

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 15TH DAY OF SEPTEMBER, 2023**

CRIMINAL APPEAL No. 641 of 1999

BETWEEN:-

**ABDUL RAZAQUE S/O ABDUL AZIZ
AGED ABOUT 28 YEARS
R/O SHRINAGAR KAKAD, NEAR SUHAG HOTEL
INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI RAMESH CHANDRA GANGARE, ADVOCATE FOR THE APPELLANT)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGH POLICE STATION GOGAWA
DISTRICT KHARGONE (WEST NIMAR) (MADHYA PRADESH)**

.....RESPONDENT/STATE

(MS. AARTI KUMAWAT, PANEL LAWYER FOR THE STATE)

CRIMINAL APPEAL No. 681 of 1999

BETWEEN:-

- 1. MUKESH S/O SHIV YADAV
AGED ABOUT 23 YEARS**
- 2. HUKUMCHAND S/O SHIV YADAV
AGED ABOUT 22 YEARS**
- 3. HARI S/O OMKAR YADAV
AGED ABOUT 35 YEARS**

**ALL : CARPENTERS & R/O MALVIYA NAGAR
DISTRICT INDORE (MADHYA PRADESH)**

.....APPELLANTS

*(SHRI SAMEER ANANT ATHAWALE, ADVOCATE FOR THE APPELLANTS)***AND**

THE STATE OF MADHYA PRADESH
 STATION HOUSE OFFICER
 THROUGH POLICE STATION GOGAWA
 DISTRICT KHARGONE (WEST NIMAR) (MADHYA PRADESH)

.....RESPONDENT/STATE

*(MS. AARTI KUMAWAT, PANEL LAWYER FOR THE STATE)**Reserved on : 09.08.2023**Pronounced on : 15.09.2023*

These appeals having been heard and reserved for judgement, coming on for pronouncement this day, Hon'ble Shri Prakash Chandra Gupta pronounced the following:

J U D G E M E N T

Both these appeals have been filed by the appellants u/S 374 of the Code of Criminal Procedure, 1973, being aggrieved by the common judgement of conviction and order of sentence dated 01.05.1999 passed by the 2nd Additional Sessions Judge, Khargone, West Nimar (M.P.) in Session Trial No.319/1996, whereby learned Trial Court has convicted the appellants and sentenced them as under :-

S. No.	Conviction	Sentence		
		Imprisonment	Fine	Additional

			amount	imprisonment in default of payment of fine
Appellants – Mukesh & Hari				
1	451 of IPC	RI for 01 year	Rs.250/-	SI for 01 month
2	324 of IPC	RI for 01 year	-	-
3	506-II of IPC	RI for 01 year	-	-
4	366 of IPC	RI for 05 years	Rs.250/-	SI for 01 month
Appellant – Hukum Chand				
1	451 of IPC	RI for 01 year	Rs.250/-	SI for 01 month
2	324/34 of IPC	RI for 01 year	-	-
3	506-II of IPC	RI for 01 year	-	-
4	366 of IPC	RI for 05 years	Rs.250/-	SI for 01 month
Appellant – Abdul Razaque				
1	366 of IPC	RI for 05 years	Rs.250/-	SI for 01 month

2. Prosecution story in brief is that on 18.08.1996 at around 12:00 AM, the complainant Rusi Bai (PW/2) was in her home, situated at village Tema Behrampur Police Station Gogawa, District Khargone alongwith her daughter Sapna Vishwakarma (PW/1), husband Pannalal (PW/3) and sons Akhilesh (PW/4) and Shyam Sundar (PW/5). At that time, the appellants/accused persons came there in a white car bearing registration No.MP13-W-0763. The accused Abdul Razaque was driving the aforementioned car. Accused Mukesh, Hukum Chand and Hari were carrying ustra blade, pistol and sword respectively, entered into the house of the complainant. The accused Mukesh caught hold the hand of victim Sapna (PW/1) and forcibly started to drag her out of the house and said that he will marry her. When the complainant tried to rescue her, then the accused Mukesh injured the complainant by his ustra blade

on her face and hands. Accused Hari gave blow by sword on the back of the complainant. Pannalal came to rescue the victim, then Mukesh gave blow to him by ustra blade on his head. Accused Hukum Chand pointed the gun at the complainant party and accused persons threatened not to shout or else they would kill them. As victim tried to save herself, she got inflicted by ustra blade in her hand. Thereafter, the aforementioned accused persons forcibly dragged the victim in their car and took her from her home. The accused persons took the victim towards Indore. It is also alleged that before the incident, for 6 months, the complainant Rusi Bai and victim Sapna @ Mangala used to work as labour and reside in Kohinoor Colony at Indore where they came to know about the accused persons Mukesh, Hukum Chand and Hari Yadav. Mukesh wanted to forcibly marry the victim Sapna because of which the accused persons had forcibly taken Sapna alongwith them. On the same day at 02:30 PM, the complainant lodged an FIR (Ex.P/2) against the accused persons at Police Station Gogawa, District Khargone.

3. During investigation, SHO Police Station Gogawa sent the injured persons Rusi Bai (PW/2) and Pannalal (PW/3) for medical examination on the same day. Dr. R.K. Sawaliya (PW/11) examined them and had given MLC report (Ex.P/15) and (Ex.P/16). Trilok Singh Tomar (PW/9) inspected the place of incident and prepared spot map (Ex.P/3) at the instance of Akhilesh (PW/4). On the same day at 09:30 PM, head constable Jagdish Chandra Patidar (PW/12) searching for the accused

was heading towards Indore by jeep alongwith other police officials. They found the vehicle of accused persons going towards Indore. Jagdish Chandra Patidar (PW/12) alongwith the aid of local police at Police Station Simrod caught the accused persons, their vehicle and victim. Jagdish Chandra Patidar (PW/12) prepared Dastyabi Panchnama (Ex.P/1). Jagdish Chandra Patidar (PW/12) seized a pistol (airgun) from accused Hukum, ustra blade from Mukesh and an ambassador car bearing registration No.MP13-W-0763, an RC of car and driving licence from accused Abdul Razaque and a sword from accused Hari on 18.08.1996 vide seizure memos (Ex.P/10 – P/13). SHO Trilok Singh Tomar (PW/9) arrested the accused persons Mukesh, Hukum Chand, Hari and Abdul Razaque vide arrest memo (Ex.P/6 – P/9). The police sent the victim Sapna (PW/1) and accused Mukesh for medical examination on 19.08.1996, Dr. R.K. Sawaliya examined them and gave MLC report (Ex.P/17 & P/18). During medical examination of the complainant, doctor preserved and sealed a blood stained blouse worn by Rusi Bai. Head constable Murlidhar seized the aforesaid sealed packet of blouse from sweeper Bhure Khan on 19.08.1996 vide seizure memo (Ex.P/14A). Statement of witnesses was recorded u/S 161 of Cr.P.C. After completion of the investigation, charge-sheet has been filed.

4. Learned Trial Court had framed charges against the accused persons. The accused persons abjured their guilt and claimed to be tried. In order to prove its case, prosecution has examined 12 witnesses in

support of its case. After completion of prosecution evidence, learned Trial Court examined the accused persons u/S 313 of Cr.P.C. Accused Mukesh has taken his defence that there was engagement between him and victim Sapna (PW/1). After returning to Behrampur from Indore, the accused tried to bring her but her parents had not sent her alongwith the accused. Father of the victim asked the accused to come alongwith his father. His father was not well, because of which he had brought his uncle Hari and brother Hukum Chand to the house of victim by a rented car. Family members of victim Sapna (PW/1) demanded Rs.50,000/- from accused Mukesh, because of which the accused persons had left. They were caught by police Simrol. He has not committed the offence and has falsely been implicated in the case.

5. Accused Hukum Chand has taken defence that father of the victim had demanded Rs.50,000/- from accused persons in order to send the victim Sapna (PW 1) with them. The accused persons did not give the money. The accused persons had went to the house of victim Sapna (PW/1) but they had not assaulted anyone there and neither had taken victim alongwith them. Accused Hari has taken defence that he has not committed the offence, they have been falsely implicated, they have neither assaulted anyone nor took the victim alongwith them. As well as the driver of the car accused Abdul Razaque has taken his defence that the co-accused persons had told him that they have to go to Khargone as someone has died at the place of accused person and to bring back his wife. Abdul Razaque further stated that he denied at first but had to

agree later as the accused persons forced him to take them to Khargone. No act of assaulting the complainant party took place in front of him and he has been falsely implicated. The accused persons examined Ram Bharose (DW/1) and Bhawani Singh (DW/2) in their defence.

6. After hearing both the parties and considering the evidence adduced by them, learned Trial Court has convicted the accused persons Mukesh and Hari u/S 451, 324, 506-II and 366 of IPC, accused Hukum Chand u/S 451, 324 r/w 34, 506-II and 366 of IPC and accused Abdul Razaque u/S 366 of IPC and sentenced them, as mentioned in paragraph-1 of this judgement.

7. Learned counsel for the appellants submits that the impugned judgement is bad in law and contrary to the facts and evidence of the case. Independent eye-witnesses Nand Kishore (PW/6), Tulsi Ram (PW/10) and seizure witnesses Raghunath (PW/7) and Mehmood (PW/8) have completely turned hostile and have not supported the case of the prosecution. Injured witnesses Sapna (PW/1), her mother Rusi Bai (PW/2), father Pannalal (PW/3) and brothers Akhilesh (PW/4) and Shyam Sundar (PW/5), being family members and are interested witnesses. There are material omissions and contradictions in their statements therefore, their statement is not reliable. Learned Trial Court erred in not considering the statement of defence witnesses Ram Bharose (DW/1) and Bhawani Singh (DW/2) properly. On behalf of appellants/accused persons Mukesh, Hukum Chand and Hari, learned counsel submitted that learned Trial Court has erred in not considering

the fact that prior to the incident, the appellant Mukesh and victim Sapna had an amorous relationship, which is evident by the photographs of both these persons as well as the love letters (Ex.D/1 - D/3) written by the victim to accused Mukesh. At the time of the alleged incident, scores of other persons were also present at the spot but still only the highly interested witnesses have been relied upon by the prosecution.

8. On behalf of accused Abdul Razaque, learned counsel has submitted that as alleged, the appellant did not take part in the abduction of the victim from her house or in the scuffle arose at the spot nor the appellant was present there. The appellant remained in his car during the entire incident. It is also submitted that the appellant's taxi was hired by the co-accused persons on payment of fare, therefore the appellant was not an accomplice in the offence. The co-accused persons had left his taxi in front of complainant's house and on the main road at Khargone. The appellant was not aware about the fact that where they had gone and what happened with them. After sometime, the co-accused persons came with a woman and asked him to take them back to Indore. There is no overt act done by him in the incident. Therefore, he cannot be treated to be a member of common intention of the co-accused persons. The impugned order is erroneous on facts and in law and also based on the surmises and conjectures. Therefore, it is prayed that the impugned judgement be set aside and appellants be acquitted.

9. On the other hand, learned counsel for the respondent/State has opposed the submissions made by the counsel for the appellants by

submitting that the prosecution has succeeded to prove its case beyond reasonable doubt. There is specific evidence against the appellants, therefore, learned Trial Court has rightly considered the evidence of the case. With the aforementioned submissions, she prays for dismissal of both the appeals.

10. Learned counsel for the appellants submits that considering the long pendency of the case, mental agony of the appellants suffered during such period and that the accused persons Mukesh, Hari and Abdul Razaque have already suffered incarceration during 19.08.1996 – 19.09.1996 during trial; Hukum Chand from 19.08.1996 – 19.09.1996 and 06.10.1998 – 01.05.1999 during trial; thereafter, accused persons Mukesh, Hukum Chand and Hari since date the of impugned judgement i.e. 01.05.1999 – 31.03.2000; and Abdul Razaque from 01.05.1999 – 14.05.1999. Accused persons Mukesh, Hari and Abdul Razaque have served incarceration for more than one year and Hukum Chand for around 18 months. Therefore, by adopting a lenient view, their jail sentence be reduced to the period already undergone by them. In this regard, learned counsel has placed reliance upon the case of *Bato @ Veeru V State of M.P. [ILR (2016) MP 2807]*.

11. I have heard learned counsels for both the parties and perused the records.

12. On perusal of the case, it appears that eye-witnesses of the incident Nand Kishore (PW/6) and Tulsi Ram (PW/10) as well as

seizure witnesses Raghunath (PW/7) and Mehmood (PW/8) have completely turned hostile and have not supported the case of the prosecution. Remaining injured and eye-witnesses Sapna (PW/1), Rusi Bai (PW/2), Pannalal (PW/3), Akhilesh (PW/4) and Shyam Sundar (PW/5) are close relatives amongst. As per prosecution case, Sapna (PW/1), Rusi Bai (PW/2) and Pannalal (PW/3) were injured in the incident. The Division Bench of this Court has well differentiated and relied upon the testimonies of interested witnesses or related witnesses in the case of ***Pappu @ Matiuddin V State of M.P. [CRA No.246 of 2010 decided on 07.04.2022]***.

13. In the case of ***Pappu @ Matiuddin (Supra)***, the Apex Court in paragraph 50 has held as under:-

“50. Why a “related witness” would spare the real culprit in order to falsely implicate some innocent person? There is a difference between “related witness” and “interested witness”. “Interested witness” is a witness who is vitally interested in conviction of a person due to previous enmity. Further more, why a related witness would spare the original assailant. Even according to the defence, the Appellant Pappu could have inflicted the injuries to himself. The “Interested witness” has been defined by the Supreme Court in the case of Mohd. Rojali Ali v. State of Assam, reported in (2019) 19 SCC 567 as under :

13. As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an “interested” witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between “interested” and “related” witnesses in a plethora of cases, stating that a witness may be called interested only when he

or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki; Amit v. State of U.P.; and Gangabhavani v. Rayapati Venkat Reddy). Recently, this difference was reiterated in Ganapathi v. State of T.N., in the following terms, by referring to the three-Judge Bench decision in State of Rajasthan v. Kalki: (Ganapathi case, SCC p. 555, para 14) “14. “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”.”

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, wherein this Court observed: (AIR p. 366, para 26) “26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person.”

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. State (UT of Pondicherry): (SCC p. 213, para

23) 51. “23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

14. In the case of **Jarnail Singh & Ors. V State of Punjab [(2009) 9 SCC 719]**, the Apex Court in paragraph 28 has held as under:-

“28. Darshan Singh (PW-4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tube well. In Shivalingappa Kallayanappa v. State of Karnataka 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case, it is proved that he suffered the injury during the said incident.”

15. By the aforementioned observation given by the Apex Court and Division Bench of this Court, a clear line has been drawn between interested witness and related witness. The testimony of a related or interested witness cannot be discarded on the sole ground of them being relative of the victim.

16. **In the present case, it is pertinent to be discussed first that**

whether injuries were found on the body of the complainant party after the incident.

17. Dr. R.K. Sawaliya (PW/11) stated that on 18.08.1996, he examined Pannalal (PW/3), brought by constable Jagdish Patidar from Police Station Gogawa and found an incised wound on left side of his skull sized 1/4" x 1/4" x 1/4" caused by hard and sharp cutting weapon within 24 hours, which was simple in nature. MLC report is Ex.P/ 15.

18. Dr. R.K. Sawaliya (PW/11) deposed that on the same day he examined Rusi Bai (PW/2) and following injuries were found:-

(i) Incised perforating entry wound sized 1.3" x 0.5" whole thickness of lower lip, right side/ near lip line, exit inner wound 2.3" x 0.5" inverted on right side of lower lip above the entry wound.

(ii) Incised penetrative wound 0.5" x 0.25" x 0.5" on inner aspect on the cheek above the canine teeth.

(iii) Incised wound 4.5" x 2/3" x 1/2" on scapula region.

(iv) Incised wound 3.5" x 1.25 x 1.5" at base of left thumb vertically downwards.

(v) Incised wound 1.25" x 0.5" x 0.25" below then middle finger of right hand.

(vi) Bruise 2" x 2" on right side of breast.

19. The witness has opined that injury No.(iii) could have been caused by sharp object such as sword and injury Nos.(i), (ii), (iv) & (v) could have been caused by sharp weapon such as ustra blade and injury No.

(vi) is caused by hard and blunt object. Injury Nos.(i) and (ii) are continuation of the same injury. Injury Nos.(i), (ii), (v) & (vi) are simple in nature. He advised X-ray for injury Nos.(iii) & (iv). All the injuries are caused within 24 hours. He sealed blood stained blouse of the injured which had cut marks and sent for chemical examination. He referred the injured for further treatment to the District Hospital, Khargone, issued MLC report (Ex.P/16).

20. Dr. R.K. Sawaliya (PW/11) further stated that on 19.08.1996 at about 10:15 AM, he examined Sapna @ Mangala (PW/1) brought by constable Om Prakash. During examination, following injuries were found on her body:-

(i) Incised wound 1/2" x 1/8" x 1/8" on left palm.

(ii) Abrasion sized 3" x 1/8" on left forearm near elbow

(iii) 2 Abrasions sized 1/8" x 1/8" each on lower area of wrist on the backside.

21. The witness opined that injury No.(i) was caused by sharp and cutting edged object. Injury Nos.(ii) and (iii) are caused by hard and blunt object within 24 hours. All the injuries were simple in nature. He issued MLC report (Ex.P/17).

22. Dr. R.K. Sawaliya (PW/11) had also examined the accused Mukesh and found following following injuries on his body:-

(i) A circular bruise on left forearm in mid 1/3rd of the left side which had bite mark on upper and lateral aspect sized 1.25" x

2/3”.

(ii) *Abrasion on left elbow at medial aspect sized 1/2” x 1/3”.*

23. The witness opined that both the injuries are simple in nature. Injury No.(i) is caused by hard and blunt object such as teeth. Injury No. (ii) was caused by hard and blunt object. Both the injuries were caused within 24 hours. He issued MLC report (Ex.P/18). Aforementioned statement of witness is not contradicted by the defence in his cross-examination. Therefore, his statement appears to be reliable and it appears that after the incident, injuries were found on the body of complainant party i.e. Rusi Bai (PW/2), Pannalal (PW/3) and Sapna (PW/1) and it was also found that there was injury on both the hands of accused Mukesh.

24. The next point of consideration is whether the alleged persons committed the alleged offence?

25. Learned Trial Court has relied on the statement of Sapna (PW/1), her parents Rusi Bai (PW/2), Pannalal (PW/3), Akhilesh (PW/4) and Shyam Sundar (PW/5).

26. Rusi Bai (PW/2) stated that at the time of incident she was cooking food, her daughter Sapna (PW/1) was lying on cot in the same floor and husband and son Akhilesh of the complainant were working together and Shyam were present in the ground floor. At that time, accused persons Mukesh, Hari and Hukum Chand entered into her

house. Accused Mukesh caught hold hand of Sapna (PW/1) and told that he will marry her. The witness objected the same then Mukesh gave a blow by ustra blade on her face, left palm, thumb and right palm and punched on nose. Hari gave blow by sword on her back. Hukum Chand intimidated them by pointing gun towards them. Fourth accused is driver. She further stated that her husband and son had also objected the accused persons then Mukesh gave a blow by ustra blade on his head. All the accused persons threatened them to get aside or they will kill them. Thereafter the accused persons took Sapna alongwith them in car.

27. Sapna (PW/1) stated that she had lived in Indore for 8 – 10 years before she shifted to Tema Behrampur, Khargone. The accused used to live nearby at Indore, so she recognizes them. On the date of the incident at around 12:00 – 12:30 PM, accused persons had come by white Ambassador car, when her mother was cooking food and she was lying on cot. She was alongwith her mother in the first floor. Her father and brother were working in the ground floor. Further she stated that the accused Mukesh came on first floor armed with ustra blade, caught hold her hand and dragged her downstairs stating that he will marry her. Her parents came to intervene then Mukesh had given blow by means of ustra blade on face, shoulder and both palms to her mother and Hukum Chand and Hari carrying sword and gun. As her father tried to save her, Mukesh and Hari had beaten him. The accused persons were saying not to move ahead or else they will kill them. Accused Mukesh had given blow by ustra blade on the head of father of the victim. Hari had pushed

her father and brother away. This witness was also trying to save herself in which she sustained injury on her hand. She further stated that the aforementioned accused persons had dragged her to the car and the car was driven by Abdul Razaque and they took her towards Gogawa. In paragraph 8 of cross-examination, she has stated that she had screamed and had bitten accused Mukesh on his hand.

28. Pannalal (PW/3) stated that at the time of the incident at around 12PM, he was in his house and was working with his son Akhilesh. His daughter and wife were also present in the house. At that time accused Mukesh entered in his house. He questioned, why is he entering, on which accused Mukesh pushed him, went upstairs and brought Sapna (PW 1) to the ground floor. As wife of this witness tried to save the victim, accused gave blow by ustra blade on back, both palms and lips. Alongwith accused Mukesh, his uncle Hari was carrying sword, this witness tried to shout for help, then Hari had shut the door and Hukum Chand was carrying a pistol. Accused Mukesh had given a blow by a hammer nearby, on the head of this witness, because of which he got fainted. Thereafter, the accused persons took her daughter with them in car. This witness had partly not supported the case of prosecution, therefore, the prosecution declared him hostile and cross-examined the witness, then he admitted that the accused Mukesh had given blow by ustra blade first on his head. He also admitted that accused Hari assaulted his wife with sword on her back. He further admitted that her husband had told this witness that accused Mukesh forcibly wants to

marry his daughter.

29. Akhilesh (PW/4) also stated that at the time of the incident, this witness was working alongwith his father on the ground floor. His mother, sister and brother were also present at house. At that time, accused persons Hari, Mukesh and Hukum Chand entered into the house carrying sword, ustra blade and pistol respectively. Accused Mukesh had grabbed hair of Sapna (PW/1) and was saying that he will marry her. As his mother intervened to save her, then Mukesh had given blow by ustra blade on her hand. This witness alongwith his father tried to save, then Hari had pointed sword at his father and said that he will kill him. Hukum Chand pointed gun at this witness and said if shouted more, he will kill them. Accused Hari gave blow by sword on the head of his father and on the back of her mother. After that the accused persons had taken Sapna (PW/1) in the car.

30. Shyam Sundar (PW/5) is a child witness aged around 11 years. Learned Trial Court had examined and it was found that the witness is capable to give evidence. Therefore, his statement was recorded. This witness stated that at the time of the incident he alongwith his parents, brother and sister were in the house, at that time accused Mukesh bearing ustra alongwith 2 other persons, who could not be recognized by him on that day were carrying sword and pistol had entered inside the house. Accused persons had dragged her sister downstairs. His parents tried to rescue the victim then they had assaulted his parents. This witness had partly not supported the case of prosecution therefore, the

prosecution declared him hostile and cross examined the witness. The witness admitted that Hari and Hukum were carrying sword and pistol. Mukesh had said to her sister that he will marry her. His sister screamed for help then all the accused person intimidated her not to shout. He also stated that accused Mukesh had given blow by ustra blade on her face and palm of her mother and accused Hari had given blow by sword at her back. Accused Mukesh had given blow by ustra blade on his father. The witnesses also admitted that the accused persons had forcibly taken Sapna (PW/1) alongwith them in car. This witness denied that he knew brother and uncle of accused Mukesh.

31. SHO Trilok Singh Tomar (PW/9) stated that on 18.08.1996, he lodged an FIR (Ex.P/2) as per information given by Rusi Bai (PW/2). Rusi Bai (PW/2) also stated that she had lodged the FIR (Ex.P/2) at Police Station Gogawa.

32. There is omission in statement of Rusi Bai (PW/2) in case diary statement (Ex.D/4), that Mukesh had punched her nose. There is also omission in case diary statement (Ex.D/5) of Pannalal (PW/3) that accused Mukesh assaulted him by means of hammer. Therefore, it appears that some omissions are in case diary statement of Rusi bai (PW/2) and Pannalal (PW/3). The aforementioned omissions are natural because statement of the witnesses were recorded before the Trial Court after 2 – 2.5 years from the incident.

33. Learned counsel for the appellants is unable to point out any

material omission or contradiction which is going to be the root of the case. In this regard, the Apex Court in the case of ***Takdir Samsuddin Sheikh V State of Gujarat and Anr. [AIR 2012 SC 27]*** has held in paragraph 9 as under:-

“9. We are of the view that all omissions/contradictions pointed out by the appellants' counsel had been trivial in nature, which do not go to the root of the cause.

It is settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions/improvements/embellishments etc. had been of such magnitude that they may materially affect the trial.

Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution should not be made the court to reject the evidence in its entirety.

The court after going through the entire evidence must form an opinion about the credibility of the witnesses and the appellate court in natural course would not be justified in reviewing the same again without justifiable reasons. (Vide: Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. V. State of Maharashtra (2010) 13 SCC 657).”

34. In this regard, the following ratio held by the Apex Court in ***Pundappa Yankappa Pujari V State of Karnataka [2014 law suits SC 516]*** is worth to be quoted here:-

“9. It is settled that if two views are reasonably possible from the very same evidence, the Appellate court on re-appreciation of the same evidence cannot impose its own view. The Appellate Court may re-appreciate the evidence when it is satisfied that the Trial Court has committed an error and has failed to consider the credibility and trustworthiness of the account given by the eye-

witnesses. The evidence on record has to be read as a whole and it is not proper to reject one or other evidence on the ground of certain contradictions and omissions which do not go to the roots of the case. If the testimony of the eye-witnesses are found trustworthy and remained unchanged, ignorance of such testimony can be held to be perverse.”

35. In view of the aforementioned settled position of law, the testimonies of the victim as well as other witnesses cannot be wiped out on the basis of trivial contradictions. Testimony of the victim must be regarded as the statement of an injured witness and the testimony of injured witness is backed by in-built guarantee of truth, rendering it high evidentiary value. Therefore, presence of some omissions and contradictions in the statement of witnesses are natural. Learned Trial Court has properly considered the aforementioned omissions in paragraph 10 of the impugned judgement. Hence, from the aforementioned omissions and contradictions cast no adverse effect. The statement of injured witnesses, Sapna (PW/1), Rusi Bai (PW/2), Pannalal (PW/3) and eye-witnesses, Akhilesh (PW/4) and Shyam Sundar (PW/5) is supported by medical evidence therefore, their statement appears to be reliable.

36. So far as the question with regard to recovery of the victim from possession of the accused persons is concerned, in this respect head constable Jagdish Chandra Patidar (PW/12) on 18.08.1996, at around 02:45 PM in order to search accused persons, alongwith other police officials, had went by jeep towards Indore from Badwah. On arrival at Sirmol with the aid of local police, had caught the car of accused in

Simrol. Accused persons and victim Sapna (PW/1) were present in the car, who were brought to Police Station Simrol by this witness. He further stated that he took the victim Sapna (PW/1) from the possession of the accused persons and prepared Dastiyabi Panchnama (Ex.P/1). The witness also stated that he seized a pistol (airgun) from accused Hukum Chand, an ustra blade from accused Mukesh, a white ambassador car bearing registration No.MP13-W-0763, RC of car and driving licence of accused Abdul Razaque from accused Abdul Razaque. Sword from accused Hari and prepared seizure memo (Ex.P/10 – P/13). Thereafter, this witness brought accused persons, seized articles and victim Sapna (PW/1) alongwith him.

37. Jagdish Chandra Patidar (PW/12), in paragraph 3 of cross-examination stated that he had returned back to Police Station Gogawa at 08:25 PM. He again stated that he carried out seizure of articles at Police Station Simrol from 09:40 – 09:55 PM. As per seizure memos, (Ex.P/10 – P/13), it appears that the witness seized the articles and weapons from the accused persons at Police Station Simrol during 09:40 PM – 09:55 PM. Therefore, it appears that the witness has stated wrongly that by 08:25 PM he had returned to Police Station Gogawa. Therefore, whole statement of witness cannot be disbelieved just because of difference at the time of arrival at 08:25 PM to Police Station Simrol. Statement of this witness is supported by (Ex.P/10 – P/13). Therefore, it appears that he seized articles and weapons from the possession of the accused persons at Police Station Simrol during 09:40

– 09:55 PM.

38. Witness of seizure proceeding Raghunath (PW/7) and Mehmood (PW/8) have completely turned hostile and they have not supported the case of prosecution but both the witnesses have admitted their signature on seizure memos (Ex.P/10) – (Ex.P/13).

39. In the case of *Mallikarjun V State of Karnataka [(2019) 8 SCC 359]*, the Apex Court has held as under:-

*“23. As pointed out earlier, based on the disclosure statement of accused No.1, MO-1-dagger which was kept hidden in the haystack of fodder in the loft of the cattle shed behind the house of accused No.1 had been seized under Ex.-P9- Panchnama in the presence of panch witnesses PW-8- Chandrappa and PW-9- Mahadevappa Needgera. The said panch witnesses have not supported the prosecution case and turned hostile. MO-2-dagger and MO-3-handle of the axe were recovered from the scene of occurrence under Ex.-P7-spot panchnama. On behalf of the accused, learned senior counsel contended that the evidence of PW-17-PSI as to the recovery of MO-1-dagger at the behest of accused No.1 is doubtful and when PWs 8 and 9 have turned hostile, no weight could be attached to the alleged recovery of MO-1-dagger. There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the Investigating Officer can be relied upon to prove the recovery even when the panch witnesses turned hostile. In *Rameshbhai Mohanbhai Koli v. State of Gujarat and others(2011) 11 SCC 111*, it was held as under:-*

“33. [In Modan Singh v. State of Rajasthan](#) (1978) 4 SCC 435 it was observed (at SCC p. 438, para 9) that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery

need not be rejected on the ground that seizure witnesses did not support the prosecution version. Similar view was expressed in [Mohd. Aslam v. State of Maharashtra](#) (2001) 9 SCC 362.

34. In [Anter Singh v. State of Rajasthan](#) (2004) 10 SCC 657, it was further held that: (SCC p. 661, para 10) “10. ... even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.”

35. This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. (Vide [Modan Singh case](#), [Krishna Gopal case](#) and [Anter Singh case](#).)” PW-17-PSI has clearly spoken about the recovery of MO-1- dagger at the behest of accused No.1 and MO-2-dagger and MO-3-handle of the axe from the scene of occurrence and his evidence cannot be discarded merely because panch witnesses have turned hostile.”

40. In the instant case, Jagdish Chandra Patidar (PW/12) categorically stated that weapons and articles were seized from the possession of accused persons and the victim was also recovered from the possession of the accused persons. Statement of witness is not contradicted in his cross-examination. There is nothing to show in his cross-examination that he was interested to falsely implicate the accused persons. Therefore, his statement is reliable.

41. SHO Trilok Singh Tomar (PW/9) stated that on 19.08.1996 Head Constable Jagdish Chandra Patidar (PW/12) brought the accused

persons and victim Sapna (PW/1) at Police Station Gogawa, thereafter, he arrested accused persons and prepared seizure memo (Ex.P/6 – P/9). Though witnesses Raghunath (PW/7) and Mehmood (PW/8) have not supported the prosecution case in respect of arrest of the accused persons, but they have admitted their signature on seizure memo (Ex.P/6 – P/9). The accused persons have also admitted their arrest at Police Station Gogawa, therefore, statement of this witness is reliable.

42. In defence, accused Mukesh had taken plea that there was engagement between him and victim Sapna (PW/1). Sapna had written love letter (Ex.D/1 – D/3) to accused Mukesh. But in paragraph 6 of cross-examination, Sapna (PW/1) denied that she used to write letter to accused Mukesh. She also denied her signature on (Ex.D/1 – D/3). Therefore, this defence of the accused Mukesh is not reliable.

43. Ram Bharose (DW/1) stated that a girl named Sapna, a woman and a boy were living with accused Mukesh at Babulal Nagar Indore. Sometimes Sapna (PW/1) and a boy used to go to watch movie alongwith Mukesh. Accused Mukesh had told him that he and Sapna are going to be married. But he is unaware if they married. He also stated that accused Mukesh used to give rent of the room of Sapna.

44. Bhawani Singh (DW/2) stated that the accused Mukesh is tenant and alongwith him, Leela Bai, Sapna, Sangeeta (sister of Sapna) and Shyam used to live together. Mother of Sapna had told this witness that Mukesh is her son-in-law and Sapna is his wife. Mukesh used to give

rent of the room. They lived in the rented room for one year.

45. Sapna (PW/1), Rusi Bai (PW/2) and Shyamlal (PW/5) admitted in their cross-examination that they were living in Kohinoor Colony, Indore and Mukesh used to live in their neighbourhood. Thereafter, they had started living in Babulal Nagar and Akhilesh Nagar but Sapna (PW/1) and Rusi Bai (PW/2) had denied that accused Mukesh used to give rent of their room and used to give money for other expenses. Both the witnesses have also denied in their cross-examination that marriage of Sapna and Mukesh was decided and after the engagement, they used to go out and watch movies. Witnesses have also denied that Pannalal (PW/3) had demanded money from the accused persons. Thereafter the accused persons had left. The accused Mukesh has not filed any receipt of rent which shows that he used to pay rent for the complainant party. There is also no evidence to show that Bhawani Singh (DW/2) was landlord of the complainant party and accused Mukesh. Therefore, statement of defence witnesses is not reliable and it does not appear that there was engagement between accused Mukesh and victim Sapna (PW/1).

46. Though it appears from the statement of Sapna (PW/1), her mother Rusi Bai (PW/2) and Shyam Sundar (PW/5) that the witnesses were living in Indore before the incident where accused Mukesh used to live in neighbourhood, because of which they used to know him. Rusi Bai (PW/2) admitted in paragraph 5 of cross-examination that Mukesh had come at village Tema Behrampur before 4 days of the incident but

on the basis of aforesaid, it cannot be assumed that there was engagement between accused Mukesh and victim Sapna (PW/1).

47. As far as plea of the accused persons that at the time of the incident, the accused persons Mukesh, Hukum Chand and Hari had taken car of the accused Abdul Razaque and went to the home of victim when father of victim demanded Rs.50,000/- from Mukesh, then accused persons returned from there. Plea of the accused Abdul Razaque is that the other accused persons said that someone has died in the family of accused and his wife has to be brought back. He had taken the accused persons on rent by his car. No offence took place in front of him at the place of incident. Therefore, it appears that the accused persons have admitted that at the time of the incident, they had gone at the complainant's home. Thereafter, they had returned from there but as per statement of prosecution witnesses victim Sapna (PW/1), Rusi Bai (PW/2), Pannalal (PW/3), Akhilesh (PW/4) and Shyam (PW/5), it appears that the accused persons came their home by car thereafter the accused persons Mukesh, Hukum Chand and Hari entered in the house of complainant with weapon, assaulted the complainant party with their weapons and took the victim Sapna (PW/1) forcibly from her home in their car and were taking her towards Indore. It is also clear from statement of Sapna (PW/1) and Jagdish Chandra Patidar (PW/12) that accused persons were caught in Simrol in the car. Then alongwith accused persons, victim Sapna was also there. Jagdish Chandra Patidar (PW/12) took victim Sapna from the possession of the accused persons,

seized weapons and car from the accused persons and returned to Police Station Gogawa, where SHO Trilok Singh Tomar (PW/9) had arrested the accused persons. Statement of aforementioned witnesses appears to be reliable and it appears that the accused persons have committed the offence. It is also clear that in these situation, it cannot be assumed that accused Abdul Razaque was not aware about the incident because three accused persons Mukesh, Hukum Chand and Hari had left the car carrying the weapons with them. In the house of the complainant had assaulted them with their weapons and dragged Sapna forcibly alongwith them in the same car. In these circumstances, it is apparent that accused Abdul Razaque had knowledge about the offence and acted upon accordingly in the offence.

48. On the aforesaid discussion, it appears that the prosecution has established its case beyond reasonable doubt against the appellants therefore, learned Trial Court has rightly relied upon the prosecution witnesses and has not committed any error by convicting the appellants in the aforementioned offences. Learned Trial Court has also rightly sentenced the appellants. Looking to the facts and circumstances, the case of *Bato @ Veeru (Supra)* is not applicable in this case, as the incarceration period already served, is not adequate to justify the offences committed by them.

49. Consequently, both these appeals filed by the appellants are **dismissed**. The judgement of conviction and order of sentence passed by learned Trial Court is hereby affirmed. Appellants are directed to

surrender forthwith before learned Trial Court to undergo their remaining jail sentence, failing which the Trial Court shall be at liberty to take necessary steps against the appellants. After their surrender before the Trial Court, their bail bonds shall be discharged.

50. Copy of this judgement alongwith record of the Trial Court be sent back to the Trial Court for necessary compliance.

Certified copy, as per Rules.

(PRAKASH CHANDRA GUPTA)
JUDGE

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