HIGH COURT OF MADHYA PRADESH

BENCH INDORE

SINGLE BENCH:

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

Criminal Appeal No.705/1999

.....Appellant: **Liyakatuddin**

Versus

.....Respondent : **State of M.P.**

None for the appellant.

Ms. Mamta Shandilya, Public Prosecutor for the respondent/State.

Date of hearing : 02/08/2018

Date of Judgment : 21/08/2018

Whether approved for reporting : Yes

J U D G M E N T

(21/08/2018)

On 26.4.2018, when the case was called. It appears that none had appeared for the appellant and accordingly, this Court appointed Ms. Manjula Mukati as counsel for the appellant/*amicus curiae*. However, when the case was called for hearing on 2.8.2018, neither any counsel for the appellant nor even the *amicus curiae* appeared for the appellant. The appellant was granted bail by this Court by order dated 2.12.1999 and it appears that after obtaining the bail from this Court, the appellant is not interested in arguing the matter. Under these circumstances, this Court was left with no other option but to peruse the record on its own and to decide this

appeal after hearing the Public Prosecutor. Accordingly, a detailed order in this regard was passed on 2.8.2018 and the case was reserved for judgment in the light of the law laid down by the Supreme Court in the case of **Surya Baksh Singh Vs. State of Utter Pradesh**, reported in **(2014) 14 SCC 222**.

2. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment dated 13.5.1999 passed by Additional Sessions Judge, Jaora, District Ratlam in S.T.No.15/1997, by which the appellant has been convicted under Sections 306 and 498A of IPC and has been sentenced to undergo the rigorous imprisonment of 5 years and a fine of Rs.1000/- and rigorous imprisonment of 2 years and a fine of Rs.500/-, with default imprisonment.

3. The necessary facts for the disposal of the present appeal in short are that the present appellant is the husband of the deceased Mumtaz Bee and the marriage had taken place about 10 years prior to the date of incident. It is alleged that immediately after the marriage, the appellant as well as the co-accused Goremiyan, Chhoti Bee and Jakiya alias Kali, who were the father-in-law, mother-in-law and sister-in-law of the deceased respectively, started treating the deceased with cruelty and were harassing her. The appellant used to beat the deceased under the influence of liquor and was asking her to bring money from her parent’s home for starting the business. On 23.4.1991, the accused persons including the appellant ousted the deceased after beating her, as a result of which she went to her parental home at Mahidpur City and lodged a report against the accused persons and on her report, Crime No.0/91 for offence under Section 498-A of IPC was registered and the FIR was sent to Police Station Jaora City where the Crime No.130/91 was registered and after completing the investigation, the police filed the charge sheet against the

appellant and the other co-accused persons and a Criminal Case No.468/93 was registered. Thereafter, on 9.1.1992 the appellant went to the parental home of the deceased and tendered his unconditional apology and also assured the security of the deceased in future and also executed an agreement on a stamp paper of Rs.5/- in front of the Panchas and thereafter, the appellant brought the deceased to her matrimonial house. However, even thereafter the behaviour of the appellant as well as other co-accused persons did not improve and consequently the deceased Mumtaz Bee committed suicide on 16.10.1996 by ablazing herself after pouring kerosene oil. A merg No.17/1996 was registered and the then SDO(P) Jaora started merg enquiry. He prepared dead body panchnama Ex.P/1, spot map Ex.P/2 and the articles from the place of incident were seized vide seizure memo Ex.P/3, the photographs of the spot were taken, which are Ex.P/5 to Ex.P/18. An application for conducting the postmortem of the dead body of the deceased was made which is Ex.P/7. The statements of the witnesses were recorded and after recording the statements of the witnesses, the police came to the conclusion that the offence under Sections 498-A and 306 of IPC have been committed and, accordingly, on 17.10.1996 the FIR Ex.P/10 was registered against the appellant and three other co-accused persons. The appellant and three other co-accused persons were arrested on 18.10.1996 vide arrest memo Ex.P/11 to Ex.P/14. The agreement Ex.P/4 was seized vide seizure memo Ex.P/5. The seized articles were sent for FSL report and after receiving the FSL report, the police filed the charge sheet against the appellant and the co-accused Azizuddin, Chhoti Bee, Jakiya alias Kali for offence under Sections 306 and 498-A of IPC.

4. The Trial Court by order dated 22.9.1997 framed the charges under Sections 306, 498-A of IPC against the appellant

and three other co-accused persons. The appellant and other co-accused persons abjured their guilt and pleaded not guilty.

5. The prosecution in order to prove its case examined Sher Ali (PW-1), Asuk Ali (PW-2), Shabbirkhan (PW-3), Tajbi (PW-4), Santosh Kerketta (PW-5), Dr. Mahavir Khandelwal (PW-6) and Dharmendra Chaudhari (PW-7).

6. The appellant as well as the other co-accused persons did not examine any witness in their defence.

7. The Trial Court (Additional Sessions Judge, Jaora, District Ratlam) by judgment dated 13.5.1999 passed in S.T. No. 15/1997 convicted the appellant Liyakatuddin for offence punishable under Sections 498-A and 306 of IPC and sentenced him to undergo the rigorous imprisonment of two years and a fine of Rs.500/- and rigorous imprisonment of five years and a fine of Rs.1000/-, with default imprisonment respectively. However, the co-accused Goremiyan @ Azizuddin, Chhoti Bee and Jakiya alias Kali were acquitted of all the charges. The acquittal of the co-accused persons has not been challenged either by the prosecution or by the complainant, therefore, any reference to the acquitted co-accused persons would be coincidental and would be for the purposes of considering the allegations made against the appellant only.

8. As neither the counsel for the appellant nor the *amicus curiae* appointed by the Court had appeared, therefore, this Court was left with no other option but to go through the grounds raised by the appellant in the memo of appeal. In the memo of appeal, it has been pleaded that so far as the allegations of torture and misbehaviour are concerned, as the prosecution has failed to examine any neighbourer, therefore, it cannot be said that the allegations of torture and misbehaviour has been proved. Since an agreement was executed between the parties, therefore, the deceased and the appellant had lived in a cordial relationship after the said agreement and certain

omissions and contradictions in the evidence of the witnesses have not been taken into consideration by the court below and the witnesses have exaggerated their allegations and have tried to project as if the present case is that of murder. After the case was reserved for judgment, the counsel for the appellant has filed the written arguments on 6.8.2018, which were taken on record and the written arguments are also taken into consideration. In the written arguments, it is mentioned that as the death occurred after 10 years of marriage, therefore, no presumption under Section 113-A of Evidence Act can be drawn and from the evidence of the witnesses, it is clear that there is no allegation that soon before her death, she was ever subjected to cruelty or harassment.

9. *Per contra,* it is submitted by the counsel for the State that the trial court after appreciating the evidence in detail, has come to a conclusion that the deceased was subjected to cruelty and harassment and the appellant had created such a situation before the deceased where she was left with no other option but to put an end to her life as the appellant had not only maltreated the deceased and had treated her with cruelty but even after giving assurance to the parents of the deceased as well as to the deceased, the behaviour of the appellant did not improve and he continuously treated the deceased with cruelty, as a result of which, a situation had arisen before the deceased where she lost all her hopes in the life and accordingly, the Trial Court did not commit any mistake in holding that the appellant had abetted the deceased to commit suicide, as well as holding him guilty for offence under Section 498-A of IPC.

10. Heard the learned counsel for the State and considered the written arguments also.

11. Sher Ali (PW-1) is the brother of the deceased-Mumtaz Bee, Asuk Ali (PW-2) is the uncle of the deceased, Shabbirkhan

(PW-3) is the brother-in-law (husband of the deceased), Tajbi (PW-4) is the sister-in-law (Bhabhi) of the deceased.

12. Before considering the allegations against the appellant, it would be appropriate to consider that whether the deceased had died homicidal death or suicidal death or natural death.

13. Dr. Mahavir Khandelwal (PW-6) had conducted the postmortem of the dead body of the deceased Mumtaz Bee and had found the following injuries on the dead body:-

> "Body of a lady having almost 95% turn having rigormortis in all the limbs and in pugilistic posture eye was closed. Cloth was found on the mouth and nose which were partially burnt. Tongue is protruded glew of head on the right side burnt up to scalp, hair was burnt on head. Two glass Chudi (bangles) on right hand and one is left mettalic Nath in nose left nostril and 4 Bichhiya. Smell of kerosene was coming from the body. Almost 95% of the body was completely burnt. There were deep burn on head, face, front of chest and abdomen. The internal organs were little congested and the burn was antemortem in nature."

14. This witness was not cross-examined at all and accordingly, it is clear that the deceased had died because of 95% burn injuries all over the entire body with deep burn marks on the head and smell of the kerosene oil was coming from the entire dead body. The postmortem report is Ex.P/7.

15. The photographs of the spot as well as the photographs of the dead body lying on the spot were also taken which are Ex.P/15, Ex.P/16, Ex.P/17 and Ex.P/18. From these photographs, it is clear that a plastic cane was lying near the

dead body and thus, it is clear that the deceased died homicidal death. Accordingly, it is held that the prosecution has succeeded in establishing beyond reasonable doubt that the deceased committed suicide by ablazing herself after pouring kerosene oil.

16. Sher Ali (PW-1), Asuk Ali (PW-2), Shabbirkhan (PW-3) and Tajbi (PW-4) have stated in one voice that the marriage of the deceased was performed with the appellant about 8 to 10 years prior to the date of incident. Earlier also the appellant used to maltreat and beat the deceased for want of money. The deceased also used to tell them that her in-laws are constantly threatening that in case if she does not bring the money from her parental home, then she would be killed and, accordingly, about 3 to 4 years prior to her death, the deceased came back to her parental home and a report was lodged in Mahidpur Police Station and on the said report, a criminal case was registered against the appellant and the police had filed the charge sheet, which was pending in the Jaora Court. The deceased had stayed in her parental home for a period of about one and half years. Thereafter, the appellant along with other elderly members of the society came to their house and the appellant tendered his unconditional apology and assured that now the deceased will not be maltreated and she will not be beaten and the appellant had executed an agreement on a stamp paper of Rs.5/- and considering the apologies and the guarantee given by the appellant, the deceased was sent along with the appellant. Thereafter, the police informed these witnesses that the deceased has died and, therefore, they went to the matrimonial house of the deceased. Dead body Panchnama Ex.P/1, spot map Ex.P/2 were prepared. The plastic cane containing the kerosene oil as well as the match box and some cloths were seized vide seizure memo Ex.P/3 and the agreement written by the appellant is Ex.P/4 which was seized

by the police vide seizure memo Ex.P/5.

17. A ground has been raised by the appellant that as the death has occurred after seven years of marriage, therefore, no presumption can be drawn under Section 113-A of the Evidence Act. It is also clear from the record that with regard to the harassment and treatment of the deceased with cruelty by the appellant, the prosecution has examined Sher Ali (PW-1), Asuk Ali (PW-2), Shabbirkhan (PW-3) and Tajbi (PW-4) who are closely related to the deceased and one more ground has been raised by the appellant in the memo of appeal, that no independent witness has been examined by the prosecution.

18. It is well established principle of law that the evidence of a witness cannot be discarded merely on the ground that he is relative or interested witness.

19. The Supreme Court in the case of **Mahavir Singh vs. State of M.P.** reported in **(2016) 10 SCC 220** has held as under:-

> "18. The High Court has attached a lot of weight to the evidence of the said Madho Singh (PW 9) as he is an independent witness. On perusal of the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same accused. This being the fact, it is important to analyse the jurisprudence on interested witness. It is a settled principle that the evidence of interested witness needs to be scrutinised with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy. Here we may refer to chance witness also. It is to be seen that although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted.
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> 19. A contradicted testimony of an interested witness cannot be usually treated as conclusive."

The Supreme Court in the case of **Harbeer Singh vs. Sheeshpal** reported in **(2016) 16 SCC 418** has held as under:

> "18. Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.
> 19. In Darya Singh v. State of Punjab, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)
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> "6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. … But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. … If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."
> 20. However, we do not wish to emphasise that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the

> evidence which is required to be judged by the court to place credence on the statement.
> 21. Further, in Raghubir Singh v. State of U.P., it has been held that: (SCC p. 84, para 10)
> "10. … the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. … In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind."

The Supreme Court in the case of **Vijendra Singh vs. State of U.P.** reported in **(2017) 11 SCC 129** has held as under:

> "31. In this regard reference to a passage from Hari Obula Reddy v. State of A.P. would be fruitful. In the said case, a three-Judge Bench has ruled that: (SCC pp. 683-84, para 13)
> "[it cannot] be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."
> It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in Kartik Malhar v. State of Bihar has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason."
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> The Supreme Court in the case of Raju

vs. State of T.N., reported in **(2012) 12 SCC 701** has held as under:

"20. The first contention relates to the credibility of PW 5 Srinivasan. It was said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi, both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW 5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

21. What is the difference between a related witness and an interested witness? This has been brought out in State of Rajasthan v. Kalki. It was held that: (SCC p. 754, para 7)

"7. … True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'."

22. In light of the Constitution Bench decision in State of Bihar v. Basawan Singh, the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In Basawan Singh, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held: (AIR p. 506, para 15)

"15. … The correct rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to

case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

23. The wife of a deceased (as in Kalki), undoubtedly related to the victim, would be interested in seeing the accused person punished—in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in Kalki is too narrow and generalised and needs a rethink.

24. For the time being, we are concerned with four categories of witnesses—a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

25. In the present case, PW 5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution.

26. In Dalip Singh v. State of Punjab this Court observed, without any generalisation, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused—each case has to be considered on its own facts. This is what this Court had to say: (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 relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

27. How the evidence of such a witness should be looked at was again considered in Darya Singh v. State of Punjab. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the "enemy" of the victim. This is what this Court said: (AIR p. 331, para 6)

"6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the

witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. … It may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

28. More recently, in Waman v. State of Maharashtra this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon Sarwan Singh v. State of Punjab, Balraje v. State of Maharashtra, Prahalad Patel v. State of M.P., Israr v. State of U.P., S. Sudershan Reddy v. State of A.P., State of U.P. v. Naresh, Jarnail Singh v. State of Punjab and Vishnu v. State of Rajasthan it was held: (Waman case, SCC p. 302, para 20)

"20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to

> scrutinise their evidence meticulously with a little care."
> 29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words: (Sarwan Singh case, SCC p. 376, para 10)
> "10. … The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

The Supreme Court in the case of **Jodhan vs. State of M.P.** reported in **(2015) 11 SCC 52** has held as under:

> "24. First, we shall deal with the credibility of related witnesses. In Dalip Singh v. State of Punjab, it has been observed thus: (AIR p. 366, para 25)
> "25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan."
> In the said case, it has also been further 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. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. In Hari Obula Reddy v. State of A.P., the Court has ruled that evidence of interested witnesses per se cannot be said to be unreliable evidence. Partisanship by itself is not a valid ground for discrediting or discarding sole testimony. We may fruitfully reproduce a passage from the said authority: (SCC pp. 683-84, para 13)

"13. … an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the court before relying upon his testimony should seek corroboration in regard to material particulars."

The Supreme Court in the case of **Yogesh Singh vs. Mahabeer Singh** reported in **(2017) 11 SCC 195** has held as under:

> "24. On the issue of appreciation of evidence of interested witnesses, Dalip Singh v. State of Punjab is one of the earliest cases on the point. In that case, it was held as follows: (AIR p. 366, para 26)
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> "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. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."
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> 25. Similarly, in Piara Singh v. State of Punjab, this Court held: (SCC p. 455, para 4)
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> "4. … It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."
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> 26. In Hari Obula Reddy v. State of A.P., a three-Judge Bench of this Court observed: (SCC pp. 683-84, para 13)
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> "13. … it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should

> be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."
> 27. Again, in Ramashish Rai v. Jagdish Singh, the following observations were made by this Court: (SCC p. 501, para 7)
> "7. … The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."
> 28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witness is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See Anil Rai v. State of Bihar, State of U.P. v. Jagdeo, Bhagaloo Lodh v. State of U.P., Dahari v. State of U.P., Raju v. State of T.N., Gangabhavani v. Rayapati Venkat Reddy and Jodhan v. State of M.P.)"

20. So far as the non-examination of the independent witnesses is concerned, the prosecution story cannot be thrown only on the ground that the independent witnesses have not come forward to depose in favour of the prosecution. It is being observed that nowadays, the independent witnesses are showing their indifferent attitude towards the offence and they always try to stay away as neither they are interested in taking

any pains for deposing before the Court nor they want to spoil their relationship with the accused persons. Under these circumstances, merely because the neighbourer are not examined by the prosecution to prove the harassment or cruelty by the appellant, it would not *ipso facto* mean that the evidence of Sher Ali (PW-1), Asuk Ali (PW-2), Shabbirkhan (PW-3) and Tajbi (PW-4) is not worth reliance. Furthermore, the case of the prosecution is not based on mere ocular evidence of the witnesses. The prosecution has also relied upon an agreement executed between the appellant and the deceased which has been marked as Ex.P/4. In the said agreement, although there is no specific allegation against the appellant to the effect that he had maltreated or treated the deceased with cruelty because of non-fulfillment of demand of dowry, but it is specifically mentioned that their relations had become strained because of some family dispute and the appellant had also mentioned in the said agreement that now he would keep the deceased properly as his wife and would not fight with her on any issue and he would behave properly with his wife (deceased) and the children, and would not harass her without any reason and he would provide her meals properly and would look after his wife and children. It is also mentioned in the said agreement that the appellant would keep the deceased as his wife and would provide all facilities for which a wife is entitled. He has also undertaken to provide food and clothes regularly and would not restrain the deceased from visiting her family members. Thus, although the agreement Ex.P/4 does not contain the exact allegations of cruelty committed by the appellant, but in view of the undertakings given by the appellant, it is clear that the appellant was treating the deceased with cruelty, as a result of which, she had come to her parental home and ultimately the appellant tendered his unconditional apology and assured the family

members of the deceased that he would treat her properly and by way of an evidence to the said assurance, the agreement Ex.P/4 was executed. Although, the appellant in his statement recorded under Section 313 of Cr.P.C. has given an evasive reply to the execution of agreement Ex.P/4, but he has not disputed his signatures on the said agreement Ex.P/4.

21. So far as the minor omissions in the evidence is concerned, it is well established principle of law that every omission cannot take shape of a contradiction and unless and until it is pointed out that the omission or improvement goes to the root of the case, the same cannot be treated as contradiction. The Supreme Court in the case of **Yogesh Singh vs. Mahabeer Singh & Ors.** reported in **(2017) 11 SCC 195** has held as under:-

> "29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi Vs. State of M.P., (1999) 8 SCC 649; Leela Ram Vs. State of Haryana, (1999) 9 SCC 525; Bihari Nath Goswami Vs. Shiv Kumar Singh., (2004) 9 SCC 186; Vijay Vs. State of M.

> P., (2010) 8 SCC 191; Sampath Kumar Vs. Inspector of Police, (2012) 4 SCC 124; Shyamal Ghosh Vs. State of W.B., (2012) 7 SCC 646 and Mritunjoy Biswas Vs. Pranab, (2013) 12 SCC 796)".

The Supreme Court in the case of **S. Govindaraju vs. State of Karnataka** reported in **(2013) 15 SCC 315** has held as under:-

> "23 It is obligatory on the part of the accused while being examined under Section 313 Code of Criminal Procedure to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculpate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (Vide: **Munish Mabar v. State of Haryana** MANU/SC/0811/2012: AIR 2013 SC 912)."

The Supreme Court in the case of **Narayan Chetanram Chaudhary & Anr. vs. State of Maharashtra** reported in **(2000) 8 SCC 457** has held as under:-

> "42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution become doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the

same would not cause any dent in the testimony of PW2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in State of H.P. v. Lekh Raj, (2000) 1 SCC 247 (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp.258-59, paras 7-8)

"Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecutions case doubtful. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [1974 (3) SCC 767] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish vs. State of M.P. [1981 SCC (Crl.) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan vs. Kalki [1981 (2) SCC 752] held that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the

like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in State of U.P. Vs. M.K. Anthony (AIR 1985 SC 48), Tehsildar Singh Vs. State of U.P. (AIR 1959 SC 1012), Appabhai Vs. State of Gujarat (JT 1988 (1) SC 249) and Rammi Vs. State of M.P. (JT 1999 (7) SC 247), this Court in a recent case Leela Ram Vs. State of Haryana (JT 1999 (8) SC 274) held:

"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embelishment, there may be, but variations by reason therefor should not render the evidence of eye witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.....

The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not failing within a set pattern is unproductive and a pedantic exercise."

22. Thus, considering the evidence which has come on record and in view of the specific admission of the witnesses that the marriage took place between the appellant and the deceased about 8 to 10 years prior to the death of the deceased, therefore, no presumption under Section 113-B of the Evidence

Act can be drawn.

23. Considering the allegations as well as the documentary evidence which has been brought by the prosecution on record, it is clear that the appellant was treating the deceased with cruelty, as a result of which the deceased had come back to her parental home and thereafter, the appellant took her back after tendering his unconditional apology and giving an assurance to the family members of the deceased to the effect that he would give all respect to the deceased and would never misbehave with her and would give all rights for which the wife is entitled, but it appears that in spite of the assurance given by the appellant, the behaviour of the appellant did not improve and he continuously harassed the deceased, as a result of which, the deceased was left with no other option but to put an end to her life and, accordingly, she committed suicide by setting herself on fire on 16.10.1996 after pouring kerosene oil on her.

24. It is well established principle of law that when a person creates a situation before the deceased where he/she is left with no other option but to put an end to his/her life, it would amount to abetment as defined under Section 107 of IPC. In the present case, at the first instance, the deceased was maltreated and harassed as well as beaten by the appellant and, therefore, the deceased came back to her parental home and lodged a report against the appellant and, accordingly, the appellant along with the other family members was being tried for an offence under Section 498-A of IPC. It appears that thereafter, the appellant came to the parental home of the deceased, tendered his unconditional apology and assured the family members of the deceased that the mistakes which he had committed in the past will never be committed in future and the deceased would be given the respect for which she is entitled and he had also assured by giving it in writing by executing an agreement Ex.P/4 that all facilities including the

food, clothing etc. would be provided to the deceased, but after relying upon the assurances given by the appellant, when the deceased went back to her matrimonial house, then again the behaviour of the appellant did not improve and under these circumstances, if the deceased was of the view that now there is no possibility of any improvement in the behaviour of the appellant and a situation has been created by the appellant where the deceased had lost all hopes of happy married life and when she got an impression that now she has no option but to put an end to her life, then it can be safely said that the appellant had committed an offence for abetment of suicide. Accordingly, this Court is of the considered opinion that the appellant is guilty of offence under Sections 498-A and 306 of IPC.

25. So far as the question of sentence is concerned, the Trial Court has awarded the rigorous imprisonment of five years for offence under Section 306 of IPC and rigorous imprisonment of two years for offence under Section 498-A of IPC. If the facts and circumstances of the case are considered, then it would be clear that initially the deceased was harassed and maltreated by the appellant and when a criminal case was registered against him for offence under Section 498-A of IPC, then he tendered his unconditional apology and gave it in writing by executing an agreement Ex.P/4 and assured that she will never be maltreated in future and when the deceased relyling upon the assurances given by the appellant went back to her matrimonial house, then again she found that the assurance given by the appellant was nothing but a false statement and under these circumstances, this Court is of the view that the jail sentence of rigorous imprisonment of five years and two years respectively for offence under Sections 306 and 498-A of IPC does not call for any interference.

26. Resultantly, the conviction and sentence passed by the

Additional Sessions Judge, Jaora, District Ratlam by judgment dated 13.5.1999 passed in S.T.No.15/1997 is hereby affirmed.

27. The appellant is on bail. His bail bonds are cancelled. He is directed to immediately surrender before the Trial Court to undergo the remaining jail sentence.

28. The appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
Judge
21/08/2018

(alok)

ALOK KUMAR
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