The High Court of Madhya Pradesh
CRA 426/2016
[Surendra Puri vs. State of MP]

Gwalior, dtd. 15/2/2020

Shri B. S. Gaur, counsel for the appellant.

Shri Vijay Sundaram, Panel Lawyer for the respondent/ State.

This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 18/03/2016, passed by Sessions Judge, Shivpuri in Special Sessions Trial No.270/2014, by which the appellant has been convicted under Section 307 of IPC and has been sentenced to undergo the rigorous imprisonment of 7 years and a fine of Rs.10,000/- with default imprisonment.

(2) The necessary facts for disposal of the present appeal in short are on 02/08/2014 at about 21:15, a FIR (Ex.P1) was lodged by complainant Akram Ali alias Kallu on the allegation that he is resident of Village Ludhabali. At about 06:00 pm, his brother Munna Khan had gone to the colony. After hearing noise of abusive language near the house of Yasmin, the complainant went there and found that appellant Surendra Puri was abusing his brother Munna Khan and was scolding as to why he use to visit the house of Yasmin. When his brother Munna Khan informed that Yasmin belongs to his caste and that is why he goes to the house of Yasmin, then on this issue, the appellant, who was having an iron pipe in his hand, started assaulting on the head of Munna Khan. Multiple blows on the head of Munna Khan were given. The incident was witnessed by the complainant as well as other witnesses named in the FIR and they intervened in the matter. Thereafter, the appellant

extended a threat that in case, if a FIR is lodged, then he would kill. Munna Khan fell unconscious and accordingly, he was shifted to Trauma Centre, Shivpuri Hospital from where he has been referred to Gwalior. On the basis of said FIR, the police registered Crime No.264/2014 at Police Station Dehat, Shivpuri, District Shivpuri for offence under Sections 307, 294, 323, 506 Part II of IPC. The police recorded the statements of the witnesses as well as collected the medical documents of injured Munna Khan. The appellant was arrested and iron pipe was seized. The clothes of injured Munna Khan were seized. Blood stained and plain earth from the spot were also seized and after completing the investigation, the police filed the charge sheet for offence under Sections 307, 294, 323, 325, 506 Part II of IPC.

(3) The Trial Court by order dated 08/12/2014 framed the charges under Sections 294, 307 in the alternative 323, and Section 506 Part II of IPC.

(4) The appellant abjured his guilt and pleaded not guilty.

(5) The prosecution, in order to prove its case, examined Akram alias Kallu (PW1), Deepak Rathore (PW2), Bachan Lal (PW3), Munna alias Abid (PW4), Ballu alias Rahish Khan (PW5), Dr. R.K. Rishishwar (PW6), Narendra Bhargava (PW7), Ashraf Ali (PW8), Dr. ML Agrawal (PW9), Bhure Singh (PW10) and Radhypuri Goswami (PW11). The appellant did not examine any witness in his defence.

(6) The Trial Court by the impugned judgment and sentence dated 18th March, 2016 passed in Sessions Trial No. 270/2014 convicted the

appellant for offence under Section 307 of IPC and sentenced to undergo the rigorous imprisonment of 7 years and a fine of Rs.10,000/- with default imprisonment and acquitted the appellant of offence under Sections 294, 323, 506 Part II of IPC.

(7) Challenging the judgment and sentence passed by the trial Court, it is submitted by the counsel for the appellant that even if the entire allegations are accepted, then it is clear that there is no intention on the part of the appellant to kill injured Munna alias Abid (PW4). The sentence awarded by Trial Court is excessive. Further, the independent witnesses have turned hostile and under these circumstances, the evidence of Akram alias Kallu (PW1) and Munna alias Abid (PW4) is not reliable.

(8) *Per contr*a, it is submitted by the counsel for the State that number of injuries, situs of the body of the injured where injuries were caused as well as the weapon used by the appellant, it is clear that his intention was to kill the injured. Further, the appellant had knowledge that the injuries caused by him may cause the death of injured and thus, it is clear that the prosecution has succeeded in establishing the allegations beyond reasonable doubt that the appellant has assaulted the injured with knowledge and intention of causing death of the injured.

(9) Heard the learned counsel fr the parties.

(10) Dr.R. K. Rishishwar (PW6) had medically examined the injured Munna alias Abid (PW4), who found the following injuries on his body:-

"(1) Lacerated wound size 4"x ½ cm x ms deep – left anterior parietal – Hard and Blunt object.

(2) Lacerated wound size 6"x ½ cm x bone deep- left mid parietal laterally – Hard and Blunt object.

(3)Lacerated wound size 3½" x ½ cm x ms deep- Right Anterior parietal – Hard and Blunt object.

(4)Lacerated wound – 2 ½" x ½ cm x ms deep – Right occipital head- Hard and Blunt object.

(5)Lacerated wound- 2 ½" x ½ cm x ms deep – Mid parietal head – Hard and Blunt object.

(6)Lacerated wound- 1½" x ½ cm x ms deep- Left mid face below eye- Hard and Blunt object.

(7)Lacerated wound –1½ " x ½ cm x ms deep – left mandible lower part – Hard and Blunt object.

(8) Lacerated wound – 1"x ½ " x bone deep- Left mid leg anterior part- Hard and Blunt object."

MLC report is Ex.P.11.

In X-ray (Ex. P13), the following fractures were found:-

(1) Fracture of mandible bone and both parietal bone.

(2) Fracture of left tibia bone.

Dr. R.K Rishishwar (PW6) has proved the fractures of the body of the injured. X-ray plates are Ex. P14 and Ex.P15 and X-ray report is Ex. P13.

Dr. ML Agrawal, Radiologist (PW9) has stated that he had seen X-ray plates and the report of the doctor was found to be correct.

It is clear that out of eight injuries which were sustained by injured Munna alias Abid (PW4), seven injuries were either on parietal region or near left mandible region, whereas injury No.8 was on the left leg.

(11) Deepak Rathore (PW2), Bachan Lal (PW3), Ballu alias Rahish Khan (PW5) and Narendra Bhargava (PW7) have turned hostile and they have not supported the prosecution case.

(12) Akram alias Kallu (PW1) has stated that it was at about 05:00-06:00 pm. He heard the noise of abusive language and accordingly, he went to the place of incident. He saw appellant Surendra Puri was assaulting his brother Munna by iron pipe. Munna had sustained injuries on his head and legs. This incident was witnessed by Deepak Rathor, Bachanlal and accordingly, the police was informed and ambulance was called. Thereafter, the injured was sent to Hospital Shivpuri from where he was referred to Gwalior Hospital for treatment. The FIR was lodged by this witness which is Ex.P1 and the spot map Ex. P2 was prepared. This witness further stated that the appellant was not arrested in his presence, however, he had signed the arrest memo Ex.P3. He further stated that no interrogation of the appellant was conducted in his presence. However, he admitted his signature on the memorandum Ex.P4 of the appellant. This witness further stated that an iron pipe was seized from the possession of appellant Surendra and its seizure memo is Ex.P5. No article was seized from the possession of injured Munna in his presence as per seizure memo Ex.P6. Since this witness did not support the prosecution case on the above-mentioned aspects, therefore, he was cross-examined by Public Prosecutor for a limited purpose, but this witness denied that the appellant was arrested on 07/08/2014 and he had signed the arrest memo at the place of arrest. This witness has also clarified that the arrest memo was signed at a later stage. He admitted that the confessional statement of the accused was recorded in his presence, who had informed that he had kept iron pipe in

his room and memorandum Ex.P4 was prepared in his presence and he had signed the same. He further admitted that on 28/08/2014, the police had seized the blood stained clothes of injured vide seizure memo Ex.P6. This witness also admitted that when he reached the spot, the appellant was on the spot and injured Munna Khan was lying on the ground. He further admitted that after looking at the injured, he gathered an impression that he might have expired and, therefore, he informed the police. It was further stated by him that the ambulance reached at the spot after 15-20 minutes of giving the information. He further stated that all the residents of the locality were present on the spot. He further denied that he had signed the spot map Ex. P2 in the police station. He stated that in his presence, the appellant informed that the iron pipe was kept in his house. He further denied that his brother Munna alias Abid had consumed liquor on the date of incident and under the drunkard condition he had fallen and sustained injuries.

(13) Munna alias Abid (PW4) is the injured. He has stated that an amount of Rs.50,000/- was outstanding against the appellant and accordingly, the appellant had called him for taking his money back. After getting an information from the appellant, he went to the house of the appellant, where tea was offered by him. Thereafter, when he reached near the house of Yasmin, the appellant started abusing him. He had an iron pipe in his hand and started assaulting on his head and legs as a result of which, he sustained injuries. His brother also reached on the spot and a threat was extended that in case, if a FIR is lodged, then

he will be killed. An information was given by his brother to the ambulance and thereafter, he was taken to Shivpuri Hospital from where he was referred to Gwalior Hospital and he remained admitted in Gwalior Hospital for ten days. The FIR was lodged by his brother Kallu. His bloodstained baniyan was seized vide seizure memo Ex.P6. In cross-examination, this witness has stated that the iron pipe was approximately 6 feet long. He also admitted that he was on visiting terms with the appellant. He further admitted that he also consumes liquor but clarified that at the time of incident, he was not under influence of liquor. He further stated that after the incident, he had fallen unconscious and regained consciousness after 8-10 days at Gwalior. He further denied that on the date of incident under the influence of liquor he had fallen on the stones, as a result of which he sustained injuries. He further stated that the house of Yasmin is situated after leaving one house, whereas the house of the appellant is situated after leaving 5-6 houses from the house of the complainant. He further denied that since the appellant was not refunding his money, therefore, he has lodged a false case.

(14) If the evidence of both these witnesses are considered, then it is clear that no effective cross-examination of injured Munna alias Abid (PW4) and Akram alias Kallu (PW1) has been done. Although Akram alias Kallu (PW1) has stated in paragraph 5 of his cross-examination that when he reached on the spot, he found that the injured was lying on the ground but this admission cannot lead to an inference that no

incident was ever seen by Akram alias Kallu. A person while rushing towards the place of incident, can see the incident from a distance. If the admission made by Akram alias Kallu (PW1) in paragraph 5 of his cross-examination is considered in the light of evidence of Akram alias Kallu (PW1) in paragraph 1 of his evidence, then it is clear that Akram alias Kallu wanted to say that when he actually reached on the spot, at that time, the injured was lying on the ground.

(15) Furthermore, Munna alias Abid (PW4) is an injured witness, who had sustained eight grievous injuries with multiple fractures. A suggestion was given by the appellant to this witness that since the appellant was not refunding the money to injured Munna alias Abid, therefore, a false case has been lodged, which was denied by injured Munna alias Abid (PW4). An attempt has been made by the appellant to project that under the influence of liquor, injured Munna alias Abid (PW4) had fallen on the stones, as a result of which he sustained multiple injuries. Although no specific defence has been taken by the appellant in this regard, but it is well-established principle of law that if the accused makes out his probable defence from the evidence led by the prosecution, then the same can be considered. In MLC report (Ex.P11), there is no mention of presence of smell of alcohol. Furthermore, no such question was put to Dr.R.K.Rishishwar (PW6) in his cross-examination. Nothing could not be pointed out by the counsel for the appellant to show that the stones were lying on the place where the injured had fallen. Further, a suggestion was given to Dr.R.K.Rishishwar

(PW6) and Dr. ML Agrawal (PW9) that under the influence of liquor, if a person falls on the stones from height, then he can sustain injuries, which was accepted by both the doctors. However, the counsel for the appellant could not point out any evidence to indicate that the injured might have fallen from the height. Thus, it is clear that the appellant assaulted injured Munna alias Abid (PW4) repeatedly by means of iron pipe as a result of which, he sustained injuries out of which seven injuries were either on parietal region or mandible region and one injury was on his left leg. It is submitted by the counsel for the appellant that since all the independent witnesses have turned hostile, therefore, the evidence of Akram alias Kallu (PW1) and Munna alias Abid (PW4) is not reliable, as Akram alias Kallu is the brother of Munna alias Abid.

(16) Heard the learned counsel for the appellant.

(17) There is a difference between "related witness" and "interested witness". The Supreme Court in the case of **Raju v. State of T.N.,** reported in **(2012) 12 SCC 701,** has held as under :-

> **"21.** What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan* v. *Kalki [(1981) 2 SCC 752]*. It was held that: (SCC p. 754, para 7)
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> > "*7.* … True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'."
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> **22.** In light of the Constitution Bench decision in

> *State of Bihar* v. *Basawan Singh [AIR 1958 SC 500]*, the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In *Basawan Singh [AIR 1958 SC 500]*, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held: (AIR p. 506, para 15)
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> > "*15.* … The correct rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

The Supreme Court in the case of **Jalpat Rai v. State of Haryana,** reported in **(2011) 14 SCC 208** has held as under:-

> **"42.** There cannot be a rule of universal application that if the eyewitnesses to the incident are interested in the prosecution case and/or are disposed inimically towards the accused persons, there should be corroboration of their evidence. The evidence of eyewitnesses, irrespective of their interestedness, kinship, standing or enmity with the accused, if found credible and of such a calibre as to be regarded as wholly reliable could be sufficient and enough to bring home the guilt of the accused. But it is a reality of life, albeit unfortunate and sad, that human failing tends to exaggerate, over implicate and distort the true version against the person(s) with whom there is rivalry, hostility and enmity. Cases are not unknown where an entire family is roped in due to enmity and simmering feelings although one or only few members of that family may be involved in the crime.
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> **43.** In the circumstances of the present case, to obviate any chance of false implication due to enmity of the complainant party with the accused

> party and the interestedness of PW 1, PW 4 and PW 8 in the prosecution case, it is prudent to look for corroboration of their evidence by medical/ballistic evidence and seek adequate assurance from the collateral and surrounding circumstances before acting on their testimony. The lack of corroboration from medical and ballistic evidence and the circumstances brought out on record may ultimately persuade that in fact their evidence cannot be safely acted upon.
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> **44.** Besides PW 1, PW 4 and PW 8, who are closely related to the three deceased, no other independent witness has been examined although the incident occurred in a busy market area. The place of occurrence was visited by PW 20 in the same night after the incident. He found three two-wheelers one bearing No. HR 31 A 5071, the second bearing No. RJ 13 M 7744 and the third without number lying there. One Maruti car bearing No. HR 20 D 8840 with broken glass was also parked there. The owners of these vehicles have not been examined. At the place of occurrence, one HMT Quartz wristwatch with black strap, one belcha and four pairs of chappals were also found. There is no explanation at all by the prosecution with regard to these articles. Nothing has come on record whether four pairs of chappals belonged to the accused party or the complainant party or some other persons. Whether the HMT Quartz wristwatch that was found at the site was worn by one of the accused or one of the members of the complainant party or somebody else is not known. Then, the mystery remains about the belcha that was found at the site. These circumstances instead of lending any corroboration to the evidence of those three key witnesses, rather suggest that they have not come out with the true and complete disclosure of the incident."

The Supreme Court in the case of **Rohtash Kumar v. State of Haryana,** reported in **(2013) 14 SCC 434,** has held as under :-

> **"35.** The term witness, means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in the court, or otherwise. In *Pradeep Narayan Madgaonkar* v. *State of Maharashtra [(1995) 4*

> *SCC 255]* this Court examined the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court therein held that the same must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belonged to the police force, and are either interested in the investigating or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars, should be sought. (See also *Paras Ram* v. *State of Haryana [(1992) 4 SCC 662]*, *Balbir Singh* v. *State [(1996) 11 SCC 139]*, *Kalpnath Rai* v. *State [(1997) 8 SCC 732]*, *M. Prabhulal* v. *Directorate of Revenue Intelligence [(2003) 8 SCC 449]* and *Ravindran* v. *Supt. of Customs [(2007) 6 SCC 410]*.)
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> Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon."

The Supreme Court in the case of **State of Rajasthan Vs. Chandgi Ram** reported in **(2014) 14 SCC 596** has held as under :-

> **17.** It was contended that all the witnesses were family members of the deceased and being interested witnesses, their version cannot be relied upon in toto. When we consider the same, we fail to understand as to why the evidence of the witnesses should be discarded solely on the ground that the said witnesses are related to the deceased. It is well settled that the credibility of a witness and his/her version should be tested based on his/her testimony vis-à-vis the occurrence with reference to which the testimonies are deposed before the court. As the evidence is tendered invariably before the court, the court will be in the position to assess the truthfulness or otherwise of the witness while deposing about the evidence and the persons on whom any such evidence is tendered. As every witness is bound to face the cross-examination by the defence side, the falsity, if any, deposed by the witness can be easily exposed in that process. The

trial court will be able to assess the quality of witnesses irrespective of the fact whether the witness is related or not. Pithily stated, if the version of the witness is credible, reliable, trustworthy, admissible and the veracity of the statement does not give scope to any doubt, there is no reason to reject the testimony of the said witness, simply because the witness is related to the deceased or any of the parties. In this context, reference can be made to the decision of this Court in *Mano Dutt* v. *State of U.P. [(2012) 4 SCC 79]* Para 24 is relevant which reads as under: (SCC p. 88)

> "*24*. Another contention raised on behalf of the appellant-accused is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. *Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured*. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. *Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party*."
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> (emphasis added)

18. Reliance can also be placed upon *Dinesh Kumar* v. *State of Rajasthan [(2008)8 SCC 270]*, wherein in para 12, the law has been succinctly laid down as under: (SCC p. 273)

> "*12*. In law, testimony of an injured witness is

> given importance. *When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically*. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence.
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> (emphasis supplied)

The Supreme Court in the case of **Nagappan Vs. State** reported in **(2013) 15 SCC 252** has held as under :-

> **"10.** As regards the first contention about the admissibility of the evidence of PW 1 and PW 3 being closely related to each other and the deceased, first of all, there is no bar in considering the evidence of relatives. It is true that in the case on hand, other witnesses turned hostile and have not supported the case of the prosecution. The prosecution heavily relied on the evidence of PW 1, PW 3 and PW 10. The trial court and the High Court, in view of their relationship, closely analysed their statements and ultimately found that their evidence is clear, cogent and without considerable contradiction as claimed by their counsel. This Court, in a series of decisions, has held that where the evidence of "interested witnesses" is consistent and duly corroborated by medical evidence, it is not possible to discard the same merely on the ground that they were interested witnesses. In other words, relationship is not a factor to affect the credibility of a witness. (Vide *Dalip Singh* v. *State of Punjab [AIR 1953 SC 364]*, *Guli Chand* v. *State of Rajasthan [(1974) 3 SCC 698]*, *Vadivelu Thevar* v. *State of Madras[AIR 1957 SC 614]*, *Masalti* v. *State of U.P. [AIR 1965 SC 202]*, *State of Punjab* v. *Jagir Singh [(1974) 3 SCC 277]*, *Lehna* v. *State of Haryana [(2002) 3 SCC 76]*, *Sucha Singh* v. *State of*

Punjab[(2003) 7 SCC 643], *Israr* v. *State of U.P. [(2005) 9 SCC 616]*, *S. Sudershan Reddy* v. *State of A.P. [(2006) 10 SCC 163]*, *Abdul Rashid Abdul Rahiman Patel* v. *State of Maharashtra [2007) 9 SCC 1]*, *Waman* v. *State of Maharashtra [(2011) 7 SCC 295]*, *State of Haryana* v. *Shakuntla [(2012) 5 SCC 171]*, *Raju* v. *State of T.N. [(2012) 12 SCC 701]* and *Subal Ghorai* v. *State of W.B. [(2013) 4 SCC 607]*)"

The Supreme Court in the case of **Harbeer Singh Vs. Sheeshpal,** reported in **(2016) 16 SCC 426** 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 scrutinised."
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> **20.** However, we do not wish to emphasise 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.
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> **21.** Further, in *Raghubir Singh* v. *State of U.P.*, it has been held that: (SCC p. 84, para 10)
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> "*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."

(18) Thus, it is clear that the evidence of a witness cannot be rejected or discarded merely because he is "related" or "interested witness", however, his testimony should be scrutinized very cautiously and all infirmities must be taken into consideration.

(19) Thus, the evidence of Akram Ali cannot be rejected merely on the ground that he is brother of injured Munna alias Abid (PW4). Further, Munna alias Abid had sustained injuries including multiple fractures and the police as well as ambulance were informed after the incident. This Court is of the considered opinion that there is no reason for the witnesses to falsely implicate the appellant after leaving the real culprit. The manner in which the police was informed, clearly indicates that

there was no sufficient time with the complainant as well as the injured to cull out the theory.

(20) So far as the fact that the independent witnesses have turned hostile is concerned, the evidence of injured Munna alias Abid (PW4) cannot be discarded on that ground only. The Court must try to remove the chaff from the grain. When the evidence of Munna alias Abid (PW4) and Akram alias Kallu (PW1) is consistent and is duly corroborated by medical evidence, then it cannot be said that the evidence of these witnesses is not reliable only because the independent witnesses had turned hostile.

(21) It is next contended by the counsel for the appellant that even if the entire allegations are accepted, then it would not be an offence under Section 307 IPC and the trial Court should have convicted the appellant under Section 326 of IPC.

(22) Considered the submissions made by counsel for the appellant.

(23) Section 307 of the Penal Code reads thus:

> "**307.*Attempt to murder***.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; **and if hurt is caused to any person by such act**, the offender shall be liable either to imprisonment for life, or to such punishment as is herein-before mentioned.
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> ***Attempts by life convicts***.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.
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> ***Illustrations***
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> (*a*) *A* shoots at *Z* with intention to kill him, under such circumstances that, if death ensued, *A* would be guilty of

murder. *A* is liable to punishment under this section.
(*b*) *A*, with the intention of causing the death of a child of tender years, exposes it in a desert place. *A* has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) *A*, intending to murder *Z*, buys a gun and loads it. *A* has not yet committed the offence. *A* fires the gun at *Z*. He has committed the offence defined in this section, and, if by such firing he wounds *Z*, he is liable to the punishment provided by the latter part of the first paragraph of this section.
(d) *A*, intending to murder *Z*, by poison, purchases poison and mixes the same with food which remains in *A*'s keeping; *A* has not yet committed the offence in this section. *A* places the food on *Z*'s table or delivers it to *Z*'s servants to place it on *Z*'s table. *A* has committed the offence defined in this section."

The Supreme Court in the case of **State of MP vs. Harjeet Singh and Another** by **order dated 19/02/2019 passed in Cr.A.No. 1190 of 2009** has held as under:-

"**5.6** Section 307 uses the term "hurt" which has been explained in Section 319, I.P.C.; and not "grievous hurt" within the meaning of Section 320 I.P.C. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307. This Court in R. Prakash v. State of Karnataka,1 held that : "…The first blow was on a vital part, that is on the temporal region. Even though other blows were on non-vital parts, that does not take away the rigor of Section 307 IPC……. It is sufficient to justify a conviction under Section 307 if there is present 1 (2004) 9 SCC 27 an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section." (emphasis supplied) If the assailant acts with the intention or knowledge that such action might cause death,

and hurt is caused, then the provisions of Section 307 I.P.C. would be applicable. There is no requirement for the injury to be on a "vital part" of the body, merely causing 'hurt' is sufficient to attract S. 307 I.P.C.2 This Court in Jage Ram v. State of Haryana3 held that:

> "12. For the purpose of conviction under Section 307 IPC, prosecution 2 State of Madhya Pradesh v. Mohan & Ors, (2013) 14 SCC 116 3 (2015) 11 SCC 366 has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc." (emphasis supplied) This Court in the recent decision of State of M.P. v. Kanha @ Omprakash held that: "The above judgments of this Court lead us to the conclusion that proof of grievous or life threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the Criminal Appeal No. 1589/2018, decided on 04.02.2019. Severity of the blows inflicted can be considered to infer intent."
>
> (emphasis supplied)

(24) Thus, in order to point out the intention or knowledge of the appellant, his overt act, the weapon used by him and the situs of the injuries on the body of injured, are some of the determinative/decisive factors. In the present case, the appellant had assaulted the injured on his

head for seven times and gave another blow on his left leg, resulting in multiple fractures on parietal bone, left tibia bone and mandible bone. Thus, it is clear that not only the repeated assaults were made by the appellant but the assaults were made with great force which resulted in fracture of parietal bone, mandible bone and left tibia bone. Seven assaults out of eight assaults were made by the appellant on the vital part of the injured i.e. head. Therefore, by no stretch of imagination, it cannot be said that the appellant had no knowledge or intention to cause death of injured Munna alias Abid (PW4). Therefore, the Trial Court has rightly held that the appellant is guilty of committing offence under Section 307 IPC and accordingly, conviction of the appellant for offence under Section 307 of IPC is hereby affirmed.

(25) So far as the question of sentence is concerned, it is submitted by the counsel for the appellant that since the appellant has already undergone a substantial part of jail sentence, therefore, he may be saddled with the sentence which has already been undergone by him.

(26) Heard the learned counsel for the appellant on the question of sentence.

(27) As already pointed out, seven repeated blows were given by the appellant on the head of injured Munna alias Abid (PW4) by iron pipe and one blow was given on the left leg of injured Munna alias Abid (PW4). The injured has sustained multiple fractures. The appellant had remained in jail for 72 days during the trial, however, he has not been granted bail by this Court in this appeal. The appellant was convicted by

judgment dated 18th March, 2016. Thus, it is clear that after his conviction, the appellant has undergone almost three years and eleven months of jail sentence and in all, he has remained in jail for approximately four years. Looking to the manner in which the appellant had repeatedly assaulted injured Munna alias Abid (PW4) causing multiple fractures including that of parietal bone, mandible bone and left tibia bone, this Court is of the considered opinion that the sentence of rigorous imprisonment of seven years awarded by the trial Court does not call for any interference.

(28 Accordingly, the judgment and sentence dated 18/03/2016 passed by Sessions Judge, Shivpuri in Special Sessions Trial No.270/2014, by which the appellant has been convicted under Section 307 IPC is hereby **affirmed.** The appellant is in jail. He shall undergone the entire jail sentence awarded to him.

(29) The appeal fails and is hereby **Dismissed.**

(G.S.Ahluwalia)
Judge

MKB