

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

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 25th OF JANUARY, 2023

CRIMINAL APPEAL No. 417 of 2011

BETWEEN:-

**ASHRAF S/O KHAJU KHAN, AGED ABOUT 36 YEARS, HATPURA
AGAR, P.S. AGAR, DISTIRICT- SHAJAPUR (MADHYA PRADESH)**

.....APPELLANT

**(MS. SHARMILA SHARMA, LEARNED COUNSEL FOR THE
APPELLANT.)**

AND

**THE STATE OF MADHYA PRADESH GOVT. THROUGH POLICE
STATION- AGAR, DFISTT. SHAJAPUR (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI KAMAL KUMAR TIWARI, LEARNED GOVT. ADVOCATE FOR
STATE.)**

Reserved on : 16.01.2023

Pronounced on : 25.01.2023

*This appeal 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

Appellant has filed this appeal under section 374 of the Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), being aggrieved by the judgment dated 03/02/2011, passed by Additional Sessions Judge, Agar, District-Shajapur in S.T. No. 118/2010, whereby the learned trial court has convicted and sentenced the appellant as under:-

Offence	Sentence awarded	Fine amount	Imprisonment in lieu of fine amount
302 of the IPC	Life Imprisonment	Rs.1,000/-	6 months R.I.
450 of the IPC	5 years R.I.	Rs.500/-	3 months R.I.
324 of the IPC	2 years R.I.	Rs.200/-	1 month R.I.

2. Prosecution case in brief is that the deceased Razia Bee was daughter of Rani Bee (PW/4). Earlier Rani Bee (PW/4) was married to Chhotu Khan. Deceased Razia Bee was the daughter from the wedlock of Rani Bee (PW/4) and Chotu Khan. After death of Chotu Khan, Rani Bee (PW/4) remarried with Bhuru Khan and since then she was living separately in Multani Mohalla, Hatpura, Agar, Distt-Shajapur with her husband Bhuru Khan. Since childhood deceased Razia Bee had been living with her maternal grandparents (hereinafter referred to as grandparents), Sattar Khan (PW/5) and Saida Bee (PW/2). Sarfaraz Khan (PW/1) is maternal uncle of the deceased.

3. The appellant Ashraf lives in the neighbour of the place where deceased used to live. The appellant was married and has children. He wanted to marry with deceased Razia Bee but the grandparents

had refused for the proposal of the marriage because of which he was pressurizing her grandparents. 8-10 days prior to the incident, the grandparents of the deceased had got the engagement of the deceased Razia Bee done in village Karnawat. In response appellant Ashraf said that if Razia would not marry him, he will not let her marry with anyone. At the time of incident, preparation for marriage of deceased was being carried on. In consonance with the foregoing reasons, on 14/03/2010 at about 04:30 PM, deceased was cleaning clothes, the appellant entered in the house of Sattar Khan (PW/5) carrying a knife and intended to kill the deceased. The appellant repeatedly stabbed her with a knife. Sarfaraz Khan (PW/1) tried to intervene, then appellant also inflicted blows upon him with knife. Saida Bee (PW/2) and Irshad Khan (PW/3) also came to rescue her. Thereafter appellant fled away. Deceased Razia Bee was taken to hospital where she died.

4. On being intimated about the incident the police had come to civil hospital Agar. Sarfaraz Khan (PW/1) had intimated the incident to the inspector P.L. Raj (PW/11). P.L. Raj (PW/11) had lodged *Dehati Nalishi* (Ex.P/1) against the appellant on the same day at 05:10 PM and also lodged *Dehati Merg* (Ex.P/2). On the basis of *Dehati Nalishi* (Ex.P/1) and *Dehati Merg* (Ex.P/2), head constable Harish Chandra Jurri (PW/7) had lodged an FIR (Ex.P/8) and *Merg Intimation* (Ex.P/9) respectively on the same day.

5. During investigation Inspector P.L. Raj (PW/11) gave notice (Ex.P/4) and prepared Lash Panchnama (Ex.P/5). He sent the body of the deceased for post-mortem through constable Madan Lal. Dr. Anil Agrawal conducted autopsy and gave post-mortem report (Ex.P/7). During post-mortem Dr. Anil Agrawal (PW/6) preserved and sealed Kurti, Salwar, Chunri and Sameej of deceased and handed over to the concerning constable. He sent Sarfaraz Khan (PW/1) for medical examination. Dr. Anil Agrawal (PW/6) examined Sarfaraz Khan (PW/1) and gave MLC report (Ex.P/6).

6. Inspector P.L. Raj (PW/11) inspected the place of incident and prepared a spot map (Ex.P/3) at the instance of Sarfaraz Khan (PW/1). He seized blood sample from the floor through cotton ball and a blood stained ladies Pajama vide seizure memo (Ex.P/15) from the place of incident. On 16/03/2010, he arrested the appellant vide arrest memo (Ex.P/11), he seized a blood stained shirt from the appellant vide seizure memo (Ex.P/13), thereafter he recorded disclosure statement of appellant vide disclosure memo (Ex.P/12). He recovered a blood stained knife at the instance of appellant vide seizure memo (Ex.P/14). On 27/03/2010 Inspector P.L. Raj (PW/11) sent the knife to doctor for examination and opinion along with letter (Ex.P/16). Dr Anil Agrawal (PW/6) examined the knife and gave his opinion on the back side of the letter (Ex.P/16). Head constable Harish Chandra Jurri (PW/7) seized a sealed packet containing clothes of deceased produced by constable Pradeep

Yadav from hospital vide seizure memo (Ex.P/10). Inspector P.L. Raj (PW/11) sent the seized articles to FSL Sagar for chemical examination through letter (Ex.P/17). Statement of witnesses was recorded and after completion of investigation, charge-sheet was filed before concerning Magistrate. The offence was triable by court of sessions, therefore, the case was committed before the court of sessions.

7. The learned trial court framed charge against the appellant. The appellant abjured his guilt and sought trial. In turn prosecution in order to prove its case, examined 11 witnesses. After completion of prosecution evidence, the appellant was examined under section 313 of Cr.P.C. The appellant had taken defence that he has not committed the offence and he has been falsely implicated in the offence due to animosity. Though, he has not examined any witness in his defence.

8. Criticising the impugned judgment, counsel for the appellant has submitted that there is no independent witness in the case. Rani Bee (PW/4), Sattar Khan (PW/5) and Ashiq Ali (PW/10) are not the eye-witnesses of the incident, they are only hear-say witnesses, therefore, their statement is not admissible in evidence. Other eye-witnesses of incident Sarfaraz Khan (PW/1), Saida Bee (PW/2) and Irshad Khan (PW/3) are related witnesses of the deceased. There was animosity in the relationship between appellant and

grandparents of deceased. Therefore, their statement is also not trustworthy. Seizure witness Kamaruddin (PW/8) is also related witness, therefore, his statement is not reliable but the learned trial court has not considered properly the aforesaid factum. Therefore, impugned judgment is liable to be set aside.

9. Learned Government Advocate appearing for the State has supported the impugned judgment passed by the learned trial court.

10. We have heard learned counsels for the parties and perused the records.

11. Entering upon the defence, this court thinks it apposite to find out as to whether the death of the deceased Razia was homicidal in nature?

12. Dr Anil Agrawal (PW/6) stated that, on 14/03/2010, he was posted as a Medical Officer at C.H.C. Agar. On the said date the dead body of deceased was brought before him for post-mortem. He examined and found following injuries on the body:-

1. *Incised wound 1"x 1" over right shoulder near acromian process.*
2. *Incised wound over upper outer aspect of left shoulder size 1" x 1" vertically on coracoid process.*
3. *Incised wound 1.5" x 1" x muscle deep, vertically over right forearm, flexor aspect 2 inch below of elbow joint.*

4. *Incised wound 2" x 1" vertically over lower 1/3rd of right forearm, extensal surface.*
 5. *Incised wound 2" x 1" vertically over antero-medial aspect of left upper arm below the head of humar.*
 6. *Incised wound 1.5" x 1" over inner upper quadrant of right breast, over 4th ICS 2 inch away from the right sternal border.*
 7. *Incised wound 1" x 1" horizontally just over the right areola.*
 8. *Incised wound 1" x 1" vertically over upper outer quadrant of right breast, 3" away from sternal border.*
 9. *Incised wound 1.5" x 1" vertically over lower inner quadrant, 1" away from right sternal border.*
 10. *incised wound 1" x 1" obliquely, over upper inner quadrant of left breast, 1" lateral to left sternal border.*
 11. *Incised wound over left breast, size 1" x 1", upper outer quadrant, vertically placed close to anterior axillary line.*
 12. *Incised wound 1.5" x 1.5" over chest, 4th ICS, close to left sternal border.*
- 13.** This witness stated that all injuries present on the body of the deceased were caused by pointed and sharp object and were ante-mortem in nature.
- 14.** Dr. Anil Agrawal (PW/6) further stated that in internal examination, he found that there were fractures in 5th right rib and 3rd left rib. An incised wound 2" x 1" on lower lobe of right lung. Incised wound 2" x 1" was present passing through both the ventricle of the heart. 400ML blood was present in the thoracic cavity. He stated that

clothes worn by deceased were sealed by him and handed over to the concerning constable. The witness opined that cause of death was shock and internal haemorrhage due to injury to heart and right lung. He proved post-mortem report (Ex.P/7). No amount of cross-examination could cause scratch on the statement of this witness. Therefore, the statement of this witness appears to be reliable. Hence, from the statement of this witness, it appears that there were 12 ante-mortem incised wounds present on the body of the deceased and she died because of internal haemorrhage and shock due to injury in heart and right lung. It also appears that death of deceased was homicidal in nature.

15. The next question arises that whether Sarfaraz Khan (PW/1) sustained injuries?

16. In this respect Dr. Anil Agrawal (PW/6) stated that on 14/03/2010, injured Sarfaraz Khan (PW/1) was brought before him for medical examination. He examined and found following injuries on his body:-

1. *Abrasion 1" x 0.5" on left palm index finger.*
2. *Abrasion 1" x 0.5" on middle finger, lower palm, phalynx region.*
3. *Abrasion 1" x 0.5" on right index near palmer surface.*
4. *Incised wound 3" x 1/4" x 1/4" on right hand.*

17. Dr. Anil Agrawal (PW/ 6) opined that all the injuries present on the body of injured were simple in nature and caused within 24

hours. He proved MLC report (Ex.P/6). Though the witness has not stated that through which type of object, the injuries could have been caused to the injured Sarfaraz Khan (PW/1) but it is mentioned in MLC report (Ex.P/6) that all the injuries are caused by sharp object. Statement of witness appears to be reliable and it is clear that Sarfaraz Khan (PW/1) has received injuries.

18. The next question arises that whether the appellant/ accused Ashraf committed house-trespass and intentionally inflicted injuries on the body of deceased Razia to cause her death and to Sarfaraz Khan (PW/1) with intention to cause hurt with sharp object?

19. Sarfaraz Khan (PW/1), Saida Bee (PW 2), Rani Bee (PW/4) and Irshad Khan (PW/3) are close relatives of the deceased. Irshad Khan (PW/3) in paragraph 6 of cross-examination has stated that Sarfaraz Khan (PW/1) is son of his maternal uncle. Seizure witness Kamaruddin (PW/8) in paragraph 5 of cross-examination has admitted that Sattar Khan (PW/5) is his maternal uncle. Therefore, it appears that aforementioned witnesses are relatives. The trial Court has relied on the statement of aforesaid witnesses.

20. In the judgment of ***Rajinder Singh and Anr. Vs. State of Haryana [AIR 2009 SC 1734]***, Hon'ble the Apex Court has observed as under:-

“23. ...It is well settled that if the witness is related to the deceased, his evidence has to be

accepted if found to be reliable and believable because he would inter alia be interested in ensuring that real culprits are punished.”

21. In the case of ***Kuldeep Singh Rajawat Vs. State of Madhya Pradesh [Criminal Appeal, 502 of 2011]***, this Court has held as under:-

(37) It is settled principle of law that merely because the witnesses may be related to the victim or the deceased, their testimony may not be rejected. There is no legal canon that only unrelated witnesses shall be considered credible. On the contrary, we are of the view that it is not natural for the related witnesses to implicate a person falsely leaving aside the actual culprit. It is pertinent to mention here that only the interested witnesses want to see the real culprit is brought to book.

22. In the case of ***Dalbir Kaur Vs. State of Punjab, [(1976) 4 SCC 158]***, the Apex Court has observed as under:-

“11. The defence pleaded innocence and Ajit Singh particularly pleaded alibi and stated that he had never gone to the Village Marrar Kalan

where the occurrence had taken place. It might be mentioned here that the appellant Puran Singh was a full brother of Bhiri while Ajit Singh was her cousin. The central evidence against the appellants consists of the statements of PW 3 Jaswant Kaur and PW 4 Shiv Kaur who have given a complete narrative of the prosecution case as indicated above. These two eyewitnesses have been described as interested witnesses by counsel for the appellants but we do not subscribe to this view. There can be no doubt that having regard to the fact that the incident took place at midnight inside the house of Ajaib Singh, the only natural witnesses who could be present to see the assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here.

In the instant case there is absolutely no evidence to indicate that either Jaswant Kaur or Shiv Kaur bore any animus against the accused. This Court had an occasion to decide as to whether a relative could be treated as an interested witness. In Dalip Singh v. State of Punjab this Court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not independent witnesses and in order to dispel the same the qualities of independent witnesses were clearly elucidated. In this connection, Vivian Bose, J. speaking for the Court observed as follows:

“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. We find,

however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

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.”

23. Therefore, it is clear that testimony of related witness, if found to be truthful, can be the basis of conviction. It also can not be forgotten that related witness would be the last person to screen the real offender by dragging an innocent person and falsely implicating him. The related witnesses are the ones who always strive to get the real offender punished for their acts.

24. Sarfaraz Khan (PW/1) stated that on 14/03/2010 at about 04:30 p.m. he, his mother Saida Bee (PW/2), deceased Razia and witness Irshad Khan (PW/3) were present in the house. This witness alongwith Irshad Khan (PW/3) was getting the paint job of the house done in first floor. All of a sudden heard scream of deceased Razia then he saw that appellant Ashraf was sitting on top of deceased and she was lying down, and he was stabbing in the chest of deceased Razia. In order to save her, he came to ground floor and caught hold the appellant, then appellant gave blows by knife upon this witness, because of which the forearm of this witness got injured. While trying to hold the knife in his hand, he sustained injuries in fingers and palm of both the hands. Irshad Khan (PW/3) and Saida Bee (PW/2) came to the place of incident, then the appellant/ accused Ashraf fled away. Saida Bee (PW/2) and Irshad Khan (PW/3) also supported the statement of Sarfaraz Khan (PW/1) in their statement.

25. Irshad Khan (PW/3) in paragraph 14 of his cross-examination has answered on being questioned by the defence counsel that as Irshad Khan (PW/3) came downstairs, then only the appellant had fled away. Saida Bee (PW/2) in paragraph 2 of her examination-in-chief has stated that deceased was cleaning clothes near the stairs at ground floor. Then accused came and physically assaulted the deceased with means of knife. Irshad Khan (PW/3) in paragraph 5 of cross-examination has admitted that he had not seen the appellant

while he was assaulting the deceased, but in paragraph 2 of examination-in-chief has stated that he was trying to catch hold the appellant alongwith Sarfaraz Khan (PW/1) but appellant fled away and he saw there were injuries on the body of Sarfaraz Khan (PW/1) and blood was oozing from the wound, therefore, it appears that Irshad Khan (PW/3) has not seen the appellant while he was assaulting the deceased but he saw the appellant when he was running from the spot.

26. Ashiq Ali (PW/10) stated that at the time of incident he saw the appellant when he was coming out alongwith knife in his hand and Sarfaraz Khan (PW/1) was trying to catch hold the appellant but the appellant fled away towards Jhanda Chowki. This witness entered in the house of Sarfaraz Khan (PW/1) and saw that deceased was lying down near the stairs in injured state and Saida Bee (PW/2) told him that the appellant has physically assaulted the deceased with knife. Therefore, it appears from the statement of this witness that right after the incident he saw the appellant running away with knife in his hand from the house of Sattar Khan (PW/5) and he also saw the deceased in injured state. At that time Saida Bee (PW/2) told him that Razia said that appellant Ashraf has physically assaulted the deceased with the means of knife.

27. Mother of deceased Rani Bee (PW/4) and maternal grandfather Sattar Khan (PW/5) were not present at the spot at the

time of incident. Rani Bee (PW/4) stated that she heard that appellant assaulted the deceased by knife and Sattar Khan (PW/5) stated that he was grazing cattle in his farm at the time of incident and Guddu Khan received telephonic message and he told this witness that the appellant has assaulted the deceased by knife. Therefore, it appears that both the witnesses Rani Bee (PW/4) and Sattar Khan (PW/5) are hear-say witnesses, hence, their statement is not admissible in evidence.

28. Gabru Khan (PW/9) is not a witness of the incident he stated that at the time of incident he was in Ujjain and Sarfaraz Khan (PW/1) intimated him through telephone that deceased has been murdered. Thereafter, he intimated head constable Harish Chand Jurri (PW/7) by phone. This witness has not supported the case of prosecution, hence, the prosecution has declared him hostile and cross-examined this witness. In paragraph 3 of cross-examination this witness admitted that Sarfaraz Khan (PW/1) had intimated that appellant killed the deceased by means of knife. Therefore, it is clear that this witness is also a hear-say witness, hence, his statement is also not admissible in evidence in respect of incident.

29. Inspector P.L. Raj (PW/11) deposed that on 14/03/2010, Sarfaraz Khan (PW/1) had given intimation in respect of incident, on the basis of said intimation, he lodged *Dehati Nalsi* (Ex.P/1) and also lodged a *Merg* intimation (Ex.P/2). Sarfaraz Khan (PW/1) also stated that police had come at Agar hospital and on the basis of his

intimation police had lodged *Dehati Nalsi* (Ex.P/1) and *Merg* intimation (Ex.P/2). Inspector P.L. Raj (PW/11) further stated that he sent *Dehati Nalsi* (Ex.P/1) and *Dehati Marg* intimation (Ex.P/2) to police station for registration of crime through constable Brajesh Jaat. Head constable Harish Chandra Jurri (PW/7) stated that he lodged an FIR (Ex.P/8) and *Merg* intimation (Ex.P/9) on the basis of *Dehati Nalsi* (Ex.P/1) and *Dehati Marg* (Ex.P/2) respectively.

30. On perusal of *Dehati Nalsi* (Ex.P/1) it appears that the incident occurred on 14/03/2010 at 04:30 p.m. and *Dehati Nalsi* was lodged on the same day at 05:10 p.m. i.e. within 40 minutes of the incident. Statement of Sarfaraz Khan (PW/1) is supported by *Dehati Nalsi* (Ex.P/1) and eye-witness Saida Bee (PW/2). Though Irshad Khan (PW/3) has not seen when the appellant was assaulting the deceased but he saw the appellant when he was running from the spot and also saw the deceased and Sarfaraz Khan (PW/1) in injured state. Therefore, the aforementioned statement of this witness partially supports the statement of Sarfaraz Khan (PW/1). Ashiq Ali (PW/10) is not an eye-witness but just after the incident he saw the appellant fleeing away from the house of Sattar Khan (PW/5) carrying knife in his hand. Therefore, statement of this witness also partially supports the statement of Sarfaraz Khan (PW/1).

31. Statement of Sarfaraz Khan (PW/1) and Saida Bee (PW/2) is also supported by statement of Dr. Anil Agrawal (PW/6). Though Dr. Anil Agrawal (PW/6) has not stated that from which type of

object the injury would have been inflicted on the body of Sarfaraz Khan (PW/1) and also has not stated the probable time of death of the deceased. But it is mentioned in MLC (Ex.P/6) of Sarfaraz Khan (PW/1) that injuries of Sarfaraz Khan (PW/1) could have been caused by sharp object. Apart from that the case depends on the statement of eye-witnesses and they have clearly stated that the appellant caused the injuries on the body of the deceased and on the body of Sarfaraz Khan (PW/1) by means of knife. Thereafter, the deceased had died as well as Sarfaraz Khan (PW/1) had received injuries. There is nothing to show in cross-examination of the witnesses that they are lying or were interested to falsely implicate the appellant Ashraf in the offence. Therefore, their statement is reliable.

32. Inspector P.L. Raj (PW/11) stated that he prepared spot map (Ex.P/3) at the instance of Sarfaraz Khan (PW/1). Sarfaraz Khan (PW/1) also stated that the police had come on spot and the police had prepared spot map (Ex.P/3) at the instance of this witness. Therefore, their statement is reliable.

33. Inspector P.L. Raj (PW/11) deposed that on 14/03/2010, he collected blood present on the place of incident through cotton ball and seized a blood stained *ladies pajama (salwar)*, prepared seizure memo (Ex.P/15). His statement is supported by Ashiq Ali (PW/10). In paragraph 9 of cross-examination Ashiq Ali (PW/10) has denied that he put his signature on seizure memo (Ex.P/15) at police

station. Statement of both the witnesses is supported by seizure memo (Ex.P/15). Therefore, their statement is reliable.

34. Inspector P.L. Raj (PW/11) stated that during investigation, he arrested the appellant vide arrest memo (Ex.P/11). The witness further stated that he seized a blood stained shirt of appellant at Police station vide seizure memo (Ex.P/13). He also stated that at the time of interrogation, the appellant disclosed that he has hidden a knife above the frame of the main door at his home vide disclosure memo (Ex.P/12). This witness further stated that he recovered a knife at the instance of the appellant, produced by him from above the frame of the main door at his home, vide seizure memo (Ex.P/14). The aforesaid statement of this witness is not challenged in his cross-examination by appellant. Statement of this witness is supported by Kamaruddin (PW/8). In paragraph 6 of cross-examination, Kamaruddin (PW/8) admitted that he had put his signature on (Ex.P/11– P/14) at the police station. On perusal of panchnamas (Ex.P/11– P/14) it appears that except seizure memo (Ex.P/14) all the other panchnamas (Ex.P/11 – P/13) were prepared at police station and (Ex.P/14) was prepared at the house of the appellant. In paragraph 4 of examination-in-chief Kamaruddin (PW/8) clearly stated that, this witness alongwith police and appellant went to house of appellant from police station and after recovery of knife the police prepared seizure memo (Ex.P/14). Therefore, his statement can not be made a subject to be doubted

upon on the basis of aforementioned minor discrepancy. Statement of both the witnesses is supported with panchnamas (Ex. P/11–P/14). Therefore, their statement is reliable.

35. Inspector P.L. Raj (PW/11) deposed that he sent the knife alongwith letter (Ex.P/16) to Dr. Anil Agrawal (PW/6) for opinion. Dr. Anil Agrawal (PW/6) stated that he received a sealed packet of knife from police station Agar and after examining the knife, he found that length of knife was 28 cm and width was 3 cm. He has also opined that the injuries found on the body of the deceased and on her clothes could have been caused from the seized knife. He has given opinion B to B and signed C to C on the letter (Ex.P/16). Statement of this witness appears to be reliable and in support of statement of Sarfaraz Khan (PW/1) and Saida Bee (PW/2).

36. Sattar Khan (PW/5) stated that appellant wanted to marry deceased Razia, but this witness did not want deceased Razia to marry him and this witness told appellant that he is quite elder than deceased and has children as well. Sattar Khan (PW/5) got engagement of deceased Razia done with Bhaiyu Khan at Karnawat, because of which appellant was filled with anger and in consequence he killed the deceased. Statement of this witness is supported by Sarfaraz Khan (PW/1), Saida Bee (PW/2), Rani Bee (PW/4) and Ashiq Ali (PW/10). therefore, statement of Sattar Khan (PW/5) is reliable, and appears that the appellant wanted to marry with deceased and on being denied by the grandparents of the

deceased, he was annoyed from the deceased as the grandparents of the deceased had got her engagement done with Bhaiyu Khan at Karnawat. This being the reason, which clearly exhibits that appellant had a strong motive to kill the deceased.

37. From the statement of Dr. Anil Agrawal (PW/6) and post-mortem report (Ex.P/7) it appears that the appellant was repeatedly stabbing the deceased on her body. At the time of post-mortem Dr. Anil Agrawal (PW/6) had found 12 incised wounds on the body of the deceased. He had also found that most of the injuries were inflicted on the vital parts of the body. Therefore, it appears the appellant had intention to kill the deceased. Such act of the appellant clearly shows that he had an intention to cause injury on the body of the deceased, sufficient in ordinary course of nature to cause death of the deceased. Act of the appellant does not fall in any exception under section 300 of IPC. The appellant Ashraf has committed murder of deceased which is punishable under section 302 of IPC having punishment of death or imprisonment for life and the appellant entered in the house of Sattar Khan (PW/5) and committed murder of deceased, hence it is clear that the appellant has committed house-trespass in order to commit offence punishable with life imprisonment. It is also clear from the above discussion that the appellant has voluntarily caused injuries on the body of Sarfaraz Khan (PW/1) by means of sharp object i.e. knife which is punishable under section 324 of IPC.

38. On the basis of foregoing discussion, it is clear that the learned trial court has properly assessed the evidences available on record and has rightly convicted and sentenced the appellant under section 450, 302 and 324 of IPC. The learned trial court has not committed any error by convicting the appellant for the offences. The learned trial court has also given the minimum sentence to the appellant, hence, conviction and sentence deserves to be maintained.

39. Resultantly, the appeal filed by the appellant/ accused is **dismissed** and conviction and sentence passed by the learned trial court is hereby upheld.

4. Copy of this order alongwith record of the learned trial court be sent to the learned trial court for information and compliance. The appellant is serving in jail, be intimated about the outcome of this appeal through the jail superintendent.

Certified copy, as per Rules.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

Ajit/-