**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 22nd OF AUGUST, 2022

CRIMINAL APPEAL No.2768 of 2021

Between:-

TILLU @ MANISH SON OF- SHRI JAGDISH VERMA AGED - 26 YEARS, OCCUPATION - LABOUR, RESIDENT OF - NAKACHANDRAVANDANI, STREET NO.4, DISTRICT GWALIOR MADHYA PRADESH.

…....APPELLANT

(BY SHRI VIKAS SAXENA - ADVOCATE)

AND

STATE OF MADHYA PRADESH, THORUGH POLICE STATION JHANSIROAD, DISTRICT GWALIOR.

.....RESPONDENT

(BY SHRI A.K. NIRANKARI – ADVOCATE)

This criminal appeal coming on for hearing this day, the Court passed the following:

JUDGEMENT

1. This case was listed for consideration of I.A. No.11401/2022, an application for suspension of sentence on the ground of delay in hearing of appeal. On 2-8-2022, the Counsel for the Appellant took adjournment

for arguing the appeal finally and accordingly, today, the appeal was heard finally.

2. This Criminal Appeal has been filed under Section 374 of Cr.P.C., against the judgment and sentence dated 24-3-2021 passed by 4th Additional Sessions Judge, Gwalior in S.T. No.418 of 2016, by which the Appellant has been convicted under Sections 307 and 341 of IPC and for offence under Section 307 of IPC, he has been sentenced to undergo rigorous imprisonment of 5 years and a fine of Rs.1000/- with default rigorous imprisonment of 6 months and for offence under Section 341 of IPC, no jail sentence has been awarded and a fine of Rs.100/- has been imposed with default simple imprisonment for 15 days.

3. The prosecution story in short is that on 10-9-2016, the complainant Sanjay Tiwari lodged a Dehati Nalishi in Sahara Hospital that his motorcycle was stopped by two miscreants near Mansha Devi, near the gate of Forest Department and sought his help on the ground that their motorcycle has gone out of order. The complainant expressed his inability to take the miscreants on his motorcycle. Then both the miscreants started abusing him and demanded Rs.500/- for purchasing liquor. When he objected to it, then they started abusing and assaulting him. One boy was having on pointed iron object and assaulted him on his head whereas another gave a lathi blow on his shoulder. Dilip also reached on the spot, then the miscreants ran away. He has been admitted by Dilip in the hospital.

4. On the basis of Dehati Nalishi, the police registered FIR for offence under Sections 341, 294, 323, 327, 34 of IPC against two unknown persons. Spot map was prepared. The statements of witnesses

were recorded. During investigation it was found that the offence has been committed by the Appellant along with Sagar Soni and Nisha Chauhan. Accordingly, the Appellant was arrested and on his memorandum, a Baka was seized from the bushes near the place of incident, whereas one motorcycle, jeans pant were seized from his house. On the information of an informer, co-accused Sagar Soni and Nisha Chauhan were also arrested. On the basis of report of CT scan, the Doctors opined that the injury caused to the Appellant was dangerous to life, accordingly, offence under Section 307 of IPC was added. Since, co-accused Nisha Chauhan was a juvenile therefore, She was produced before JJB. The seized articles were sent for Forensic examination. The FSL report was received. Police after completing investigation, filed the charge sheet for offence under Sections 341, 294, 323, 327, 307, 34 of IPC.

5. The Trial Court by order dated 9-3-2017, framed charges under Sections 307, 327, 341 of IPC and under Section 25-B of Arms Act against the Appellant and framed charges under Sections 307/34, 327 and 341 of IPC against co-accused Sagar Soni.

6. The Appellant and co-accused Sagar Soni, abjured their guilt and pleaded not guilty.

7. The prosecution examined Sanjay Tiwari (P.W.1), Dilip Sharma (P.W.2), Manoj Dhakad (P.W.3), Shailendra Tiwari (P.W. 4), Devendra Singh (P.W. 5), Jyotsana Tiwari (P.W. 6), Hakim Singh (P.W.7), Dr. Keshav Rajput (P.W.8), Dr. R.N. Gupta (P.W.9), Smt. Yogita Bajpai (P.W.10), Ramlakhan Singh (P.W.11), Ramlakhan Singh Yadav (P.W.12), Maharaj Singh (P.W.13), Arvind Singh Tomar (P.W.14), and Ramkishan

(P.W.15).

8. The Appellant did not examine any witness in his defence.

9. The Trial Court by the impugned judgment has acquitted the co-accused Sagar Soni and convicted the Appellant for the above mentioned offences.

10. Challenging the judgment of conviction, it is submitted by the Counsel for the Appellant that the ocular evidence is not supported by medical evidence, as no incised wound was found on the head of the injured Sanjay Tiwari. The independent witness has not supported the prosecution story. No motive has been assigned by the prosecution. Or in the alternative, looking to the nature of injury sustained by the injured Sanjay Tiwari, no offence under Section 307 of IPC is made out.

11. Per contra, the Counsel for the State has supported the findings recorded by the Trial Court.

12. Heard the learned Counsel for the Parties.

13. Dr. R.N. Gupta (P.W.9) had medically examined the injured Sanjay Tiwari (P.W.1) and found following injuries on his body :

(i) Lacerated wound 3 cm x 1 cm x ½ cm over left side of temporal region. Advised C.T scan;

(ii) Lacerated wound 4 cm x 3 cm x ½ cm over left frontal region;

(iii) Lacerated wound 5 cm x 1 cm x ½ cm over right parietal region of the skull;

(iv) Lacerated wound 3 cm x 0.5 cm x 0.2 cm over pinna of left ear;

These injuries are due to hard and blunt object duration within

24 hours.

Patient admitted in the hospital and referred to surgical expert for his opinion.

14. The MLC report is Ex. P.11. This witness was cross-examined.

15. In cross-examination, he stated that the injured Sanjay Tiwari was conscious and was talking. He admitted that the injuries can be sustained either in an accident or due to fall on the stones. He admitted that in his MLC, Ex. P.11 he had not mentioned that the condition of the injured Sanjay Tiwari was serious. He admitted that he had referred the patient to Surgical expert for his opinion, and thereafter, he did not treat him. He admitted that the patient was treated by Surgical expert after seeing the report of CT Scan. He admitted that in report of CT Scan, Ex. D.1, the name of referring Doctor is mentioned as Dr. Keshav Rajput. He denied that he had prepared a false report.

16. Dr. Keshav Rajput (P.W.8) has stated that the injured Sanjay Tiwari was brought in an injured condition and he had sent him for CT Scan. This witness was not cross-examined.

17. Thus, it is clear that the injured Sanjay Tiwari (P.W.1) had sustained lacerated wounds on his head as well as fracture through left lambdoid suture, undisplaced fracture of left parietal bone extending to the left petrous and mastoid temporal bone. Left hemotympanus. Opacification in left mastoid air cells, mild fluid in left maxillary sinus and small hemorrhagic contusions were found in left fronto-parieto-temporal lobes with mild surrounding edema.

18. The next question for consideration is that whether the Appellant is the author of the offence or not?

19. Dilip Sharma (P.W.2) has not supported the prosecution case and he was declared hostile, but nothing could be elicited from the cross-examination by the public prosecutor.

20. Sanjay Tiwari (P.W.1) is the injured eye-witness. He has stated that he was returning from Neelshiri hotel along with his friend Dilip Sharma after having their meals. He was ahead of Dilip Sharma. As soon as he reached in front of John Deer Tractor Showroom, one boy gave a signal to stop on the pretext that his motorcycle has gone out of order. The Appellant saw that two boys and a girl were standing. All the three persons requested for lift which was denied by this witness. Thereafter, they caught hold of him and demanded Rs.500/- for purchasing liquor and when he refused to give money, then they all started abusing him. Both the boys took the complainant towards the railway track whereas the girl stayed back. At the railway tracks, one boy assaulted on his head by an iron *Baka* and another boy assaulted by lathi on his shoulder. In the meanwhile, his friend Dilip also reached there. After noticing Dilip, the girl shouted that Manish and Sagar must leave the place. Accordingly, all the three persons escaped on their motorcycle and the boys had also called the girl as Nisha. Thereafter, he was taken to Hospital by Dilip. This witness turned hostile with regard to co-accused Sagar Soni, but specifically claimed that it was the Appellant who had assaulted on his head by *Baka.* The Dehati Nalishi is Ex. P.1. His blood stained clothes were seized by police vide seizure memo Ex. P.2. The complainant had identified the appellant in T.I.P, Ex. P.3 by keeping his hand on the head of the Appellant. The complainant was got medically examined. Since, this witness did not support the prosecution qua the co-accused Sagar

Soni, therefore, he was declared hostile by the Public Prosecutor but nothing could be elicited against the co-accused Sagar Soni. This witness was cross-examined by the Appellant.

In cross-examination, he stated that the incident took place at about 12-12:15 A.M. in the night. When he was stopped by the boys, they were not having any weapon in their hand. He further claimed that there is no street light near the railway tracks, but claimed that sufficient light was coming from the nearby street light. He denied that he had fallen down in a scuffle and therefore had sustained the injury. He claimed that he had disclosed the description of the miscreants in his Dehati Nalishi, Ex. P.1, but could not explain as to why this fact is not mentioned in the same. Police had not informed him about the arrest of the miscreants. Nobody had disclosed the name of Manish. However, he claimed that the miscreants were calling each other by their names. He was informed that he has to visit the jail for identification of miscreants. The description of the miscreants was not disclosed by the police. About 8 persons, in the prisoners dress, who were of the age in between 22-23 to 26-27 were standing and out of which he had identified the Appellant. The co-accused was not identified by him. He denied that the Appellant had not assaulted him. He denied that as he had slipped on the railway track, therefore, he sustained the injuries. He denied that since, it was dark, therefore, he could not identify the assailants. He denied that since, he is in police force, therefore, had enquired from the boy regarding reasons for standing there and accordingly, that boy ran away from the spot, and while chasing him, this witness had fallen down.

21. Thus, it is clear that nothing substantial could be elicited from the

cross-examination of this witness, which may make his evidence suspicious.

22. Manoj Dhakad (P.W.3) is the witness of arrest of Appellant vide arrest memo Ex. P.7. The Appellant had also produced a Baka from the bushes near the place of incident. He has also stated that blood stained jeans pant and one Motorcycle was seized from the house of the Appellant by seizure memo Ex. P.8. In cross-examination, he denied that the Appellant was arrested from *Cancer Pahadia.* He further stated that the seized articles were brought to police station, where seizure memo was prepared. The house of Appellant is near *Nahar Wali Mata ki Ghatia.*

23. Shailendra Tiwari (P.W.4) is the seizure witness of blood stained clothes of the Complainant which were seized vide seizure memo Ex. P.2.

24. Devendra Singh (P.W.5) is also the witness of arrest of Appellant vide arrest memo Ex. P. 9. Memorandum of Appellant, Ex. P.10 was recorded. Since number of criminal cases are registered against the Appellant in Police Station Jhansi Road, therefore, the Appellant is known to him.

In cross-examination, he stated that the Appellant was arrested on 12-9-2016 at about 11:40 A.M. He was aware that for which offence, the Appellant was being arrested. He denied that no memorandum was given by the Appellant.

25. Jyotsana Tiwari (P.W.6) is a witness of seizure of blood stained clothes of the injured which were seized vide seizure memo Ex. P.2.

26. Hakim Singh (P.W. 7) is also a witness of arrest of Appellant, Ex.P.9 and his memorandum, Ex. P.10.

In cross-examination, he stated that no independent witness had agreed to become the witness of recording of memorandum.

27. Smt. Yogita Bajpai (P.W.10) was working on the post of Naib-Tahsildar and had conducted Test-Identification Parade of the accused persons. The T.I.P. was conducted on 15-9-2016 at about 1:50 P.M. Total 10 persons were mixed and the complainant had identified the Appellant but the co-accused was not identified by the injured. The T.I.P. Memo is Ex. P.3.

In cross-examination, She has stated that She had not attached the letter of request written to Superintendent of Jail. She had gone all alone. She had not shown her identity card at the time of entering inside the jail. At the time of T.I.P., nobody else was present. She had mixed 8 more persons along with 2 miscreants. One person was identified by the complainant/injured whereas another person was not identified. She had not verified the ID proof of the complainant who had come to identify the miscreants.

28. Ramlakhan Singh (P.W.11) had prepared the spot map, Ex. P.12 on the instructions of A.S.I. Maharaj Singh.

29. Ramlakhan Singh Yadav (P.W.12) has stated that on production of a written complaint by A.S.I. Ramkishan Shakya, he had registered Crime No.325/16 for offence under Sections 341, 294, 323, 327/34 of IPC, Ex. P.13 against two unknown persons.

30. Maharaj Singh (P.W. 13) has stated that spot map, Ex. P.12 was prepared by Patwari Ramlakhan Singh in his presence.

31. Arvind Singh Tomar (P.W.14) is the investigating officer. He has stated that vide arrest memo, Ex. P.9, he had arrested the Appellant and

his memorandum, Ex. P.10 was recorded. On the information given by the Appellant, one Baka was seized from the bushes near the place of incident by seizure memo Ex. P.7. His blue jeans which was stained with blood and a motorcycle were seized from his house by seizure memo Ex. P.8. By seizure memo Ex. P.2, the blood stained clothes of the complainant were seized in the hospital.

In cross-examination, he stated that when he went to hospital, the complainant was conscious and was talking. He admitted that he has not produced any document to show that whether Sahara Hospital is competent to prepare any M.LC. or not. He denied that Baka, blood stained pant and motorcycle were not seized from the possession of Appellant. He denied that the entire proceedings were done by him in the police station.

32. Ram Kishan (P.W.15) had recorded the Dehati Nalishi, Ex. P.1.

In cross-examination, he stated that the complainant was conscious and was talking. He admitted that the name of any miscreant was not disclosed by the complainant.

33. Thus, the entire prosecution case is based on the evidence of Sanjay Tiwari (P.W.1) and recovery of a blood stained Baka.

Whether Evidence of Sanjay Tiwari (P.W.1) is reliable.

34. The Counsel for the Appellant could not point out any reason for false implication of Appellant. The Appellant was duly identified by the complainant in the T.I.P, Ex. P.3 and had also identified the Appellant in the dock. The Counsel for the Appellant could not point out any ground for disbelieving the identification of Appellant in the dock, specifically when it was preceded by T.I.P.

35. Sanjay Tiwari (P.W.1) has specifically stated that it was the Appellant who had assaulted on his head by a *Baka* and injuries have also been found on the head of the complainant Sanjay Tiwari (P.W.1).

Whether Ocular Evidence is contrary to Medical Evidence.

36. It is submitted by the Counsel for the Appellant that since, *Baka* is a sharp edged weapon, therefore, incised wound should have been found on the head of the injured, but since, lacerated wounds were found, therefore, it is clear that the ocular evidence is not corroborated by medical evidence.

37. Heard the learned Counsel for the Appellant.

38. The Supreme Court in the case of **Putchalapalli Naresh Reddy v. State of A.P.,** reported in **(2014) 12 SCC 457** has held as under :

> **14**.....The doctor has opined that this injury could have been caused by a blunt object. According to the learned counsel the witness did not say that the accused reversed the axe while hitting the deceased on the head as the injury shows, and therefore he is lying or was not present.
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> **15.** In the first place, we find that other witnesses have given the same deposition. It is possible that the statement of the witness [PW 3] is slightly inaccurate or the witness did not see properly which side of the axe was used. It is equally possible that the sharp edge of the axe is actually very blunt or it was reversed just before hitting the head. It is not possible to say what is the reason. That is however no reason for discarding the statement of the witness that A-1 Puchalapalli Parandhami Reddy hit the deceased with a battleaxe, as is obvious from the injury. Moreover, it is not possible to doubt the presence of this witness, who has himself been injured. Dr M.C. Narasimhulu, PW 13, Medical Officer, has stated in his evidence that on 25-11-1996 at about 3.30 p.m., he examined this witness PW 3 P. Murali Reddy and found the following injuries:
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> "(*1*) Diffused swelling with tenderness over middle ?rd and back of left forearm.

> (*2*) A lacerated injury skin-deep of about ½? over the back of head. Bleeding present with tenderness and swelling around."
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> (Underline Supplied)

39. Furthermore, unless and until the medical evidence completely makes the ocular evidence improbable, the ocular evidence will have primacy over the medical evidence. The Supreme Court in the case of **Bhajan Singh Vs. State of Haryana** reported in **(2011) 7 SCC 421** has held as under :

> **37.** In *State of U.P.* v. *Hari Chand* this Court reiterated the aforementioned position of law: (SCC p. 545, para 13)
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> "*13*. … In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."
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> **38.** Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. (Vide *Abdul Sayeed*.)

40. The Supreme Court in the case of **Ramanand Yadav v. Prabhu Nath Jha,** reported in **(2003) 12 SCC 606** has held as under :

> **17.** So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as is claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference.

41. The Supreme Court in the case of **Shamsher Singh Vs. State of Haryana** reported in **(2002) 7 SCC 536** has held as under :

> **8.** The authorities cited by the learned counsel for the appellant, on the point that when there is conflict between the medical evidence and the ocular evidence, the prosecution case should not be accepted, are of no help to him in this case. On deeper scrutiny of the evidence as a whole, it is not possible to throw out the prosecution case as either false or unreliable on the mere statement of the doctor that injuries found on the deceased could not be caused by a sharp-edged weapon. This statement cannot be taken in isolation and without reference to the other statement of the doctor that the injuries could be caused by Ext. P-9 axe to disbelieve the evidence of the eyewitnesses. From the evidence available in this case the possibility of the blunt head of the axe or the stick portion coming in contact with the head of the deceased cannot be ruled out. These decisions cited by the learned counsel for the appellant are related to those cases where the medical evidence and the version of the eyewitnesses could not be reconciled or that the account given by the eyewitnesses as to the incident was highly or patently improbable and totally inconsistent with the medical evidence having regard to the facts of those cases and as such their evidence could not be believed.

42. In chapter 29 of Modi's Jurisprudence under the heading Regional Injuries, it has been mentioned that a scalp wound by a blunt weapon may resemble an incised wound, hence the edges and ends of wound must be carefully seen....". Thus, incised wound may also appear as lacerated wound because of the location of injury. Furthermore, it cannot be presumed that the Baka would always contain a sharp blade. With continuous use of Baka, its blade may become blunt, which may cause lacerated wound also.

43. Thus, merely because Lacerated wounds were found on the head of Sanjay Tiwari (P.W.1), it cannot be said that there was material variance in the ocular and medical evidence, thereby completely ruling out the ocular evidence. Either the blade of the Baka must have become

blunt or the blunt part of the Baka must have come in contact at the time of assault, therefore, the ocular evidence has to be given preference over the medical evidence. Thus, it is held that the evidence of Sanjay Tiwari (P.W.1) cannot be discarded merely on the ground that although it was alleged that the Appellant had used a Baka, but lacerated wounds were found.

Independent witness did not support the prosecution case

44. It is submitted that the independent witness, namely, Dilip (P.W.2) did not support the prosecution case, therefore, the testimony of Sanjay Tiwari (P.W.1) has remained uncorroborated.

45. Heard the learned Counsel for the Appellant.

46. It is well established principle of law that it is the quality and not quantity of witnesses, which decides the fate of trial. Sanjay Tiwari (P.W.1) is an injured witness. It is well established principle of law that an injured witness enjoys a special status as his presence on the spot is undisputed and presence of injuries is a guarantee of his presence. Furthermore, merely because a witness has turned hostile, it would not efface his entire evidence.

47. Dilip (P.W.2) in his evidence has merely turned hostile on the question of assault. He has supported the prosecution story to the effect that after having their meals, he and Sanjay Tiwari (P.W.1) were returning back. Sanjay Tiwari (P.W.1) was ahead of him. When he reached on the spot, the injured Sanjay Tiwari (P.W.1) was lying and the accused persons had already run away. Thus, the evidence of Dilip (P.W.2) supports the evidence of Sanjay Tiwari (P.W.1) that the injured was returning back after having his meals and injured was moving ahead

of Dilip (P.W.2) and it was Dilip (P.W.2) who took the injured to the hospital.

48. The Supreme Court in the case of **Rameshbhai Mohanbhai Koli v. State of Gujarat,** reported in **(2011) 11 SCC 111** has held as under :

> **Hostile witness**
>
> **16.** It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide *Bhagwan Singh* v. *State of Haryana*, *Rabindra Kumar Dey* v. *State of Orissa*, *Syad Akbar* v. *State of Karnataka* and *Khujji* v. *State of M.P.*)
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> **17.** In *State of U.P.* v. *Ramesh Prasad Misra* this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde* v. *State of Maharashtra*, *Gagan Kanojia* v. *State of Punjab*, *Radha Mohan Singh* v. *State of U.P.*, *Sarvesh Narain Shukla* v. *Daroga Singh* and *Subbu Singh* v. *State*.
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> **18.** In *C. Muniappan* v. *State of T.N.* this Court, after considering all the earlier decisions on this point, summarised the law applicable to the case of hostile witnesses as under: (SCC pp. 596-97, paras 83-85)
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> "*83*. … the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.
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> *84*. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions,

improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide *Sohrab* v. *State of M.P.*, *State of U.P.* v. *M.K. Anthony*, *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*, *State of Rajasthan* v. *Om Prakash*, *Prithu* v. *State of H.P.*, *State of U.P.* v. *Santosh Kumar* and *State* v. *Saravanan*.)"

49. The Supreme Court in the case of **Radha Mohan Singh v. State of U.P.,** reported in **(2006) 2 SCC 450** has held as under :

7.....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof. (See *Bhagwan Singh* v. *State of Haryana*, *Rabindra Kumar Dey* v. *State of Orissa*, *Syad Akbar* v. *State of Karnataka* and *Khujji* v. *State of M.P.*)

50. The Supreme Court in the case of **Arjun Vs. State of Chhatisgarh** reported in **(2017) 3 SCC 247** has held as under :

15. Though the eyewitnesses PWs 1, 2, 7 and 8 were treated as hostile by the prosecution, their testimony insofar as the place of occurrence and presence of accused in the place of the

incident and their questioning as to the cutting of the trees and two accused surrounding the deceased with weapons is not disputed. The trial court as well as the High Court rightly relied upon the evidence of PWs 1, 2, 7 and 8 to the abovesaid extent of corroborating the evidence of PW 6 Shivprasad. Merely because the witnesses have turned hostile in part their evidence cannot be rejected in toto. The evidence of such witnesses cannot be treated as effaced altogether but the same can be accepted to the extent that their version is found to be dependable and the Court shall examine more cautiously to find out as to what extent he has supported the case of the prosecution.

16. In *Paramjeet Singh* v. *State of Uttarakhand*, it was held as under: (SCC pp. 448-49, paras 16-20)

"*16*. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. (Vide *State of Rajasthan* v. *Bhawani*.)

17. This Court while deciding the issue in *Radha Mohan Singh* v. *State of U.P.* observed as under: (SCC p. 457, para 7)

'*7*. … It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.'

18. In *Mahesh* v. *State of Maharashtra* this Court considered the value of the deposition of a hostile witness and held as under: (SCC p. 289, para 49)

'*49*. … If PW 1 the maker of the complaint has chosen not to corroborate his earlier statement made in the complaint and

> recorded during investigation, the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case. In these circumstances, we are of the view that PW 1 has tried to conceal the material truth from the Court with the sole purpose of shielding and protecting the appellant for reasons best known to the witness and therefore, no benefit could be given to the appellant for unfavourable conduct of this witness to the prosecution.'
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> *19*. In *Rajendra* v. *State of U.P.* this Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. This Court reiterated a similar view in *Govindappa* v. *State of Karnataka* observing that the deposition of a hostile witness can be relied upon at least up to the extent he supported the case of the prosecution.
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> *20*. In view of the above, it is evident that the evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution."
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> The same view is reiterated in *Mrinal Das* v. *State of Tripura* in para 67 and also in *Khachar Dipu* v. *State of Gujarat* in para 17.

51. Thus, the entire evidence of a hostile witness would not stand effaced off the record, and that part of evidence can be looked into which corroborates the prosecution or defence of the accused.

Motive

52. It is next contended by the Counsel for the Appellant that since there was no motive on the part of the Appellant to cause injury on the head of the complainant, therefore, the Appellant has been falsely implicated.

53. Considered the submissions.

54. Absence of motive would not weaken the prosecution case, specifically when it is based on direct evidence. The Supreme Court in the case of **Bikan Pandey Vs. State of Bihar** reported in **(2003) 12 SCC 616** has held as under :

> 13.....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.....

55. The Supreme Court in the case of **Praful Sudhakar Parab v. State of Maharashtra,** reported in **(2016) 12 SCC 783** has held as under:

> **26.** Motive for committing a crime is something which is hidden in the mind of the accused and it has been held by this Court that it is an impossible task for the prosecution to prove what precisely have impelled the murderer to kill a particular person. This Court in *Ravinder Kumar* v. *State of Punjab*, has laid down following in para 18: (SCC pp. 697-98)
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> "*18.* … It is generally an impossible task for the prosecution to prove what precisely would have impelled the murderers to kill a particular person. All that prosecution in many cases could point to is the possible mental element which could have been the cause for the murder. In this connection we deem it useful to refer to the observations of this Court in *State of H.P.* v. *Jeet Singh*: (SCC p. 380, para 33)
>
> '*33.* No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is

almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.'"

27. Further in *Paramjeet Singh* v. *State of Uttarakhand*, this Court held that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. Following was stated in para 54: (SCC p. 457)

"*54.* So far as the issue of *motive* is concerned, the case is squarely covered by the judgment of this Court in *Suresh Chandra Bahri*. Therefore, it does not require any further elaborate discussion. More so, if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. (Vide: *State of Gujarat* v. *Anirudhsing*.)"

(emphasis in original)

28. The High Court while considering the motive has made following observations at p. 46: (*Praful Sudhakar case*, SCC OnLine Bom para 70)

"*70.* Although prosecution is not very certain about the motive, upon taking into consideration the evidence of PW 4 and PW 6, a faint probability is created, regarding intentions of the accused to lay hands on the cash which could have been in possession of the victim, as against the initial story that the accused was enraged against the victim, because the victim used to tease him on the point of his marriage with a bar girl Helen Fernandes. Motive is a mental state, which is always locked in the inner compartment of the brain of the accused and inability of the prosecution to establish the motive need not necessarily cause entire failure of prosecution."

We fully endorse the above view taken by the High Court and do not find any substance in the above ground.

Whether offence under Section 307 of IPC is made out or not?

56. It is submitted by the Counsel for Appellant that since, the injuries were not dangerous to life therefore, no offence under Section 307 of IPC is made out.

57. Considered the submissions made by the Counsel for the Appellant.

58. It is well established principle of law that nature of injuries are not decisive factor to find out as to whether the accused has committed an offence under Section 307 of IPC or not?

59. Section 307 of IPC reads as under :

> 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. 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.

60. From the plain reading of Section 307 of IPC, it is clear that presence of injury is not sine qua non for making out an offence under Section 307 of IPC. If any act is done with an intention or knowledge that, if assailant by that act causes death, then the assailant would be guilty of murder, then such act would certainly be punishable under Section 307 of IPC.

61. Thus, the following two ingredients are necessary to make out an offence under Section 307 of IPC :

(a) Knowledge or intention that by his act, if murder is caused then he would be guilty of murder ;

(b) Does any act towards commission of that offence.

62. The first part of Section 307 of IPC deals with a situation, where no injury is caused and second part of Section 307 of IPC deals with a

situation where hurt is caused. "Hurt" is defined in Section 319 of IPC which reads as under :

> 319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

63. Thus, the nature of injuries is not a decisive factor to determine as to whether the act of the assailant would be an act punishable under Section 307 of IPC or not. In order to gather intention or knowledge, the weapon used, part of the body on which injury was caused as well as number of injuries are some of the important aspects.

64. The Supreme Court in the case of State of **M.P. Vs. Harjeet Singh** reported in **(2019) 20 SCC 524** has held as under :

> 5.6.1. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.
> 5.6.2. This Court in R. Prakash v. State of Karnataka, held that: (SCC p. 30, paras 8-9)
> "8. … 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 rigour of Section 307 IPC. …
> 9. It is sufficient to justify a conviction under Section 307 if there is present 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 52 Kedar Singh and another Vs. State of M.P. (Cr.A. No. 687 of 2010) Bharat Singh & Ors. Vs. State of M.P. (691 of 2010) circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section 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)

5.6.3. 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 IPC 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 Section 307 IPC.

5.6.4. This Court in Jage Ram v. State of Haryana held that: (SCC p. 370, para 12)

> "12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the 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)

5.6.5. This Court in the recent decision of State of M.P. v. Kanha held that: (SCC p. 609, para 13)

> "13. 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 severity of the blows inflicted can be considered to infer intent."

65. The Supreme Court in the case of **State of M.P. Vs. Kanha** reported in **(2019) 3 SCC 605** has held as under :

> 13. 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 severity of the blows inflicted can be considered to infer intent.

66. The Supreme Court in the case of **State of M.P. Vs. Saleem** reported in **(2005) 5 SCC 554** has held as under :

> 12. To justify a conviction under this section, 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 section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
>
> 13. It is sufficient to justify a conviction under Section 307 if there is present 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. The section 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. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.
> 14. This position was highlighted in State of Maharashtra v. Balram Bama Patil, Girija Shankar v. State of U.P. and R. Prakash v. State of Karnataka.
> 15. In Sarju Prasad v. State of Bihar it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.
> 16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

67. Thus, if the accused has a knowledge or intention that by his act, if murder is caused then he would be guilty of murder and does any act towards commission of that offence, then such act would be sufficient to make out an offence under Section 307 of IPC, irrespective of nature of injury.

68. In the present case, the appellant is said to have assaulted on the head of the complainant Sanjay Tiwari (P.W.1) and not only lacerated wounds spreading over different parts of the head of the complainant were found, but even in C.T. Scan report, Ex. D.1, fracture was seen through left lambdoid suture, as well as undisplaced fracture of left parietal bone extending to the left petrous and mastoid temporal bone

was also found. The knowledge or intention can be gathered from the weapon of offence used by the accused and the part of the body on which assault was made. Head is undisputedly a vital part of the body and causing an injury on the head by Baka clearly indicates the knowledge or intention on the part of the appellant.

Recovery of Blood Stained Baka

69. The seizure witnesses have proved the seizure of Baka. The Baka was seized from the bushes. It is submitted by the Counsel for the Appellant that since, Baka was seized from an open place, therefore, the recovery is suspicious and does not show that it was made at the instance of the Appellant.

70. Heard the learned Counsel for the Appellant.

71. No question was put to any of the seizure witness that the Baka was visible and could have been noticed by anybody. According to the prosecution, the Baka was recovered from the bushes. Thus, it is clear that it was not visible. The Appellant was aware of the fact that he had kept the Baka at a particular place. Merely because the Baka was recovered from an open place, that by itself would not make the recovery worthless. The Supreme Court in the case of **Yakub Abdul Razak Memon v. State of Maharashtra,** reported in **(2013) 13 SCC 1** has held as under :

> **1707.** Similarly, in *State of Maharashtra* v. *Bharat Fakira Dhiwar*, this Court held : (SCC p. 629, para 22)
>
> "*22*. In the present case the grinding stone was found in tall grass. The pants and underwear were buried. They were out of visibility of others in normal circumstances. Until they were disinterred, at the instance of the respondent, their hidden state had remained unhampered. The respondent alone knew where they were until he disclosed it. Thus we see no substance in this submission also."

1708. In view of the above, it cannot be accepted that a recovery made from an open space or a public place which was accessible to everyone, should not be taken into consideration for any reason. The reasoning behind it, is that, it will be the accused alone who will be having knowledge of the place, where a thing is hidden. The other persons who had access to the place would not be aware of the fact that an accused, after the commission of an offence, had concealed contraband material beneath the earth, or in the garbage.

1709. In *Durga Prasad Gupta* v. *State of Rajasthan*, this Court explained the meaning of possession as : (SCC p. 266, paras 26 & 27)

> "*26*. The word 'possession' means the legal right to possession (see *Heath* v. *Drown*). In an interesting case it was observed that where a person keeps his firearm in his mother's flat which is safer than his own home, he must be considered to be in possession of the same. (See *Sullivan* v. *Earl of Caithness*.)
>
> *27*. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge."

1710. In *Sanjay Dutt* v. *State* this Court considered the statutory provisions of Section 5 TADA and in this regard held : (SCC pp. 430 & 432, paras 19, 25 & 27)

> "*19*. The meaning of the first ingredient of '*possession*' of any such arms, etc. is not disputed. Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly, the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of a statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood. …

***

25. The significance of unauthorised possession of any such arms and ammunition, etc. in a notified area is that a statutory presumption arises that the weapon was meant to be used for a terrorist or disruptive act. This is so, because of the proneness of the area to terrorist and disruptive activities, the lethal and hazardous nature of the weapon and its unauthorised possession with this awareness, within a notified area. This statutory presumption is the essence of the third ingredient of the offence created by Section 5 of the TADA Act. The question now is about the nature of this statutory presumption.

***

27. There is no controversy about the facts necessary to constitute the first two ingredients. For proving the non-existence of facts constituting the third ingredient of the offence, the accused would be entitled to rebut the above statutory presumption and prove that his unauthorised possession of any such arms and ammunition, etc. was wholly unrelated to any terrorist or disruptive activity and the same was neither used nor available in that area for any such use and its availability in a 'notified area' was innocuous. Whatever be the extent of burden on the accused to prove the non-existence of the third ingredient, as a matter of law he has such a right which flows from the basic right of the accused in every prosecution to prove the non-existence of a fact essential to constitute an ingredient of the offence for which he is being tried. If the accused succeeds in proving non-existence of the facts necessary to constitute the third ingredient alone after his unauthorised possession of any such arms and ammunition, etc. in a notified area is proved by the prosecution, then he cannot be convicted under Section 5 of the TADA Act and would be dealt with and punished under the general law. It is obviously to meet situations of this kind that Section 12 was incorporated in the TADA Act."

(emphasis in original)

1711. Therefore, the only requirements under the statutory provisions are, that (*1*) a person must be in possession of some contraband material; (*2*) the person must have knowledge of his possession i.e. conscious possession; (*3*) it should be in the notified area. Once possession is established, the burden is on the accused to show that he was not in conscious possession.

***

1844. On the issue of recovery, this Court in *State of H.P.* v. *Jeet Singh*, held : (SCC p. 378, para 26)

"*26*. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is '*open or accessible to others*'. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is *disinterred*, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others."

(emphasis supplied)

1845. In *State of Maharashtra* v. *Bharat Fakira Dhiwar*, this Court also dealt with this issue.

1846. Thus, in view of the above, the submission made by Mr Mushtaq Ahmed, stating that as the recovery had been made from an open place to which all persons had access, cannot be relied upon and is not worth acceptance.

72. Since, the Baka was kept in a hidden condition in the bushes and was not accessible to the general public, this Court is of the considered opinion, that the prosecution has proved the recovery of Baka from the

possession of the Appellant.

73. Furthermore, as per F.S.L. report, Ex. P.14, Human blood was found on the Baka.

74. It is submitted by the Counsel for the Appellant that since, no blood group was found, therefore, it cannot be held that the blood was of the injured.

75. Heard the learned Counsel for the Appellant.

76. The Appellant has not explained the presence of human blood on the axe which was seized from his possession. He did not claim that the said blood stains were of him.

77. The Supreme Court in the case of **Khujji Vs. State of M.P.** reported in **(1991) 3 SCC 627** has held as under :

> **10.** Mr Lalit, however, argued that since the report of the serologist does not determine the blood group of the stains on the weapon and the pant of the appellant, the mere find of human blood on these two articles is of no consequence, whatsoever. In support of this contention he placed strong reliance on the decisions of this Court in *Kansa Behera* v. *State of Orissa* and *Surinder Singh* v. *State of Punjab*. In the first mentioned case the conviction was sought to be sustained on three circumstances, namely, (*i*) the appellant and the deceased were last seen together; (*ii*) a dhoti and a shirt recovered from the possession of the appellant were found to be stained with human blood; and (*iii*) the appellant had made an extra-judicial confession to two witnesses when arrested. There was no dispute in regard to the first circumstance and the third circumstance was held not satisfactorily proved. In this backdrop the question for consideration was whether the first and the second circumstances were sufficient to convict the appellant. This Court, therefore, observed that a few small blood stains could be of the appellant himself and in the absence of evidence regarding blood group it cannot conclusively connect the blood stains with the blood of the

deceased. In these circumstances this Court refused to draw any inference of guilt on the basis of the said circumstance since it was not 'conclusive' evidence. This Court, however, did not go so far as to say that such a circumstance does not even provide a link in the chain of circumstances on which the prosecution can place reliance. In the second case also this Court did not consider the evidence regarding the find of human blood on the knife sufficient to convict the appellant in the absence of determination of blood group since the evidence of PW 2 was found to be uninspiring and there was no other circumstance to connect him with the crime. In this case we have the direct testimony of PW 1 Komal Chand, besides the testimony of PWs 3 and 4 which we have considered earlier. The find of human blood on the weapon and the pant of the appellant lends corroboration to the testimony of PW 1 Komal Chand when he states that he had seen the appellant inflicting a knife blow on the deceased. The appellant has not explained the presence of human blood on these two articles. We are, therefore, of the opinion that the aforesaid two decisions turned on the peculiar facts of each case and they do not lay down a general proposition that in the absence of determination of blood group the find of human blood on the weapon or garment of the accused is of no consequence. We, therefore, see no substance in this contention urged by Mr Lalit.

78. The Supreme Court in the case of **Rameshbhai Mohanbhai Koli v. State of Gujarat** reported in **(2011) 11 SCC 111** :

31. We have already observed that the prosecution has established that FSL report has clearly certified that the blood found on the knife was of human origin. This question fell for consideration in *State of Rajasthan* v. *Teja Ram* and this Court held that it would be an incriminating circumstance if the blood on the weapon was found to be of human origin. The same view has been reiterated in *Molai* v. *State of M.P.*

79. The Supreme Court in the case of **Molai v. State of M.P.** reported in **(1999) 9 SCC 581** has held as under :

27..... As far as the knife recovered at the instance of Molai (A-

> 2), it did have human blood but the blood group could not be determined. These incriminating articles connect the accused with the crime in question. Mr Shukla, the learned Senior Counsel, however, urged that it would be unsafe to connect the said knife with the crime in question and attribute the use of the same by the accused persons in the absence of determination of the blood group. This argument does not appeal to us because FSL's report has clearly certified that the blood found on the knife was of human origin. This question fell for consideration in *State of Rajasthan* v. *Teja Ram* and this Court held that it would be an incriminating circumstance if the blood on the weapon was found to be of human origin.....

80. The Supreme Court in the case of **State of Rajasthan v. Teja Ram** reported in **(1999) 3 SCC 507** has held as under :

> **25.** Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

81. Thus, even in absence of blood group on the axe seized from the possession of the Appellant, it can be held that the seizure of an axe with human blood on it, is an incriminating circumstance against the Appellant.

82. No other argument is advanced by the Appellant.

83. In view of the discussion of the evidence available on record, this

Court is of the considered opinion, that the prosecution has successfully proved the guilt of the Appellant for offence under Section 307 of IPC.

84. Accordingly, the conviction of the Appellant for offence under Sections 307 and 341 of IPC is hereby **affirmed.**

85. The Trial Court has awarded jail sentence of 5 years R.I. for offence under Section 307 of IPC. Devendra Singh (P.W.5) in his examination-in-chief has stated that number of cases have been registered against the Appellant in Police Station Jhansi Road and no cross-examination was done on this issue. Accordingly, the jail sentence of 5 years R.I. for offence under Section 307 of IPC is hereby affirmed. For offence under Section 341 of IPC, the Trial Court has merely imposed a fine of Rs.100/-, which also does not call for any interference.

86. Accordingly, the judgment and sentence dated 24-3-2021 passed by 4th Additional Sessions Judge, Gwalior in S.T. No.418 of 2016 is hereby **affirmed.**

87. The Appellant is in jail. He shall undergo the remaining jail sentence.

88. Let a copy of this judgment be supplied to the Appellant free of cost.

89. The Record of the Trial Court be sent back immediately along with a copy of this judgment for necessary information and compliance.

90. The Appeal fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE