High Court of Madhya Pradesh
Bench Gwalior
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DB:- Hon'ble Shri G. S. Ahluwalia &
Hon'ble Shri Rajeev Kumar Shrivastava, JJ

Criminal Appeal No. 715 of 2013

Kamal Singh Rawat Vs. State of Madhya Pradesh

Criminal Appeal No. 303 of 2010

Madho Singh Rawat Vs. State of MP

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Criminal Appeal No. 363 of 2010

Gulab Singh Vs. State of MP

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Shri SS Kushwah with Shri S.K.S. Jadon, counsel for appellants in all criminal appeals.
Shri CP Singh, Counsel for State in all criminal appeals.

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Reserved on 07/12/2021
Whether approved for reporting Yes../.....

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JUDGMENT
(Delivered on 14/12/2021)

Per Rajeev Kumar Shrivastava, J:-

This judgment shall govern disposal of **Criminal Appeal No. 303 of 2010** filed by appellant Madho Singh Rawat & **Criminal Appeal No.363 of 2010** filed by appellant Gulab Singh against the judgment of conviction & sentence dated 07/04/2010, passed by Special Judge, Datia (MP) in Special Sessions Trial No.71/2007, by which appellant Madho Singh Rawat has been convicted under Section 302/34 of IPC r/w Section 13 of MPDVPK Act and sentenced to undergo Life Imprisonment with a fine of Rs.10,000/- with default stipulation,

while appellant Gulab Singh Rawat has been convicted under Section 302 of IPC r/w Section 13 of MPDVPK Act and sentenced to undergo Life Imprisonment with a fine of Rs.10,000/- with default stipulation. Similarly, vide judgment dated 21st day of June, 2013 passed by Special Judge (MPDVK Act), Data (MP) in same Special Sessions Trial No.71/2007, appellant Kamal Singh Rawat **(in Criminal Appeal No.715 of 2013)** has been convicted under Section 302 of IPC r/w Section 13 of MPDVPK Act and sentenced to undergo Life Imprisonment with a fine of Rs.10,000/- with default stipulation. Since the facts and circumstances of the case in all the criminal appeals are same, therefore, for the sake of convenience, we have heard all the criminal appeals simultaneously.

(2) It is undisputed fact that the place of incident i.e. Village Kurra, Police Station Badoni, District Datia has been declared a dacoity-affected area under Section 3 of MPDVPK Act as per Notification No. F12-A/2000/B(1)/2/dated 24-01-2000. Co-accused Mohan Singh was killed in a police encounter. Accused Madho Singh Rawat and Gulab Singh were tried, convicted and sentenced as stated above. Accused Kamal Singh Rawat is the real brother of Madho Singh, Rawat, Mohan Singh (deceased) and Gulab Singh. Sanjay alias Baba (deceased) was the real brother of Dashrath Singh (PW1) and Ashok Singh Yadav (PW2).

(3) Prosecution case, in brief, is that the agricultural field of one Prakash Ahirwar is situated near the agricultural field of deceased. On the date of incident i.e. on 28/06/2007 at around 2:30 pm, complainant Dashrath Singh, Ashok Singh and deceased Sanjay alias Baba were repairing the electric supply line which was discontinued. Deceased Sanjay alias Baba was fixing up a wooden pole (balli) by digging a pit. At that time, accused Kamal Singh, who

was armed with 12 bore adhiya, co-accused Mohan Singh (since deceased) was having 12 bore gun, accused Gulab Singh who was having a katta and accused Madho Singh, who was having luhangi came there. Due to previous enmity, accused co-accused Mohan Singh (since deceased) fired a gunshot, which hit on the back of deceased Sanjay. Thereafter, accused Gulab Singh fired another gunshot at Sanjay causing injury on the right hand of deceased Sanjay. Accused Kamal Singh fired a gunshot, which hit on the back of deceased Sanjay. On hearing hue and cry raised by Dashrath and Ashok Singh, witnesses Panjab Singh and Radhelal, who were working near the agricultural field, reached the spot and on seeing them, all accused persons fled away towards the well of Prakash Ahirwar. Thereafter, complainant Dashrath Singh lodged an FIR at Police Station Badoni vide Ex.P1 and police recorded merg intimation report under Section 174 of CrPC vide Ex.P2. Spot map was prepared vide Ex.P3. The dead body of deceased Sanjay alias Baba was sent for postmortem examination. All the accused persons were arrested and from their possession, deadly weapons were recovered. Bullet found inside the body of deceased Sanjay, bloodstained and simple soil, clothes of deceased and other seized articles were sent for chemical examination to FSL, Sagar. After completion of investigation, charge sheet in connection Crime No. 84/2007 for offences under Sections 302, 302/34 IPC r/w Section 11/13 of MPDVPK Act and Section 25/27 of Arms Act was filed and the case was committed to the Special Court/ Trial Court.

(4) Accused pleaded not guilty and claimed to be tried. Statements of accused under Section 313 of CrPC were recorded. It is pleaded by accused that they have falsely been implicated in the case due to previous enmity. Accused did not

examine any witness in order to lead any defence evidence.

(5) Prosecution, in order to prove its case, examined 15 witnesses, namely, PW1 complainant Dashrath Singh, PW2 Ashok Kumar Yadav, PW3 Dhoop Singh, PW3 Sitaram, PW4 Panjab Singh, PW5 Ram Singh, PW6 Mansharam, PW7 Mahesh, PW8 Suresh Singh, PW9 Mahesh Kumar, PW10 Bhanwar Singh, PW11 Kalyan Singh, PW12 Dr. Jaibharat Singh, PW13 Devilal, PW14 Karan Singh Lodhi and PW15 Alok Singh Bhadoriya.

(6) After conclusion of trial, the Trial Court by the impugned judgment and sentence, after marshalling the evidence available on record, found appellants guilty and accordingly, convicted and sentenced them, as mentioned in paragraph 1 of this judgment.

(7) Challenging the impugned judgment of conviction and sentence, it is submitted by learned Counsel for the appellants that the trial Court has erred in considering the evidence produced before it as there are so many contradictions and omissions between the statements of witnesses recorded under Section 161 of CrPC and the Court statements. The complaint party had enmity with the accused. Since the witnesses did not try to intervene in the matter, therefore, their conduct is unnatural, which shows that they were not present at the time of incident, hence, the prosecution evidence is shaky and conviction of the appellants is bad in the eyes of law. Even medical evidence does not corroborate the oral evidence of witnesses. It is further submitted that PW4 Panjab Singh (PW4) and PW11 Kalyan Singh are not the eyewitnesses and their statements were recorded after a delay of one month and no explanation for delay has been explained by prosecution, therefore, their evidence is not reliable. There is

nothing on record to suggest that all accused persons had acted in furtherance of common intention to commit murder of deceased. Therefore, the conviction of the appellants under the aforesaid offences is not sustainable in the eyes of law. Hence, prayed that the impugned judgment of conviction and sentence passed by the Trial Court deserves to be set aside.

(8) On the other hand, it is submitted by the learned Counsel for the State that the prosecution has proved the guilt of all the accused beyond reasonable doubt. It is submitted that the FIR was lodged without any delay, which shows the veracity of prosecution case. The oral evidence of prosecution witnesses finds corroboration from medical evidence and FIR (ExP1). The presence of witnesses on their fields is natural. As soon as PW4 Panjab Singh nd PW11 Kalyan Singh reached the place of occurrence, they saw that the accused persons are fleeing away from the spot towards the agricultural field and, therefore, their evidence is relevant as per the Indian Evidence Act. He further supported the impugned judgment of conviction and sentence and submitted that there being no infirmity in the impugned judgment of conviction and sentence and the findings arrived at by the Trial Court do not require any interference by this Court. Hence, prayed for dismissal of appeals.

(9) Heard the learned Counsel for the parties and perused the record.

(10) The first question for determination of present appeals is <u>whether the death of deceased Sanjay alias Baba was homicidal in nature or not ?</u>

(11) It would be appropriate to throw light on relevant provisions of Sections 299 and 300 of Indian Penal Code.

The Law Commission of United Kingdom in its 11th Report proposed the

following test :

> "The standard test of 'knowledge' is, Did the person whose conduct is in issue, either knows of the relevant circumstances or has no substantial doubt of their existence?"
> *[See Text Book of Criminal Law by Glanville Wiliams (p.125)]*

"Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability. Consequently, it cannot be held that the appellant caused the injury with the intention of causing such bodily injury as the appellant knew to be likely to cause the death of Shivprasad. So, clause Secondly of Section 300 IPC will also not apply."

The enquiry is then limited to the question whether the offence is covered by clause Thirdly of Section 300 IPC. This clause, namely, clause Thirdly of Section 300 IPC reads as under: -

> "Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death of the deceased in the ordinary course of nature. This is also borne out from illustration (c) to Section 300 IPC which is being reproduced below:-

> "(c) A intentionally gives Z a sword-cut or club-wound

> sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death."

Therefore, the contentions advanced in the present case and which are frequently advanced that the accused- appellants had no intention of causing death of deceased Sheoprasad (Shivprsasad) is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

(12) The scope and ambit of clause Thirdly of Section 300 IPC was considered by the Supreme Court in the decision in **Virsa Singh Vs. State of Punjab** reported in **AIR 1958 SC 465** and the principle enunciated therein explains the legal position succinctly. The accused Virsa Singh was alleged to have given a single spear blow and the injury sustained by the deceased was "a punctured wound 2"x =" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal. Three coils of intestines were coming out of the wound." After analysis of the clause Thirdly, it was held: -

> "The prosecution must prove the following facts before it can bring a case under S. 300 "Thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type, just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under

S. 300 "Thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (there is no real distinction between the two), or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death."

(13) In the case of **Arun Nivalaji More vs. State of Maharashtra (Case No. Appeal (Cri.) 1078-1079 of 2005)**, it has been observed as under :-

"**11**. First it has to be seen whether the offence falls within the ambit of Section 299 IPC. If the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300IPC, which will be punishable under Section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done

(i) with the intention of causing death; or

(ii) with the intention of causing such bodily injury as is likely to cause death; or

(iii) with the knowledge that the act is likely to cause death."

If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under

Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.

12. What is required to be considered here is whether the offence committed by the appellant falls within any of the clauses of Section 300 IPC.

13. Having regard to the facts of the case it can legitimately be urged that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to cause death" occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under: -

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact. It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

In Blackstone's Criminal Practice the import of the word 'knowledge' has been described as under: -

> 'Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance

> whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

(14) Section 299 of Indian Penal Code runs as under :-

> "299. Culpable homicide.-- Wheoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

(15) Section 299 of IPC says, whoever causes death by doing an act with the bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing :

> (i) an act with the intention of causing death;
> (ii) an act with the intention of causing such bodily injury as is likely to cause death; or
> (iii) an act with the knowledge that it is was likely to cause death.

Without one of these elements, an act, though it may be by its nature criminal and may occasion death, will not amount to the offence of culpable homicide. 'Intent and knowledge' as the ingredients of Section 299 postulate, the existence of a positive mental attitude and the mental condition is the special *mens rea* necessary for the offence.The knowledge of third condition contemplates knowledge of the likelihood of the death of the person. Culpable homicide is of two kinds : one, culpable homicide amounting to murder, and another, culpable homicide not amounting to murder. In the scheme of the Indian Penal Code, culpable homicide is genus and murder is species. All murders are

culpable homicide, but not *vice versa*. Generally speaking, culpable homicide *sans* the special characteristics of murder is culpable homicide not amounting to murder. In this section, both the expressions 'intent' and 'knowledge' postulate the existence of a positive mental attitude which is of different degrees.

(16) Section 300 of Indian Penal Code runs as under :-

> "**300. Murder.--** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--
>
> *Secondly.*-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--
>
> *Thirdly.*-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--
>
> *Fourthly.*-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

(17) "Culpable Homicide" is the first kind of unlawful homicide. It is the causing of death by doing ;(i) an act with the intention to cause death; (ii) an act with the intention of causing such bodily injury as is likely to cause death; or, (iii) an act with the knowledge that it was likely to cause death.

(18) Indian Penal Code recognizes two kinds of homicide :(1) Culpable homicide, dealt with between Sections 299 and 304 of IPC (2) Not-culpable homicide, dealt with by Section 304-A of IPC. There are two kinds of culpable homicide; (i) Culpable homicide amounting to murder (Section 300 read with Section 302 of IPC), and (ii) Culpable homicide not amounting to murder (Section 304 of IPC).

(19) A bare perusal of the Section makes it crystal clear that the first and the

second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not the intention. Both the expression “intent” and “knowledge” postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

(20) There are three species of *mens rea* in culpable homicide.(1) An intention to cause death; (2) An intention to cause a dangerous injury; (3) Knowledge that death is likely to happen.

(21) The fact that the death of a human being is caused is not enough unless one of the mental sates mentioned in ingredient of the Section is present. An act is said to cause death results either from the act directly or results from some consequences necessarily or naturally flowing from such act and reasonably contemplated as its result. Nature of offence does not only depend upon the location of injury by the accused, this intention is to be gathered from all facts and circumstances of the case. If injury is on the vital part, i.e., chest or head, according to medical evidence this injury proved fatal. It is relevant to mention here that intention is question of fact which is to be gathered from the act of the party. Along with the aforesaid, ingredient of Section 300 of IPC are also required to be fulfilled for commission of offence of murder.

(22) In the scheme of Indian Penal Code, “Culpable homicide” is genus and “murder” is its specie. All “Murder” is “culpable homicide” but not vice versa. Speaking generally 'culpable homicide sans special characteristics of murder' if

culpable homicide is not amounting to murder.

(23) In the case of **Anda vs. State of Rajasthan** reported in **1966 CrLJ 171,** while considering "third" clause of Section 300 of IPC, it has been observed as under:-

> "It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on sufficiency of injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and causing of such injury was intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature."

(24) In the case of **Mahesh Balmiki vs. State of M.P.** reported in **(2000) 1 SCC 319,** while deciding whether a single blow with a knife on the chest of the deceased would attract Section 302 of IPC, it has been held thus :-

> "There is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

(25) In the case of **Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat** reported in **(2003) 9 SCC 322**, it has been observed as under :-

> "The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend

upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

(26) In the case of **Pulicherla Nagaraju @ Nagaraja vs. State of AP** reported in **(2006) 11 SCC 444**, while deciding whether a case falls under Section 302 or 304 Part-I or 304 Part-II, IPC, it was held thus :-

> "Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference

> to individual cases which may throw light on the question of intention. Be that as it may."

(27) In the case of **Sangapagu Anjaiah v. State of A.P. (2010) 9 SCC 799,** Hon'ble Apex Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus**:-**

> "**16.** In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

(28) In the case of **State of Rajasthan v. Kanhaiyalal** reported in **(2019) 5 SCC 639,** this it has been held as follows:-

> "**7.3** In **Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155]** this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.
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> **7.4** ***In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat,*** **(2011) 10 SCC 604 : (2012) 1 SCC (Cri) 397]** , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion

that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5 A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether case falls under Section 302 or Section 304 Part I or Section 304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21)

> "**21**. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner."

(29) In the case of **Bavisetti Kameswara Rao v. State of A.P.** reported in **(2008) 15 SCC 725,** it is observed in paragraphs 13 and 14 as under:-

> "**13.** It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.
>
> 14. In **State of Karnataka Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231]** this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the

injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh vs. State of Punjab [AIR 1958 SC 465] , the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court (in **Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4)** relied on the observation by Bose, J. in Virsa Singh case **[AIR 1958 SC 465]** to suggest that: (Virsa Singh case **[AIR 1958 SC 465],** AIR p. 468, para 16)

> "16. With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

The further observation in the above case were: **(Virsa Singh case [AIR 1958 SC 465]** , AIR p. 468, paras 16 & 17)

> "**16.** The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.…
>
> 17. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify

> an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

(30) Dr. Jaibharat Singh (PW12), who was posted as Medical Officer in District Hospital Datia on the alleged date of incident, in his evidence, deposed that on 29/06/2007, he had conducted postmortem of deceased Sanjay alias Baba. Kalyan Singh, Harisharan and Ramesh had identified the dead body of deceased. He had proved postmortem report Ex.P17 and on postmortem examination, he found following injuries on the body of deceased:-

> (1) Gunshot entry wound, deep lacerated wound size 2.5 cm x 2.5 cm in circular shape over outer side of right side of chest, 5th rib was damaged.
>
> (2) Gunshot entry wound, deep lacerated wound 1.5 cm x 1.5 cm in round shape over upper sacrum of back bone.
>
> (3) Gunshot exit wound on lower portion of right side of scapula region.
>
> (4) Lacerated wound 1 cm x 1.5 cm over right pubic (hip bone) or genitalia region.

This witness further stated that the right side lung of the deceased was damaged. Semi-digested food materials were present in the stomach of deceased. As per the opinion of doctor, the deceased died due to syncope caused by gunshot injuries. One bullet, one rubber cork and three pellets were found inside the body of deceased. The clothes and corks, pellets and bullets were sealed and handed over to constable concerned. Blood-stained and simple soil, bullet and rubber cork found in the body of deceased along with clothes were sent to FSL for chemical examination vide Ex.P19. As per the FSL report Ex.P20, there

were gunshot holes on the clothes of deceased. Inquest report Ex.P5 was prepared by IO Alok Singh Bhadoriya (PW15) in the presence of witnesses, Sitaram PW3, Dashrath Singh PW1 and Mansharam PW6 after giving notice to them vide Ex.P4, which shows that deceased was died due to firearm injuries.

Therefore, from the evidence of Dr.Jaibharat Singh (PW12), inquest report Ex.P5 and FSL report Ex.P20, it is clear that cause of death of deceased Sanjay alias Sanju was homicidal in nature.

(31) The next question for determination of present appeals is whether on the date of incident, accused Kamal Singh had formed common intention with accused Mohan Singh, Madho Singh and Gulab Singh and committed murder of deceased Sanjay alias Baba or not ?

(32) Learned counsel for the appellants submitted that prosecution is not convincing to hold that accused were also shared common intention in committing murder of deceased Sanjay alias Baba, therefore, their conviction under Section 302 r/w Section 34 of IPC is liable to set aside. Prosecution has to establish by evidence whether direct or circumstantial that, there was a plan or meeting of minds of all accused to commit murder of deceased for which, they are charged with the aid of Section 34 of IPC, be it prearranged or on the spur of the moment, but it must necessarily be before the commission of crime.

(33) Section 34 of Indian Penal Code runs as under :-

> **"34.-- Acts done by several persons in furtherance of common intention.--** When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.**"**

Section 34 of the Indian Penal Code recognizes the principle of vicarious

liability in criminal jurisprudence. A bare reading of this Section shows that the Section could be dissected as follows :

(a) Criminal act is done by several persons;
(b) Such act is done in furtherance of the common intention of all; and
(c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 I.P.C. Must be done by several persons. The emphasis in this part of the Section is on the word 'done'. It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity. The Section does not envisage a separate act by all of the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.

(34) Section 34 is intended to meet a situation wherein all the co-accused have also done something to constitute the commission of a criminal act. Even the

concept of presence of the co-accused at the scene is not a necessary requirement to attract Section 34 e.g., the co-accused can remain a little away and supply weapons to the participating accused can inflict injuries on the targeted person. Another illustration, with advancement of electronic equipment can be etched like this; One of such persons in furtherance of the common intention, overseeing the actions from a distance through binoculars can give instructions to the other accused through mobile phones as to how effectively the common intention can be implemented. The act mentioned in Section 34 I.P.C., need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act e.g., a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the Section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34 I.P.C., cannot be invoked for convicting that person. This Section deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for 'that act' and 'the act' in the latter part of the Section must include the whole action covered by 'a criminal act' in the first part, because they refer to it. This Section refers to cases in which several persons both intend to do and do an

act. It does not refer to cases where several persons intended to an act and some one or more of them do an entirely different act. In the latter class of cases, Section 149 may be applicable if the number of the persons be five or more and the other act was done in prosecution of the common object of all.

(35) In the case of **Suresh Sankharam Nangare vs. State of Maharashtra [2012 (9) SCALE 345]**, it has been held that "if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the Code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, section 34 cannot be involved. In other words, it requires a pre-arranged plan and pre-supposes prior concert, therefore, there must be prior meeting of minds."

(36) In the case of **Shyamal Ghosh vs. State of West Bengal [AIR 2012 SC 3539]**, it is observed that "Common intention means a pre-oriented plan and acting in pursuance to the plan, thus common intention must exist prior to the commission of the act in a point of time."

(37) In the case of **Mrinal Das vs. State of Tripura [AIR 2011 SC 3753]**, it is held that "the burden lies on prosecution to prove that actual participation of more than one person for commission of criminal act was done in furtherance of common intention at a prior concert."

(38) In the case of **Ramashish Yadav vs. State of Bihar [AIR 1999 SC 1083]**, it is observed that "it requires a pre-arranged plan and pre-supposes prior concert therefore there must be prior meeting of mind. It can also be developed at the spur of moment but there must be pre-arrangement or premeditated concert."

(39) Mainly two elements are necessary to fulfill the requirements of Section

34 of IPC. One is that the person must be present on the scene of occurrence and second is that there must be a prior concert or a pre-arranged plan. Unless these two conditions are fulfilled, a person cannot be held guilty of an offence by the operation of Section 34 of IPC. [*Kindly see,* **Bijay Singh vs. State of M.B. [1956 CrLJ 897]**.

(40) In a murder case a few accused persons were sought to be roped by Section 34 I.P.C. It was found that one of the accused persons alone inflicted injuries on the deceased and the participation of the other accused persons was disbelieved. The person who alone inflicted injuries was held liable for murder and others were acquitted. [*Kindly see,* **Hem Raj vs. Delhi (Administration) [AIR 1990 SC 2252]**.

(41) In the case of **Dashrathlal vs. State of Gujarat [1979 CrLJ 1078 (SC)]**, it has been observed that "by merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of Section 34 I.P.C."

(42) In the case of **Rajagopalswamy Konar vs. State of Tamil Nadu [1994 CrLJ 2195 (SC)]**, there was land dispute between the members of a family, as a result of which deceased persons were attacked by the accused persons, in which one accused stabbed both the deceased persons and other caused simple injuries with a stick. It was held that the conviction of both the accused under Section 34 read with Section 302 IPC was not proper. Other accused was convicted under Section 324 of IPC.

(43) In the case of **Sheikh Nabab vs. State of Maharashtra [1993 CrLJ 43(SC)]**, it is observed that "the overtact on the part of accused could not be

proved and it was held that the order of the conviction was not proper."

(44) On a perusal of the evidence on record, we are of the view that the offence committed by appellants/accused is clearly one of murder and squarely comes within clause "thirdly" of Section 300 of IPC, which runs as under :-

> "If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

(45) It is well-established principle of law that where the case is based on direct evidence and the evidence led by prosecution is worth-reliance, then same cannot be discarded merely on the ground of absence of any motive or intention of accused. The Hon'ble Supreme Court in the matter of **Yogesh Singh vs. Mahabeer Singh and Others,** reported in **(2017) 11 SCC 195,** has held as under:-

> "**46.**....It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance."

(46) In the present matter, the bodily injury is caused by gunshot injuries and were sufficient in the ordinary course of nature to cause death of the deceased. It is in two parts, first part is subjective one which indicates that the injury must be intentional and not accidental and, second part is objective, in that, looking to the injury caused, the Court must be satisfied that it was sufficient in the ordinary course of nature to cause death of deceased. As per the opinion of the doctor, the

cause of death of the deceased was homicidal in nature.

(47) Dashrath Singh (PW1) and Ashok Kumar Yadav (PW2) in their evidence deposed that on the date of incident, while they along with deceased Sanjay alias Baba were repairing the broken electric supply line and deceased Sanjay alias Baba was digging a pit by fixing up a wooden pole (Balli), accused Kamal Singh, Mohan Singh (since deceased), Madho Singh and Gulab Singh came there with 12 bore adhiya, luhangi and firearms and thereafter, they fired at the deceased Sanjay alias Baba. On hearing hue and cry of Dashrath Singh and Ashok, witnesses Panjab Singh and Radhelal, who were working nearby the agricultural field, reached the spot and saw that all accused are fleeing away from the spot. Therefore, Dashrath Singh PW1 immediately went to Police Station and lodged the FIR.

(48) PW4 Panjab Singh in his evidence deposed that on being heard the sound of gunshot fires from the field of Prakash Ahirwar, he reached the spot and at that time, Dashrath Singh (PW1) and Ashok Singh Yadav (PW2) were crying and saying that, accused have killed Sanjay. They saw that the accused persons are running from the place of occurrence and the dead body of deceased Sanjay was lying on spot. This witness supported the prosecution version, as narrated by Dashrath Singh (PW1) and Ashok Singh Yadav (PW2).

(49) PW11 Kalyan Singh, in his evidence, deposed that on the date of incident, he was working in his agricultural filed and on hearing the sound of gunshot fires, when he reached near the agricultural field of Prakash Ahirwar, he saw that all the accused persons are fleeing away from the spot, who were having with deadly weapons, like 12 bore gun, adhiya, katta and luhangi. This

witness supported the prosecution version, as narrated by Dashrath Singh (PW1) and Ashok Singh Yadav (PW2).

(50) Investigating officer Alok Singh Bhadoriya (PW15) in his evidence deposed that he had prepared site plan Ex.P3 at the instance of complainant Dashrath Singh (PW1). On 28/06/2007, at about 04:25 pm, he had seized blood stained and plain soil from the spot in the presence of witnesses Mansharam PW6 vide seizure memo Ex.P13. An inquest report vide Ex.P5 of the dead body of deceased was prepared at the agricultural field of Prakash Ahirwar. The site plan and inquest report prove the place of incidence,as alleged by eye-witnesses.

(51) PW14 Karan Singh Lodhi, Patwari posted at Mouza & Tahsil Datia, in his evidence, deposed that on the information given by Tahsildar on 21/08/2007, he had prepared site plan (Najari Naksha) Ex.P18, carrying his signature from " A to A".

(52) PW13 Devilal, who was posted as Head Constable at Police Station Badoni on 29/06/2007, in his evidence, deposed that he had seized bullet, cork, clothes, shoes & other articles vide seizure memo Ex.P15,carrying his signature from "C to C". Similarly, PW10 Constable Bhanwar Singh and PW9 Constable Mahesh Kumar also supported the prosecution version, as narrated by PW13 Devilal, Head Constable.

(53) PW 6 Mansharam, in his evidence, deposed that in his presence Safina Form Ex.P4 was prepared by police carrying his signature from "C to C" and in his presence, panchnama of dead body of deceased *(Naksha Panchayatnama)* was prepared vide Ex.P5.

(54) From the evidence of aforesaid witnesses, it is clear that that the incident

took place at around 2:30 pm on 28/06/2007. The distance between the place of incident and police station is 9 kilometers. FIR Ex.P1 was lodged immediately on the same day at about 03:20 pm by Dashrath (PW1). Presence of witnesses, namely, Ashok Kumar Yadav (PW2) and Panjab Singh (PW4) has been shown in FIR. The deposition given by eye-witness Dashrath Singh (PW1) in the FIR is duly proved by Investigating Officer PW15 Ashok Singh Bhadoriya, which shows the veracity of prosecution version. Even in the FIR and in the Court statements, it has been specifically mentioned that accused Kamal Singh fired from his 12 bore katta/gun at the deceased, which is fully supported by medical evidence given by PW5 Dr. Jaibharat Singh. There is no discrepancy between medical evidence and oral testimony of witnesses. From the perusal of inquest report Ex.P5, it is also clear that the dead body of deceased was found at the place of occurrence i.e. in the agricultural field of Prakash Ahirwar. The statements of the witnesses clearly show that there was gunshot injuries on the body of deceased and, therefore, medical evidence fully corroborates evidence of eye-witnesses. Hence, the presence of the witnesses on the scene of occurrence i.e. the agricultural field is natural. From the evidence of PW1 Dashrath Singh, PW2 Ashok Singh Yadav and PW11 Kalyan Singh, it is apparent that the uncle of accused Kamal Singh, namely Durg Singh was murdered and in that case, Kalyan Singh PW11, the father of deceased Sanjay and Sanjay (since deceased) were tried for commission of murder of Durg Singh. Both the parties were in strained and inimical terms. The alleged eye-witnesses, Panjab Singh (PW4) and Kalyan Singh (PW11) are family members of deceased and all eye-witnesses are interested and inimical terms. In catena of decisions, the Hon'ble Supreme Court

has held that an interested witness is one, who is interested in securing the conviction of a person out of vengeance or enmity or due to dispute and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well-established, according to which the version of an interested witness cannot be thrown out overboard, but has to be examined carefully before accepting the same. There is no hard and fast rule that the family members can never be true witnesses to be occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. Therefore, the evidence of Dashrath Singh PW1, Ashok Singh Yadav PW2, Panjab Singh PW4 and Kalyan Singh PW11 cannot be discarded merely on the ground of being family members. There is no conflict between direct and medical evidence and even there is no inconsistency in the evidence of eye-witnesses. In the cross-examination of eye-witnesses, nothing has been elicited to discard their evidence and, therefore, their evidence are cogent, reliable and trustworthy. Although, the name of Radhelal has been mentioned in the FIR as an eye-witness and he was not examined by the prosecution, but as per the law laid down by Hon'ble Supreme Court in catena of judgments that no particular of witness is required for proof of any fact and it is not the number of witnesses, but it is the quality of evidence, which is required to be taken note of by the Court while ascertaining the truth and veracity of allegations made against accused. The Hon'ble Apex Court in the case of **Harbeer Singh Vs. Sheeshpal and others,** reported in **(2016) 16 SCC 418** has held as under :-

> **"18.** Further, the High Court has also concluded that these

witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.

19. In *Darya Singh* v. *State of Punjab*, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)

"*6*. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. … But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. … If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinized."

20. However, we do not wish to emphasize that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the Court to place credence on the statement.

21. Further, in *Raghubir Singh* v. *State of U.P.*, it has been held that: (SCC p. 84, para 10)

"*10*. … the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. … In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind."

(55) In view of the law laid down by Hon'ble Supreme Court, it is clear that the quality of evidence and not the quantity of evidence is material, which is

required to be judged by the Court to place credence on the statements of witnesses and, therefore, the credibility of prosecution witnesses in the present case remained unrebutted.Again, there is no substance in the argument advanced by learned Counsel for the accused in this regard.

(56) In the light of aforesaid discussions, we find that the learned Trial Court has rightly established appellants accused guilty of aforesaid offences beyond reasonable doubt in order to convict them for the charges levelled against them. As a consequence thereof, the judgment of conviction & sentence dated 07/04/2010, passed by Special Judge, Datia (MP) in Special Sessions Trial No.71/2007 as well as the judgment of conviction and sentence dated 21st day of June, 2013 passed by Special Judge (MPDVK Act), Data (MP) in same Special Sessions Trial No.1/2007 are hereby affirmed. All the criminal appeals **fail and stand dismissed.**

(57) The appellants- accused who are on bail are directed to surrender immediately before the Trial Court concerned for serving out their remaining part of jail sentence. The appellants- accused be intimated about the outcome of their appeals through the Jail Superintendent concerned.

(58) A copy of this order along with record of trial Court be also sent to trial Court for information and compliance.

(G. S.Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB