

**A.F.R.**  
**HIGH COURT OF MADHYA PRADESH, JABALPUR**

<b>Criminal Appeal No.</b>	<b>1630 of 1994</b>
<b>Parties Name</b>	<p>1. Prakash Chandra, S/o Ram Vilas Jat, aged about 21 years, R/o Village Dehti P.S. Shivpur, District Hoshangabad (M.P.)</p> <p>2. Ram Charan, S/o Gulab Chand Keer, aged about 21 years, Labour, R/o Village Shahpur, P.S Shivpur, District Hoshanbabad (M.P.)</p> <p style="text-align: center;"><b>Vs.</b></p> <p>State of Madhya Pradesh</p>
<b>Bench Constituted</b>	Hon'ble Shri Justice S.K.Gangele & Hon'ble Shri Justice Anurag Shrivastava
<b>Judgment delivered by</b>	<b>Hon'ble Shri Justice Anurag Shrivastava</b>
<b>Whether approved for reporting</b>	Yes/No
<b>Name of counsels for parties</b>	<p><b>For appellant:</b> Shri H.S. Dubey, Senior Advocate with Shri Abhinav Dubey, Advocate</p> <p><b>For respondent/State:</b> Shri Ajay Tamarakar, Panel Lawyer.</p>
<b>Law laid down</b>	
<b>Significant paragraph numbers</b>	

**J U D G M E N T**  
**( 30.11. 2017)**

The appellants have preferred the present appeal under Section 374(2) of the Cr.P.C. being aggrieved of judgment and conviction dated 30.11.1994 passed by the III Additional Sessions Judge Hoshangabad in S.T. No.186/1993, whereby the appellant Prakash Chand has been convicted for commission of offence punishable under Section 302 of IPC and sentenced to undergo R.I. for life and fine of Rs.5000/- and appellant Ram Charan has been convicted for commission of offence punishable under Section 302/34 of IPC and sentenced to undergo R.I for life and fine of Rs.5000/- with default stipulation.

**2.** The case of the prosecution in brief is that on 24.06.1992 at about 04:30 pm in the evening deceased Kishori Lal went to village Shahpur to meet Champal Keer for giving him the fields on lease for cultivation. He did not return home in the night. Next day in the morning the dead body of deceased was found on way to village Shahpur near the field of Mool Chand Keer. Shree Ram Patel of Shahpur came to village Dedhi and informed the complainant Sher Singh and his grand father Dhana Lal about the death of Kishori Lal. Sher Singh went to the scene of occurrence and saw the dead body and thereafter submitted a written report (Ex.P/3) of incident at Police Station Shivpur. Police registered the FIR (Ex.P/4) and initiated the inquest. The spot map and panchanama of the dead body was prepared. The deceased had received multiple injuries on his head and neck. The dead body was sent for postmortem. The red

earth, plain earth a pair of sleepers and two axes were seized from the spot. During investigation it is revealed that due to previous enmity the appellant Prakash Chandra, Ram Charan and Virendra had assaulted the deceased by giving multiple blows of axe on person of his body and committed his murder. Accused Virendra and Prakash had left their axes at the spot. Whereas an axe was recovered and seized at the instance of appellant Ram Charan. The statement of witnesses were recorded and after usual investigation the charge sheet has been submitted against appellants Prakash and Ram Charan before the Court. Other accused Virendra remained absconding.

**3.** The appellant has been charged for commission of offence punishable under Sections 302/34 of IPC. They abjured guilt and pleaded innocence. The prosecution has examined ten witnesses, whereas appellants have adduced three witnesses in their defence.

**4.** The trial Court on appreciation of evidence held the appellant Prakash Chand guilty for commission of offence punishable under Section 302 of IPC and appellant Ram Charan under Section 302 r/w 34 of IPC and sentenced them as mentioned hereinabove.

**5.** Heard arguments, perused the record.

**6.** It is not disputed that deceased had received multiple injuries caused by hard and sharp object like axe

at the time of incident and succumbed to his injuries. The dead body of deceased was sent for postmortem. From the evidence of Dr. N. Singh (PW-7), it is found that he had performed the postmortem of the deceased on 21.06.1992 at Community Health Centre, Seoni, Malva and noticed seven incised wounds on the head and neck of the deceased. There were fractures of jaws, left occipital bone, collar bone and vertebra. The neck and its muscles and blood vessels were chopped off. The death of deceased was caused due to above injuries. The statement of doctor is duly corroborated by postmortem report (Ex.P/16). The trial Court has rightly relied upon above evidence and recorded the findings that the death of the deceased was homicidal.

7. Now the question arises whether the appellants have inflicted the injuries to deceased and thereby committed his murder. The prosecution has examined the witness Ram Avtar (PW-1), Shiv Prasad (PW-5) as eye witness to the incident but, they had not supported the prosecution case and have been declared hostile. The trial Court has relied upon the testimony of Dhanna Lal (PW-6) and Sher Singh (PW-4) in convicting the appellants. Dhanna Lal is real uncle and Sher Singh is real nephew of the deceased. They have admitted in their evidence that there was previous enmity between the appellants and the family of the deceased on account of grazing of cattle of appellants in the fields of deceased. Deceased had also lodged a report against the appellants in this regard. Thus, in view of strained relationship and previous enmity we have to scrutinize

the evidence of Dhanna Lal (PW-6) and Sher Singh (PW-4) carefully with circumspection.

**8.** It is settled law that merely because in a murder case, prosecution witnesses were interested and inimical, that by itself is no ground to reject their testimony in *toto*. The evidence of interested witnesses should however be scrutinised with care. Close relationship of the witness with the injured is not sufficient to suspect credibility and desirability subjecting the testimony of the evidence of the relatives to close and severe scrutiny arises only when it is shown that there was likelihood of an attempt to falsely implicate an accused but where the incident had taken place in the broad day-light and there was no reason to falsely implicate the accused, the testimony of the interested witness could not be brushed aside.

**9.** Dhanna Lal (PW-6) claims himself as eye witness. He deposed that on the day of incident in the evening when his cattle did not return home he went towards village Shahpur in search of his cattle. After collecting his cattle at around 7:30 pm in the evening he was bringing them towards his village Dehti. When he reached near the scene of occurrence he had seen the deceased Kishori Lal, who was coming from village Shahpur. The appellants Prakash, Ram Charan and accused Virendra armed with axe hiding in the bushes, came out from the bushes and caught hold of Kishori Lal and started beating him by giving blows of axe. They killed the deceased and ran away. Seeing the incident

Dhanna Lal became frightened ran inside the forest and remained there for whole night. Next day morning he returned home, meanwhile, Shree Ram of village Shahpur came there and informed complainant Sher Singh about the dead body of deceased lying on the spot. Sher Singh asked Dhanna Lal what is to be done but, due to nervousness Dhanna Lal could not tell him anything. Thereafter Sher Singh, Dhanna Lal, Kotwar Chunnilal and other villagers arrived on the spot and saw the dead body of the deceased. Here Dhanna Lal informed Sher Singh about the incident and than Sher Singh went to lodge report of incident at Police Station Shivpur.

**10.** We find material discrepancies in the testimony of Dhanna Lal. In examination in chief he had deposed that he was returning home with the cattle but, in his cross-examination he deposed that he was coming alone to his house when he saw the incident. In his police statement (Ex.D/2) he had stated that at the time of incident he was going towards Shahpur village in search of deceased Kishori Lal. He had not stated in his police statement that he went on the spot in search of his cattle or he was taking back his cattle to his village. Thus, the reasons for which Dhanna Lal had arrived on the spot at the time of occurrence is not clear. Looking to his contradictory statements it cannot be believed that Dhanna Lal was returning home with his cattle and on the way he arrived at scene of occurrence.

**11.** We find, in cross-examination of Dhanna Lal who deposed that after witnessing the incident due to fear he remained in the forest for whole night and returned home in the morning. But, this fact is not mentioned in his police statement (Ex.D/2). Dhanna Lal had admitted that there were huts of Ram Prasad, Mool Chand, Ram Avtar and Lakhan situated near the scene of occurrence, but he had not informed them about the incident. He has also admitted that after reaching home he did not told anybody at home about the incident. He has further admitted that next day morning when Shree Ram and gave information about the death of deceased, even than he did not inform Sher Singh or any of the family members about the incident. He went on the spot and saw the dead body and thereafter he had narrated about the incident to Sher Singh and other members of the family. Thus, as per statement of Dhanna Lal, it appears that he had informed Sher Singh about the incident first time on the next day when he had seen the dead body of deceased.

**12.** Sher Singh (PW-4) deposed that on 20.06.1992 at about 7 O' clock in the morning he was present in his house meanwhile, Shree Ram Patel came there and informed that the deceased has been killed by unknown persons and his dead body was lying on the way near village Shahpur. He went on the spot and saw the dead body of deceased Kishori Lal, than his grand-father Dhanna Lal told him that appellant Ram Charan, Prakash and co-accused Virendra had killed the deceased in the yesterday evening at around 7 O' clock. Dhanna Lal told

him to go and lodge the report. Than he came to police station Shivpur and submitted a written complaint of the incident (Ex.P/8).

**13.** In written complaint (Ex.P/8) it is mentioned that on 20.06.1992 at around 07:30 am in the morning Shree Ram Patel arrived at the house of complainant Sher Singh and informed him and his grand-father Dhanna Lal that the deceased Kishori Lal has been killed by some one and his dead body was lying on the way to village Shahpur. Receiving this information Sher Singh and Dhanna Lal arrived on the spot and saw the dead body of the deceased and thereafter Sher Singh went to lodge the report at police station. In the written report (Ex.P/8) and FIR (Ex.P/18) the names of appellants and co-accused Virendra has not been mentioned as assailants. It is also not mentioned that Dhanna Lal had witnessed the incident. These are material omission because the report has been lodged after receiving the information of the incident from Dhanna Lal.

**14.** Sher Singh (PW-4) in his statement given explanation about non-mentioning of names of the appellants in written complaint (Ex.P/8) by stating that he wanted to report against the appellants and accused Virendra to the police but the police officers present at police station did not record his report as stated by him and compelled him to sign a written report prepared by them.



**15.** Above statement of Sher Singh is not corroborated by Investigating Officer R.N. Yadav (PW-8). He deposed that on 20.06.1992 at police station Shivpur, complainant Sher Singh came and submitted a written complaint (Ex.P/8). On the basis of this an FIR (Ex.P/18) has been recorded by him. R.N. Yadav, did not say that he had compelled Sher Singh to sign written complaint (Ex.P/8). He has not stated that at the time of lodging of report Sher Singh had informed him the names of the appellants as assailants and also informed that Dhanna Lal had witnessed the incident. In police statement of Sher Singh which has been recorded on 20.6.1992 he has not mentioned that Dhanna Lal had informed him about the incident and told him that the appellants had killed the deceased. In view of aforesaid discrepancy and omission the statement of Sher Singh cannot be relied upon. If Dhanna Lal would have informed him about the incident, then naturally this fact would have been mentioned by Sher Singh in his written complaint (Ex.P-8 and FIR Ex.P-18).

**16.** In the present case we find sole testimony of Dhanna Lal (P.W-6) available on record as eye witness to the incident. Although he has claimed himself as eye witness, but his conduct is not natural and creates suspicion on his testimony. He is the real uncle of deceased. It appears that even after seeing the incident and gruesome murder of his nephew Kishori, he did not inform anybody at home about the incident. After the incident, he returned home and remained there in the night. Next day morning when Shree Ram came and

informed about the death of deceased, Dhanna Lal had not informed his nephew Sher Singh or other family members about the incident. He has not stated that he had witnessed the incident and the appellants had threatened him to kill if he would tell anybody about the incident. The conduct of this witness is not natural. The written complaint (Ex.P/8) also shows that till the lodging of the report, the names of assailants were not known to Sher Singh. It is not believable that on the next day morning when Sher Singh was going to lodge the report at police station, Dhanna Lal had informed him about the incident, because the names of the assailants are not mentioned in FIR. It is also not believable that Dhanna Lal went on the spot in order to collect and bring his cattle to home.

**17.** In the case law **Alil Mololah and another Vs State of West Bengal** [(1996) 5 SCC 369] it is observed by Hon'ble Apex Court that conviction can be based on the testimony of single witness if he is wholly reliable. Corroboration is required when it is only partly reliable. Conduct of the witness in not telling anyone about the occurrence, till next day found unnatural creating an impression that he had not witnessed the incident. Witness not appearing before the I.O., who was camping in his village hence his plea that he was frightened and had no courage to inform anyone about the occurrence, is not maintainable. In the circumstance of the case, no conviction can be founded on his uncorroborated testimony.

**18.** In the present case, the sole eye witness Dhanna Lal is a chance witness. He has previous enmity with the appellants. It is not believable that he reached on the scene of occurrence while he was taking back his cattle. The written report (Ex.P/8) clearly shows that he is not an eye witness. If he would have seen the occurrence, naturally he would have informed all the family members after reaching to home. Non informing anybody till next day of the incident creates suspicion on his testimony. The trial Court has committed error in relying upon the sole testimony of Dhanna Lal and recorded the guilt against the present appellants. The testimony of Dhanna Lal and Sher Singh do not inspire confidence. Consequently, it is not proved beyond reasonable doubt that the appellants have committed murder of the deceased Kishori Lal.

**19.** Hence, the appeal is allowed. The conviction and sentence recorded by the trial Court against the appellants for the offence punishable under section 302 and 302 read with section 34 of IPC is hereby set aside and appellants are acquitted of the charge of aforesaid offences. Their bail bonds shall stand discharged.

**(S.K.Gangele)**  
**Judge**

**(Anurag Shrivastava)**  
**Judge**

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