RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Criminal Appeal No. 28/1998
CNR: RJHC010003011998 | URN: CRLA / 78U / 1998

Rajasthan High Court
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1. Jagia @ Jagdish S/o Jawar, R/o Bisala Agor, Police Station Sadar Kotwali, District Barmer.
2. Khetiya S/o Jawara, R/o Bisala Agor, Police Station Sadar Kotwali, District Barmer.
(Both in Central Jail, Jodhpur)

----Appellants

Versus

State of Rajasthan

----Respondent

For Appellant(s) : Mr. Shreyash Ramdev
For Respondent(s) : Mr. C.S. Ojha, P.P.

HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

Date of Conclusion of Arguments : 05/10/2026

Date of Judgment Reserved : 05/10/2026

Full / Operative Part Pronounced : Full Judgment

Date of Judgment Pronounced : 04/11/2026

Per : Ashutosh Kumar, J.

1. This criminal appeal has been filed under Section 374(ii) of Cr.P.C. on behalf of accused-appellants against the judgment dated 02.12.1997 passed by the learned Additional Sessions Judge, Barmer (hereinafter to be referred as 'trial court') in Sessions Case No. 24/96, by which, the learned trial court while convicting the accused-appellants for the offences punishable

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under Sections 302 and 380 of IPC sentenced/punished as follows :-

Section	Sentence	Fine Amount	Sentence in case of default of fine amount
Appellant No.1 - Jagia @ Jagdish S/o Jawar			
302 IPC	Life Imprisonment	Rs.100/-	15 Days' Rigorous imprisonment
380 IPC	4 Years' Rigorous Imprisonment	Rs.100/-	15 Days' Rigorous imprisonment
Appellant No.2 - Khetiya S/o Jawara			
380 IPC	4 Years' Rigorous Imprisonment	Rs.100/-	15 Days' Rigorous imprisonment

2. Earlier, the appeal filed on behalf of the accused-appellants was allowed by a Coordinate Division Bench of this Court vide judgment dated 25.03.2004 passed in D.B. Criminal Appeal No.28/1998 (Jagiya @ Jagdish & Ors. Vs. State of Rajasthan), whereby the accused-appellants were acquitted and the judgment of conviction and order of sentence passed by the learned trial court against them were set aside. Against the said judgment, the State of Rajasthan preferred a Criminal Appeal No.719/2005 before Hon'ble Supreme Court and the Hon'ble Supreme Court while setting aside the judgment of this Court remanded the criminal appeal back to be decided afresh strictly in accordance with law.

3. As per the prosecution case, during the intervening night of 02.02.1996 and 03.02.1996, one Dheli Devi was found murdered at her residence in Kalyanpura, District Barmer, where she was residing alone. On the morning of 03.02.1996, one Suresh Sindhi visited her house and found her lying dead on her bed. One Mohan

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Lal had been adopted by the deceased and was reisding far away from Barmer on the date of incident; therefore, the First Information Report was lodged by Suresh Sindhi, who was the first person to witness the deceased lying dead in her room. The FIR No.30/1996 was lodged at Police Station Kotwali Barmer, District Barmer for the offences punishable under Section 302 of IPC and an investigation was carried out.

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4. During the course of investigation, it was found that some jewellery had been stolen and a list of stolen articles was submitted to the police. From the scene of occurrence, foot steps were locketed and they were traced. The accused-appellants were thereafter arrested and at their instance, certain stolen articles were recovered from both of them. One blood stained knife and blood stained clothes were recovered from the accused-appellant No.1-Jagia @ Jagdish. Specimen footprints of accused-appellants were taken in the presence of Judicial Magistrate and the same along with the footprints collected from the scene of occurrence, were sent to the Forensic Science Laboratory (FSL) for examination. The recovered stolen jewellery articles were subjected to an identification procedure and were duly identified. Upon completion of a detailed investigation, the charge-sheet was filed against the accused-appellants before the competent court.

5. After hearing the accused-appellants on charge, both were charged with the offences punishable under Sections 302/34, 380/34 and 460 of IPC; however, they denied the charges levelled against them and opted for trial. As many as 19 witnesses were examined and the accused-appellants were examined under

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Section 313 of Cr.P.C; however, they did not produced any defence evidence. After conclusion of trial, learned trial court passed the impugned judgment against the accused-appellants. Hence, this criminal appeal.

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6. Learned counsel for the accused-appellants submits that the incident occurred during the intervening night of 02.02.1996 and 03.02.1996, whereas the accused-appellants were arrested on 20.03.1996 i.e. approximately one and a half months after the alleged incident. Learned counsel for the accused-appellants further submits that the recoveries of blood stained knife, blood stained clothes and stolen ornaments were also effected after an inordinate delay. It is also submitted that the case is based on the circumstantial evidence and the chain of circumstances is not completely make inference against accused-appellants so as to conclude that they are real culprits and no one else. It is also submitted that the evidence of identification of stolen articles is very weak, and no conviction can be based on this evidence. It is further submitted that the evidence relating to recovery of blood stained knife is also weak and the accused-appellants cannot be convicted solely on the basis of the recovery of a blood stained knife bearing blood of the same group as that of the deceased.

7. Learned counsel for the accused-appellants submits that the doctor, who conducted autopsy of the deceased, has stated that the cause of death was strangulation and not any injury inflicted by a knife; therefore, the knife recovered at the instance of the accused-appellants cannot be connected with the murder of the deceased. It is further submitted that the recoveries made in the

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present case are also doubtful, as the recovery witnesses do not belong to the locality from where the recoveries were made; rather, they are merely stock witnesses of the police, particularly the Investigating Officer. It is submitted that the prosecution has not established this fact that the blood stained clothes recovered from the accused were same which the accused-appellants were wearing at the time of so called incident. It is further submitted that the accused-appellants were made accused in this case simply because of the reasons that they were involved in an another Case No.45/1996, in which they had already been arrested; therefore, it is clear that they have falsely been implicated in this case. It is, thus, prayed that the present criminal appeal is liable to be allowed and as a consequence of which, the accused-appellants are entitled to be acquitted of the charges levelled against them.

8. Learned counsel for the accused-appellants has placed reliance on the following judgments :-

a) Order dated 19.06.2025 rendered by the Hon'ble Supreme Court in the case of ***State of Rajasthan Vs. Hanuman (Criminal Appeal No.631/2017)***;

b) Judgment dated 24.01.2024 rendered by the Hon'ble Supreme Court in the case of ***Raja Naykar Vs. State of Chhattisgarh (Criminal Appeal No.902/2023)***;

c) Judgment dated 30.09.2022 rendered by the Hon'ble Supreme Court in the case of ***Munikrishna @ Krishna Etc. Vs. State by Ulsoor PS (Criminal Appeal Nos.1597-1600 of 2022)***;

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d) Order dated 31.05.2016 rendered by a the Division Bench of this Court at Jaipur Bench in the case of ***Gopal Sharma Vs. State of Rajasthan (D.B. Criminal Appeal No.709/2009).***

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9. Per contra, learned Public Prosecutor submits that the photographs i.e. Exhibits - P/15, P/16 and P/18, showing the dead body of deceased at the scene of occurrence, makes it clear that clothes, face and neck of the deceased were also stained with blood. Furthermore, blood stained injuries were also found on the body of the deceased while conducting the autopsy and the injury No.1 of the Postmortem Report was also found with blood; therefore, it cannot be contended that the knife recovered in this case was not used in the commission of crime. It is further submitted that the clothes of the deceased, clothes of the accused-appellants and knife recovered in the present case were sent to the Forensic Science Laboratory for examination. The F.S.L. Report revealed the presence of blood group 'B' on all the aforesaid articles, which was the blood group of the deceased. It is also submitted that the blood stained knife and blood stained clothes were recovered at the instance and possession of the accused-appellants. Apart from this, the stolen ornament articles recovered at the instance and possession of the accused-appellants were duly identified by the complainant party as belonging to the deceased. Moreover, the footprints taken from the scene of occurrence were found to match the specimen footprints of the accused-appellants. It is, therefore, submitted

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that the prosecution has established the charges against the accused-appellants beyond reasonable doubt and that there is no illegality or infirmity in the impugned judgment warranting interference by this Court. Accordingly, the present appeal deserves to be dismissed.

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10. We have heard learned counsel for the parties and carefully reappreciated the evidence available on record.

11. Admittedly, there is no eyewitness to the occurrence and the prosecution case rests upon circumstantial evidence. Therefore, each incriminating circumstance relied upon by the prosecution has to be proved by reliable evidence and all such circumstances, when considered cumulatively, must form a complete chain pointing towards the guilt of the accused and excluding any reasonable hypothesis consistent with innocence. At the same time, the circumstances cannot be examined in complete isolation from each other, as the evidentiary value of one circumstance may stand materially strengthened by another independent circumstance.

12. In the present case, the fact that Dheli Devi met a homicidal death inside her residence during the intervening night of 02/03.02.1996 stands established from the evidence on record. It is also the prosecution case that jewellery belonging to the deceased was found missing from her house. The principal question, therefore, is whether the circumstances proved during investigation sufficiently connect the appellants with the offences for which they have been convicted.

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CASE AGAINST JAGIA @ JAGDISH :-

13. The first important circumstance against accused-appellant No.1- Jagia @ Jagdish is the footprint evidence. A bare left-foot impression was found at the place of occurrence immediately after discovery of the crime and was traced on 03.02.1996 vide Exhibit-P/4, which was seized and sealed in a packet marked 'B'. The said impression was subsequently compared with the specimen left bare-foot impression of Jagia @ Jagdish and was found to match. The significance of this evidence lies in the fact that the impression was obtained from the very place where the deceased was found murdered. The defence has not been able to point out any material circumstance showing that the crime-scene footprint was subsequently introduced, substituted or otherwise rendered unreliable. The matching footprint, therefore, constitutes a material circumstance connecting Jagia @ Jagdish with the scene of occurrence.

14. The next circumstance is the recovery of the blood-stained knife from Jagia @ Jagdish vide Exhibit-P/13, which was sealed in a packet marked 'E'. His blood-stained shirt and pant were also recovered and sealed in a packet marked 'F'. These recoveries acquire greater significance when examined in conjunction with the forensic evidence. As per FSL report Exhibit-P/51, the blood found on the shawl and towel/angocha of the deceased, seized vide Exhibit-P/3, and the blood found on the knife, shirt and pant recovered from Jagia @ Jagdish was of the same blood group, namely group 'A'. Thus, the prosecution case regarding the recoveries does not rest merely upon the presence of visible

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stains; it receives scientific corroboration from the FSL examination.

15. Learned counsel for the accused-appellants has emphasised that according to the medical evidence, the cause of death was strangulation and therefore the recovery of a blood-stained knife cannot connect accused-appellant No.1-Jagia @ Jagdish with the murder. The said argument is appealing. The reason is that no knife injuries were found on the body of the deceased, and the post-mortem report as well as the medical evidence clearly rules out the use of a knife in the commission of the offence for causing injuries. Therefore, the presence of blood on the knife loses much of its relevance, as contended by learned counsel for the appellant. However, leaving aside, the blood also found on the clothes of the deceased. It is pertinent to note that there were abrasions and lacerated wounds on the body of the deceased. Such abrasions result in the rupture of the outer layer of the skin, causing bleeding. Therefore, there is a possibility that the accused came into contact with the blood oozing from the injuries while committing the offence. Further, the photographs (Exhibit P/16) show that the shawl and towel/angocha of the deceased were soaked with blood when the body was found at the scene of the offence. Its evidentiary significance has to be considered along with the fact that it carried blood of the same group as found on the articles of the deceased, that the clothes recovered from Jagia @ Jagdish also carried blood of the same group, and that his bare left-foot impression matched the impression found at the scene of occurrence. Therefore, even if strangulation was the cause of

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death, the recovery of the blood-stained knife remains a corroborative circumstance in the overall chain of evidence.

16. Another material circumstance against Jagia @ Jagdish is the recovery of the stolen gold ring belonging to the deceased. The said ring was recovered from him on 29.03.1996 vide Exhibit-P/31 and was sealed in a packet marked 'J'. The recovered ring was thereafter subjected to identification and Mohan Lal, adopted son of the deceased, identified it vide Exhibit-P/12 as belonging to deceased Dheli Devi. Thus, the recovery is not of an unidentified article having no established connection with the deceased. The prosecution has connected the recovered ornament with the deceased through the identification proceedings.

17. Learned counsel has also questioned the recoveries on the ground that they were effected after considerable lapse of time from the date of occurrence and that the appellants themselves were arrested approximately one and a half months after the incident. Mere delay in arrest or recovery, however, cannot by itself render the entire evidence inadmissible or unreliable. In this regard it is relevant to refer to the decision of the Apex Court in the case of ***Earabhadrappa alias Krishnappa Vs. State of Karataka*****,** reported in **AIR 1983 Supreme Court 446**. The relevant para reads as under:-

> "13. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (*a*) to Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant

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> with the commission of the crime. The sudden disappearance of the appellant from the house of PW 3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangulated to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by PW 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex. P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under Illustration (*a*) to Section 114 must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property."

18. From a reading of the aforesaid decision, it is clear that the time elapsed between the incident and the recovery of the ornaments is a relevant factor, which has to be assessed in the light of the facts and circumstances of each case. There is no fixed time limit for determining whether possession is recent or otherwise. The question as to what constitutes recent possession must be determined having regard to the nature of the stolen article. If the stolen article is not one that is likely to pass readily

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from one hand to another, even a period of one year may be considered to constitute recent possession.

19. In the present case, the ornaments were of a distinctive nature, being those ordinarily worn by the deceased, and were not articles likely to pass readily from one hand to another. Thus, the delay of one and a half months in the recovery of the ornaments is of little significance, having regard to the nature of the ornaments. The evidence in the present case demonstrates that the murder and robbery were integral parts of one and the same transaction. The presumption under Illustration (a) to Section 114 of the Indian Evidence Act is not confined to the inference that the appellant committed the murder of the deceased; it also extends to the inference that he committed the robbery of her gold ornaments, which formed part of the same transaction. The evidence on record is sufficient to invoke the presumption under Section 114 of the Indian Evidence Act. In the present case, the recovery of the ring is supported by its subsequent identification. More importantly, so far as Jagia @ Jagdish is concerned, the prosecution case is independently reinforced by the matching crime-scene footprint and the FSL evidence concerning the blood-stained articles. The delay, therefore, does not break the chain of circumstances established against him.

20. If the circumstances proved against Jagia @ Jagdish are considered cumulatively, the following position emerges : firstly, his left bare-foot impression matches the footprint found at the scene of occurrence; secondly, his shirt and pant were found blood-stained; thirdly, as per Exhibit-P/51, blood group 'A' was

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detected on the articles of the deceased as well as on the knife and clothes recovered from him; and fourthly, the stolen gold ring of the deceased was recovered from him vide Exhibit-P/31 and identified vide Exhibit-P/12.

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21. These circumstances are not merely repetitive pieces of evidence of the same nature. They constitute separate categories of evidence - crime-scene evidence, forensic evidence and recovery evidence - which materially corroborate each other. The footprint connects Jagia @ Jagdish with the scene; the forensic evidence connects the blood-stained articles recovered from him with the same blood group found on the articles of the deceased; and the recovery of the identified stolen ring connects him with the property removed from the house of the deceased. Viewed cumulatively, these circumstances form a coherent and complete chain. The defence has not brought on record any reasonable explanation capable of breaking this chain or giving rise to a hypothesis consistent with the innocence of Jagia @ Jagdish.

22. We are, therefore, satisfied that the prosecution has established beyond reasonable doubt the involvement of Jagia @ Jagdish in the murder of Dheli Devi as well as in the theft of her property. The findings of the learned trial court convicting him under Sections 302 and 380 IPC do not suffer from any illegality or perversity warranting interference in appeal.

CASE AGAINST KHETIYA :-

23. The evidence against accused-appellant No.2-Khetiya, however, has to be appreciated independently. The incriminating circumstance established against him is the recovery of the stolen

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gold pendant/kanthi of deceased Dheli Devi on 29.03.1996 vide Exhibit-P/32, which was sealed in a packet marked 'L'. The said ornament was subsequently identified by Mohan Lal through Exhibit-P/12 as belonging to the deceased. The recovery and subsequent identification provide a direct evidentiary link between Khetiya and the property stolen from the house of the deceased.

24. The evidence adduced by the prosecution establishes the recovery of a gold pendant from the possession of another appellant, namely, Khetiya. In this regard, it would be relevant to refer to Illustration (a) to Section 114 of the Indian Evidence Act, which reads as under: –

> "114. The Court may presume existence of certain facts. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> Illustrations
>
> The Court may presume-(a) That a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

25. From a reading of the aforesaid Illustration, it is clear that where a person is found in possession of stolen goods soon after the commission of an offence, and the robbery and murder form part of the same transaction, the Court may presume that the person in possession of such goods either committed the murder and robbery as integral parts of the same transaction or committed the robbery or theft of such goods. In the present

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case, the trial court has drawn an inference of theft because there were no other circumstances to corroborate that the murder was an integral part of the robbery. The State has not preferred any appeal against the conviction recorded by the trial Court. It is the appellant, who was convicted under Section 380 IPC, has preferred the present appeal. The trial Court has already extended the benefit of a lesser offence by convicting the appellant under Section 380 IPC.

26. The learned trial court, therefore, rightly distinguished the evidentiary position of the two appellants. While the cumulative circumstances against Jagia @ Jagdish establish his involvement in the murder as well as theft, the proved circumstance against Khetiya establishes his involvement in the theft of the jewellery belonging to the deceased. We consequently find no ground to interfere with his conviction under Section 380 IPC.

27. On an overall reappreciation of the evidence, we find that the prosecution has established a complete chain of circumstances against Jagia @ Jagdish. The matching footprint found at the scene of occurrence, recovery of the blood-stained knife and clothes, FSL report Exhibit-P/51 showing blood group 'A' on the articles of the deceased as well as on the knife and clothes recovered from him, and recovery and identification of the stolen gold ring are mutually corroborative circumstances which, taken together, exclude any reasonable hypothesis consistent with his innocence.

28. As regards Khetiya, the recovery of the stolen gold pendant/ kanthi vide Exhibit-P/32 and its identification vide Exhibit-P/12

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establish his connection with the stolen property of the deceased and justify his conviction under Section 380 IPC. However, the additional circumstances relating to the footprint, blood-stained knife and blood-stained clothes operate against Jagia @ Jagdish and not against Khetiya.

29. We have also considered the objections regarding delay in arrest and recovery, the reliability of the recovery evidence and the medical opinion regarding strangulation. In the facts of the present case, these aspects do not create such reasonable doubt as would displace the cumulative effect of the circumstances proved by the prosecution.

30. Consequently, D.B. Criminal Appeal No.28/1998 filed by the accused-appellants viz. Jagia @ Jagdish and Khetiya is dismissed. The judgment of conviction and order of sentence dated 02.12.1997 passed by the learned Additional Sessions Judge, Barmer in Sessions Case No.24/1996 is affirmed.

a) The conviction of accused-appellant No.1-Jagia @ Jagdish under Section 302 IPC and the sentence of life imprisonment with fine of Rs.100/-, and in default thereof 15 days' rigorous imprisonment, are maintained.

b) His conviction under Section 380 IPC and the sentence of four years' rigorous imprisonment with fine of Rs.100/-, and in default thereof 15 days' rigorous imprisonment, are maintained.

c) The conviction of accused-appellant No.2-Khetiya under Section 380 IPC and the sentence of four years'

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rigorous imprisonment with fine of Rs.100/-, and in default thereof 15 days' rigorous imprisonment, are maintained.

31. The appellants shall be entitled to the benefit of the period of custody already undergone in accordance with law. If either appellant is on bail and is required to undergo the remaining sentence, appropriate steps shall be taken by the learned trial court in accordance with law. The trial court record be transmitted forthwith along with a copy of this judgment for necessary compliance. The appeal and all pending applications, if any, stand disposed of.

(ASHUTOSH KUMAR),J **(MUNNURI LAXMAN),J**

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