Thakor Prabhatsingh has been acquitted. It is submitted that merely because out of five accused, one of the accused is acquitted for insufficient evidence, the learned trial Court has materially erred in acquitting the accused under section 396 of the IPC. It is submitted that when the offence was committed by five persons and merely because one of the accused is acquitted due to insufficiency of evidence, it does not mean that other accused persons against whom sufficient evidence is available, cannot be convicted for dacoity. In support of his above submissions, Shri Patel, learned APP has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Saktu and Another Vs. State of U.P., as well as the recent decision of the Hon''ble Supreme Court in the case of Manoj Giri Vs. State of Chhatisgarh, .

5.5. Even otherwise the learned trial Court has materially erred in acquitting the accused for the offence punishable under section 302 of the IPC. It is submitted that once it is established and proved that the accused persons committed the offence of dacoity and the prosecution has been successful in establishing the complete chain of events leading to the murder of the deceased, the learned trial

Court has committed grave error in acquitting the original accused for the offence punishable under section 302 of the IPC.

5.6. Now, so far as the contention on behalf of the accused that the prosecution has failed to establish any motive for the accused to commit the murder of deceased Bharatbhai, it is submitted that the motive was to commit loot and dacoity. It is submitted that therefore even the motive is also established and proved.

Making above submissions and relying upon above decisions, it is requested to dismiss the Criminal Appeal preferred by the convicted accused and to allow the appeal preferred by the State and to convict the original accused for the offence punishable under section 302 as well as section 396 of the IPC.

6.0. Heard learned advocates appearing on behalf of respective parties at length. Perused the impugned judgment and order passed by the learned trial Court. We have re-appreciated the entire evidence on record.

At the outset it is required to be noted that by impugned judgment and order the learned trial Court has convicted the original accused Nos. 1, 2, 3 and 5 for the offence punishable under section 392 of the IPC, however has acquitted them for the offences punishable under sections 302 of the IPC and sections 396 and 397 of the IPC.

6.1. At the outset it is required to be noted and it is not in dispute that the dead body of the deceased Bharatbhai was found on 01.03.1990 in the agricultural field of one Nizamkhan at village Dangiya on Dantiwada road within the jurisdiction of the Gadhi Police Station, Taluka Palanpur. It is not in dispute that that original accused No. 1 Laxmansingh was apprehended by the PSI Shri Chaudhary of Sardarnagar Police Station on 02.03.1990 in the early morning. That on 02.03.1990, in early morning at Ahmedabad near Chharanagar, PSI of Sardarnagar Police station saw one jeep (muddamal jeep) coming in speed and he tried to stop the same. That four persons other than the original accused No. 1 were successful in running away from jeep, however the original accused No. 1 was arrested and interrogated. That the original accused No. 1 tried to explain his presence in the jeep in his further statement recorded under section 313 of the CrPC. According to original accused No. 1, as he wanted to go to Palanpur from Gitamandir Bus stand and one jeep was taking passengers to Palanpur, he was offered to sit in the same on payment of charges and therefore, he along with other passengers sat in the jeep and on the road near Sardarnagar Police tried to stop the jeep which was stopped at some distance and therefore, the passengers and the driver ran away and when he alighted from the jeep, the police arrested him. However, by giving cogent reasons the learned trial Court has not accepted the defence of the original accused No. 1. It is required to be noted that to go to Palanpur from Gitamandir Bus stand, Chharanagar from where the original accused No. 1 was apprehended from jeep, was not the route at all. To go to Palanpur from Gitamandir Bus stand, one was not required to go

to Chharanagar/Sardarnagar at all. Under the circumstances, as such the original accused No. 1 gave the false explanation/defence in his further statement recorded under section 313 of the CrPC. At this stage it is required to be noted that the design of the tyres of the jeep tallies with the tyre marks found at the place of incident from where the dead body of the deceased Bharatbhai was found. Even the design of the slippers of the original accused No. 1 tallies with the design of slipper found at the place of incident.

6.2. In the present case there is recovery of the knife used in committing the offence, at the instance of original accused No. 2 Pravinsingh which was recovered from the place which could have been known to the said accused alone i.e. from Nala near Palanpur - Siddhpur Highway road. The recovery of the knife at the instance of the original accused No. 2 has been established and proved by examining the panch witnesses.

6.3. In the present case even there is a recovery of the knife at the instance of the original accused Nos. 3 and 5 and the knife used in committing the offence was recovered from the place which was known to the said accused alone. Even the trousers/pant of the original accused Nos. 3 and 5 were recovered at their instance from the house of one Kanjibhai - friend of the said accused. The said pants were having blood stains. The original accused Nos. 3 and 5 have failed to explain the blood stains on their trousers. The recovery of the trouser/pants and the knife at the instance of original accused Nos. 3 and 5 have been established and proved by examining Kanjibhai at Exh.77 and his wife Shobhnaben.

6.4. It is further submitted that therefore when there are recoveries of the weapons used in committing the offence and even recovery of trousers/pants of original accused Nos. 3 and 5 having blood stains, at the instance of the original accused Nos. 2, 3 and 5 and when original accused No. 1 was as such found/apprehended/arrested with the muddamal jeep and his defence/explanation is found to be false and when the prosecution has been successful in establishing and/or proving the complete chain of events with respect to the involvement of the jeep which was driven by the original accused No. 1, it cannot be said that the trial Court has committed any error in convicting the accused Nos. 1, 2, 3 and 5 for the offence punishable under section 392 of the IPC. It is required to be noted that even the blood stains were found on the hood of the jeep and even on the knife.

6.5. Now, that takes us to the appeal preferred by the State against the impugned judgment and order of acquittal passed by the learned trial Court acquitting the original accused for the offences punishable under sections 302 and 396 of the IPC.

So far as the impugned judgment and order of acquittal passed by the learned trial Court acquitting the accused for the offence punishable under section 396 of the IPC is concerned, it appears that by the impugned judgment and order, the learned trial Court has acquitted the accused for the offence punishable under

section 306 of the IPC on the ground that as original accused No. 4 has been acquitted and the number of remaining convicted accused would be only four, the learned trial Court has acquitted the remaining accused for the offence punishable under section 396 of the IPC. However, it is required to be noted that from the very beginning there were allegations of involvement of five persons in committing the offence. It is true that out of five accused, original accused No. 4 has been acquitted for want of sufficient evidence. However, on that ground alone the remaining accused could not have been acquitted for the offence punishable under section 396 of the IPC. As observed by the Hon''ble Supreme Court in the case of Manoj Giri (Supra), in a given case it may happen that there can be five or more persons and the factum of five or more persons either is not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal, observing that thereafter identity is not established, or that otherwise there is insufficient evidence to convict them, in such case there can be a conviction of less than five persons or even one for dacoity. Similar is the view taken by the Hon''ble Supreme Court in the case of Saktu & Anr. (Supra). Under the circumstances and in the facts and circumstances of the case, learned trial Court has materially erred in acquitting the remaining original accused Nos. 1, 2, 3 and 5 for the offences punishable under section 396 of the IPC.

6.6. Similarly, the learned trial Court has committed grave error in acquitting the original accused for the offence punishable under section 302 of the IPC. From the findings recorded by the learned trial Court as such the learned trial Court has specifically observed and given a finding that original accused Nos. 1, 2, 3 and 5 have committed the murder/loot and dacoity and there is ample material/evidence against them connecting them with respect to the murder of the deceased Bharatbhai. Therefore, as such the learned trial Court has already convicted the accused for the offence punishable under section 392 of the IPC. As observed hereinabove, original accused Nos. 1, 2, 3 and 5 are also held to be guilty for the offence punishable under section 396 of the IPC. Once the accused are convicted for the offence punishable under section 396 of the IPC i.e. dacoity with murder and the death of the deceased Bharatbhai was homicidal death, the learned trial Court ought to have convicted the accused for the offence punishable under section 302 of the IPC also. As observed hereinabove, the prosecution has been successful in proving and establishing the complete chain of events by leading cogent evidence and therefore, accused persons were liable to be convicted for the offence punishable under section 302 of the IPC.

6.7. Now, so far as the reliance placed upon the decisions of the Hon''ble Supreme Court in the cases of Rakesh & Anr. (Supra); Vijay Kumar (Supra) and Kanhaiyalal (Supra) relied upon by the learned advocate appearing on behalf of the original accused is concerned, it is required to be noted that on facts and the findings recorded by this Court, none of the aforesaid decisions shall be applicable and/or of any assistance to the accused.

6.8. Now, so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of Rakesh & Anr. (Supra) by the learned advocate appearing on behalf of the accused is concerned, it is required to be noted that in the present case there is recovery of knife/s at the instance of original accused No. 2 and original accused Nos. 3 and 5 and that there is discovery of clothes of original accused Nos. 3 and 4 with blood stains which are not explained by the original accused Nos. 2, 3 and 5. Similarly, in the case before the Hon''ble Supreme Court in the case of Kanhaiyalal (Supra), except last seen together, there was no other evidence connecting the accused. Under the circumstances, none of the aforesaid decisions shall be applicable to the facts of the case on hand and/or shall be of any assistance to the accused.

7.0. In view of the above and for the reasons stated above, Criminal Appeal No. 1012/1993 preferred by the original accused against their conviction for the offence punishable under section 392 of the IPC is hereby dismissed.

For the reasons stated above, Criminal Appeal No. 949/1994 preferred by the State against the impugned judgment and order passed by the learned trial Court acquitting the original accused for the offence punishable under section 302 of the IPC and section 396 of the IPC is hereby allowed. Respondents herein - Original accused No. 1 Laxmansingh Halsingh Thakor, original accused No. 2 Pravinsingh Rajsingh Thakor, original accused No. 3 Umedsingh Nathusingh Thakor and original accused No. 5 Khemsingh Halsingh Thakor are held to be guilty for the offences punishable under sections 302 and 396 of the IPC also and the said accused are sentenced to undergo life imprisonment and the fine imposed by the learned trial Court is maintained. All the sentences to run concurrently.

FURTHER ORDER

At this stage, Shri Majmudar, learned advocate appearing on behalf of the original accused has requested to grant reasonable time to the accused to surrender before the jail authority.

Prayer is opposed by Shri H.K. Patel, learned APP. However, in the facts and circumstances of the case, time to surrender to the original accused to undergo remaining sentence is hereby granted upto 11.01.2016.