IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE PRAKASH CHANDRA GUPTA

CRIMINAL APPEAL No.1079 OF 2015

BETWEEN :-

DEEPAK BELDAR S/O BHAGWAN DAS, AGED ABOUT 24 YEARS, R/O VILLAGE GAHLA, DISTRICT HARDA (MP)

….**APPELLANT**

(BY SHRI K.S.RAJPUT, ADVOCATE)

AND

STATE OF MADHYA PRADESH, THROUGH POLICE STATION RAHATGAON, DISTRICT HARDA (MP)

….**RESPONDENT**

(BY SHRI A.S. BAGHEL, DEPUTY GOVERNMENT ADVOCATE)

Reserved on	:	30/6/2022
Delivered on	:	04/7/2022

This criminal appeal coming on for hearing this day, ***Justice Sujoy Paul,*** *passed the following :*

J U D G M E N T

This is an appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (In short "Cr.P.C) against the judgment dated

28/02/2015 passed in Sessions Trial No.58/2011 whereby the appellant has been convicted under Section 302 of Indian Penal Code and directed to undergo sentence of life imprisonment with fine of Rs.2000/-, with default stipulation.

FACTUAL BACKGROUND :-

2. The story of prosecution is that on 17/05/2011 at around 6 p.m., in village Gahal Khedi road, the appellant assaulted deceased Sewantibai by means of a knife thereby causing multiple injuries because of which she died on the same day.

3. As per the said story, on 17/05/2011, the deceased Sewantibai with her sister-in-law Sewantibai went to Khedi road which was outside the village Gahal Khedi for attending the natural call. Both of them were sitting together for the said purpose by maintaining some distance. In the meantime, the appellant Deepak Beldar came there and caught hand of deceased Sewantibai with oblique motive and tried to take her to nearby agricultural field. In order to save her, complainant Sewantibai shouted and tried to save her. The appellant caused 2-3 knife injuries on the chest of deceased Sewantibai. Out of fear, complainant Sewantibai came running to her house shouting about the incident. The complainant narrated the entire incident to her husband Poonam and brother-in-law Bhagwandas and Ram. The said persons reached to the place of incident and brought Sewantibai to the residence. At that point of time, Sewantibai was unconscious and was profusely bleeding. She was taken to Harda hospital by calling a Jeep from Dagawashankar. In the hospital, deceased Sewantibai was declared as dead. Consequently, in Police Station Rahatgaon, Crime No.105/2011 under Section 302 r/w 354 of IPC was

registered. During investigation, the statement of witnesses were recorded and certain materials were seized. The appellant was arrested. The challan was filed in the Court of Judicial Magistrate First Class, Harda which on committal came for trial before the Sessions Court.

4. The appellant abjured the guilt and prayed for trial. His statement was recorded. On behalf of prosecution, statements of Mangilal (PW-1), Bhagwan Singh (PW-2), Smt. Laxmi Bai (PW-4), Pinaki More (PW-5), Ramu (PW-6), Shankarlal (PW-7), Gopal (PW-8), Smt. Sewantibai (PW-9), Poonam (PW-10), Vinod Kumar Ikka (PW-11), Dr. Bharat Katker (PW-12), Lalsingh Patel (PW-13), Ajay Tiwari (PW-14), Dr. Rajesh Mithoriya (PW-15), A.L. Chowkikar (PW-16), R.D. Berman (PW-17) and Rakesh Kumar Gaur (PW-18) were recorded. In turn, appellant in his defence statement recorded under Section 313 of Cr.P.C. denied the allegations and projected himself to be an innocent person. However, no defence witness was produced by him.

5. The trial Court framed three questions and decided the same by the impugned judgment dated 28/02/2015.

SUBMISSIONS :-

6. Shri K.S.Rajput, learned counsel for the appellant submits that it is a case of honour killing. The appellant had love affair with the deceased. A day before the death of deceased, she was married against her wish with Roshan. The appellant and deceased decided to leave the village together and live separately. The family members of the deceased came to know about this plan and, therefore, decided to murder the deceased. The appellant has been falsely arraigned in the matter by the family members of deceased.

7. To bolster the said submission, learned counsel for the appellant submits that sole eye witness is Sewantibai (PW-9). Her statement shows that from the place where she went with deceased Sewantibai to attend the call of nature, only one pot was recovered. She in her dehati nalisi (Ex.P/2) and in her Court's statement stated that appellant caused three injuries on the chest of the deceased by means of a knife. However, post-mortem report shows that nine injuries were found on the person of the deceased. Thus, statement of this star witness Sewantibai is untrustworthy and whole prosecution story founded upon it deserves to be disbelieved.

8. It is urged that prosecution witness Mangilal (PW-1) turned hostile. The statement of Bhagwansingh (PW-2) is not trustworthy because this witness also deposed that he found three knife injuries on the chest of deceased Sewantibai.

9. Shri K.S.Rajput, learned counsel for the appellant submits that recovery of knife is unbelievable. It is recovered from an open space and, therefore, such recovery is not trustworthy. Moreso, when Investigating Officer Rakesh Kumar Gour (PW-18) categorically deposed that the place from where knife was recovered was a busy road, accessible to any person. Furthermore, statement of Pinaki More (PW-5) is relied upon wherein he also deposed that knife allegedly used for murder was recovered from an open space.

10. The use of said knife on the part of appellant is doubtful submits Shri Rajput, learned counsel for the appellant, on the basis of yet another reason. He submits that the Dr. Rajesh Mithoriya (PW-15) in his query report (Ex.P/18) mentioned that knife was like a 'Katar' which is normally carried by bridegroom in marriage. The recovery of such a

weapon shows that it must have been used by family members of the deceased to murder her.

11. It is further argued that husband of deceased Roshan was not produced as a prosecution witness which creates serious doubt on the prosecution story.

12. The blood stained clothes of appellant were not recovered. If appellant had caused multiple injuries on deceased as per the prosecution story, there must have been profuse bleeding and appellant's clothes must have got certain blood stains but no efforts were made to recover his clothes.

13. By taking this Court to the prosecution statements, it is urged that most of the witnesses are relatives of the deceased. There is no independent eye-witness. No independent witness went with the family members to the place of incident. Such statements of relatives cannot become foundation for appellant's conviction.

14. By placing reliance upon FSL report (Ex.P/22), it was argued that in the knife (article 'c') although blood stains were found but since the same were totally disintegrated, the blood group could not be detected. Hence, prosecution could not establish beyond reasonable doubt that blood stains so found on the knife were of the deceased.

15. The appellant is in custody from 18.5.2011. Alternatively, it is contended that the appellant can be held guilty for committing offence under Section 304 Part-II of the I.P.C. The appellant has undergone actual sentence of more than one decade. Thus, in alternatively, by converting the conviction for offence under Section 304 Part-II, the appellant may be

directed to be released by considering the period of sentence already undergone.

16. Lastly, Shri K. S. Rajput, learned counsel for the appellant submits that there is no reliable and clinching evidence on the strength of which conviction can get stamp of approval from this Court.

17. Shri A. S. Baghel, learned Deputy Government Advocate for the respondent/State supported the impugned judgment and urged that incident had taken place on 17.5.2011 at around 6:00 pm. The Dehati Nalisi was recorded on the same date at 21:45 pm. The Court's statement of eye-witnesses Sawantibai (PW-9) tallies with Dehati Nalisi. Her statement could not be demolished during the cross-examination. Her statement alone is sufficient to convict the appellant.

18. Shri A. S. Baghel, learned Government Advocate further urged that in a case of this nature where multiple injuries were caused in quick succession, there may be variation in statement of witnesses regarding number of injuries caused. The recovery is supported by the statement of independent witnesses Pinaki More (PW-5) and statement of A.L.Chowkikar (PW-16). Hence, Appeal may be dismissed.

19. The eye witness Sawantibai (PW-9) came running to her house when she witnessed fatal blow on deceased Sawantibai by the appellant. She narrated the incident to her family members including Bhagwan Singh (PW-2). Thus, there is corroboration of her statement. The other prosecution witnesses also supported the said story.

20. The query report of Dr. Rajesh Mithoriya (PW-15) is relied upon and submit that weapon shown to the doctor could have been used in the crime.

21. The reliance is further placed on medical report to show that nine fatal injuries by a deadly weapon were caused by the appellant. Seizure of knife is beyond pale of doubt. FSL report also suggest that the knife was having blood stains on it.

22. The parties confined their arguments to the extent indicated above.

23. We have heard the parties at length and perused the record.

FINDINGS :-

24. The statement of Mangilal (PW-1) doesn't help the prosecution at all. This witness was declared as hostile. Bhagwan Singh (PW-2) is brother of deceased Sewantibai. This witness corroborates the statement of star eye witness Sewantibai (PW-9) to the extent she deposed that when she witnessed the incident of knife attack by appellant on Sewantibai, she came running and shouting to the house and informed about the incident to Ramu, Roshan and other family members available at the residence. This statement of Baghwan Singh could not be demolished during cross examination.

25. Smt. Laxmibai (P.W.3) is mother of deceased Sewantibai. She also stated that Sewantibai (P.W.9) narrated about the incident and on the basis of such narration, she made statement in the Court. Her statement also could not be demolished by the defence. Thus, there exists a corroboration of statement of Sewantibai (P.W.9) inasmuch as she deposed that she came running from the place of incident where she witnessed multiple knife blow on the person of deceased by the present appellant. The same is the stand of Raj Singh (P.W.4). To this extent, his statement also could not be demolished.

26. The next witness is Pinaki More (P.W.5). He is the husband of local Sarpanch. Pinaki More is witness of recovery of knife. He categorically stated that the appellant gave information about the knife at his residence. Thereafter, he along with police went to main road namely Harda-magardha road. At the instance of appellant, knife was recovered. Recovery memorandum Ex.P/8 was prepared which contains his signature. The statement of this seizure witness remained un-rebutted. The statement of Ramu (P.W.6) is also in the same line who deposed that at the residence he came to know about the incident when Sewantibai (P.W.9) came running and informed about the assault by the present appellant.

27. Shankarlal (P.W.7) is witness to the recovery of plain earth and blood-stained earth. The FSL report shows that blood-stained earth was indeed found and his statement could not be doubted by way of any effective cross-examination.

28. Gopal (P.W.8) is signatory to Ex.P-8 and Ex.P/9 (seizure memos). He signed these memos along with aforesaid witness Pinaki More. His statement inspires confidence about the recovery.

29. As noticed above, Sewantibai (P.W..9) is the eye-witness in whose presence knife injuries were caused by the present appellant. If *dehati nalisi* lodged by her is read in juxtaposition to her statement recorded in the Court, it will be clear that both are in the same line and there is no contradiction which can cause any dent to her statement. Court below has heavily relied on her statement. It is noteworthy that incident of assault on Sewantibai had taken placed at 6:00 p.m. and *dehati nalisi* was recorded promptly at 6:45 p.m. of the same day.

30. The statement of Sewantibai was doubted by contending that both the ladies went to attend the call of nature. One Sewantibai was assaulted by appellant whereas another Sewantibai (P.W.9) came shouting and running to her house. Later on, only one water pot was recovered from the place of incident. In our view, this will not cause any dent to the prosecution story for twin reasons - *firstly*, her deposition about the incident is trustworthy and *secondly*, she was not put to cross-examination regarding non-availability of second water pot.

31. The statement of Poonam (P.W.10) is not of much significance. He narrated the story in the same line. Other family members narrated that Sewantibai (P.W.9) came shouting and running and informed the family members about the assault caused by appellant on deceased Sewantibai. P.W.11 Vinod Kumar Ikka, P.W.12 Dr. Bharat Katker and P.W.13 Lalsingh Patel are witnesses about the Panchanama of dead body and seizure of body parts and clothes of deceased Sewantibai. They were either not put to cross-examination or their statements could not be demolished.

32. Dr. Rajesh Mithoriya (P.W.15) conducted the post-mortem. As per his statement, in total, 9 injuries were found on the person of deceased. As per his opinion, the death caused because of cardio-respiratory arrest because of excessive bleeding. This witness also proved the query application and his opinion was that injuries available on the person of deceased could have been caused by knife (Katar). Another recovery witness is A.L. Chowkikar (P.W.16) who signed the memorandum and deposed that the knife was recovered from a bush near Magardaha road. During cross-examination, he admitted that on the said road traffic continues consistently. During cross-examination, he deposed that knife

was recovered from an open space. He again on his own deposed that it was recovered from a bush.

33. The Court below found the statements of prosecution witnesses as trustworthy. The statement of Sewantibai (P.W.9) inspired confidence of Court below. The Court below opined that the appellant although took a defence that deceased was about to leave the village with him and was not happy with the marriage with Roshan, did not produce any evidence in support thereof. All the suggestions given to the prosecution witnesses in this regard were denied by them and in absence of any evidence to this effect, the aforesaid suggestions could not fetch any result. In our considered view, the Court below has correctly appreciated this aspect and rightly came to hold that mere suggestions will not cut any ice unless there is clinching evidence to establish the said story.

34. The aforesaid factual backdrop shows that there is a contradiction in number of injuries allegedly caused by appellant as per the statement of prosecution witnesses and the injuries actually found during post-mortem. Sewantibai (P.W.9) deposed that three injuries were caused by appellant whereas injuries were nine in number. The question is whether this variation/contradiction will cause any such dent because of which story of prosecution can be said to be like house of cards. In our judgment, once it is established beyond reasonable doubt that appellant caused injuries in the presence of Sewantibai (P.W.9), merely because injuries were found more in number during post-mortem, her statement could be discarded. In **AIR 1974 SC 21 (Bhagwan Tana Patil vs. State of Maharashtra)**, the Apex Court in para-15 held that :-

> **"15.** …… A similar explanation was given by Baliram Ukha in his deposition at the trial. It is, therefore, not correct to say that the courts below

> had themselves invented an explanation for the injuries of the appellant, which the witnesses had not given. True that the explanation given was not found impeccable, but there is no hard and fast rule that simply because the prosecution witnesses did not explain the| injuries on the person of the accused, their entire evidence should be discarded. The observations of this Court in Bankey Lal v. State of Uttar Pradesh Cri. Appeal No. 199 of 1988 D/- 4-2-.1971 : are in point."
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> **(Emphasis Supplied)**

35. The Apex Court considered the aspect of discrepancies relating to injuries in the case of **Leela Ram vs. State of Haryana (1999) 9 SCC 525**. The relevant portions are reproduced thus :-

> **"6.** The reason recorded by the High Court in the support of acquittal is that the eyewitnesses' account regarding the number of shots fired by the appellant on the deceased stands contradicted by medical evidence.
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> **10.** In a very recent decision in *Rammi* v. *State M.P.* [(1999) 8 SCC 649] with *Bhura* v. *State of M.P.* [(1999) 8 SCC 649] this Court observed: (SCC p. 656, para 24)
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> "*24*. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of

an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

16. It is the above evidence which has prompted the High Court to ask the learned advocate appearing for the prosecution "to caricature any position in which a man can strike such an injury with a .12 bore gun …". Whether there was one shot or two shots, can it not be termed to be immaterial in the matter of assessing the culpability of the accused? The son who saw his father had been shot at and thereafter fell dead — total stunning effect on the son and it is on this score that mere hair-splitting on the available evidence ought not to be undertaken and instead the totality of the situation ought to have been reviewed. This however is not acceptable to this Court: the discrepancy does not seem to be of such a nature so as to effect the creditworthiness or the trustworthiness of the witness. As a matter of fact, it does not do so by reason of the fact that Maman fell a victim of gunshot injuries and died: it is immaterial as to whether one or two gunshots were fired — the contradiction at its highest cannot but be stated to be in regard to a minor incident and does not travel to the root of the nature of the offence."

(**Emphasis Supplied**)

36. It is profitable to consider **Prithvi (Minor) vs. Mam Raj (2004) 13 SCC 279** :-

"**16.** We are afraid that mathematics does not strictly work in appreciation of such evidence. A child who is rudely woken up from his slumber by a lathi-blow on his head is not expected to count the number of *lathis* or the number of blows given so that the court could correlate them mathematically to

> the post-mortem certificate. That the child survived the murderous attack itself is a piece of extreme good fortune. To expect this exactitude from the evidence of such a witness, is asking for the impossible."
>
> (**Emphasis Supplied**)

37. Reference may be made to **Gosu Jayarami Reddy vs. State of A.P. (2011) 11 SCC 766** :-

> "**39.** It is true that PW 1 has in his deposition attributed an injury to A-3 which according to the witness was inflicted on the neck of the deceased. It is also true that the post-mortem examination did not reveal any injury on the neck. But this discrepancy cannot (*sic* be vital) in the light of the evidence on record and the fact that it is not always easy for an eyewitness to a ghastly murder to register the precise number of injuries that were inflicted by the assailants and the part of the body on which the same were inflicted. A murderous assault is often a heart-rending spectacle in which even a witness wholly unconnected to the assailant or the victim may also get a feeling of revulsion at the gory sight involving merciless killing of a human being in cold blood. To expect from a witness who has gone through such a nightmarish experience, meticulous narration of who hit whom at what precise part of the body causing what kind of injury and leading to what kind of fractures or flow of how much blood, is to expect too much."
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> (**Emphasis Supplied**)

38. The Apex Court in **Anuj Singh vs. State of Bihar 2022 SCC OnLine SC 497** considered the impact of minor contradiction in relation to time of incident and injuries attributed and held as under :-

> **"17.** It is not disputed that there are minor contradictions with respect to the time of the occurrence or injuries attributed on hand or foot but the constant narrative of the witnesses is that the appellants were present at the place of occurrence armed with guns and they caused the injury on informant PW-6. However, the testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission as observed by this court in *Narayan Chetanram Chaudhary* v. *State of Maharashtra*1. This Court while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses."
>
> (**Emphasis Supplied**)

39. A Division Bench of this Court in **Gulab vs. State of M.P. 2013 SCC OnLine MP 7083** held as under :-

> "**9.** As regards the discrepancy about number of injuries stated by her and were found in the postmortem, in our considered view, merely because in her depisition, Hinglibai had stated that she has seen the appellant inflicting 3-4 injuries to thedeceased and in the postmortem report and as per the versiion of the doctor, if the injuries were eight in number, the version of Hinglibai (PW-1) cannot be discarded. It has come in her evidence that when the appellant was inflicting injuries to her husband, she started shouting, on this, the appellant tried to catch her and to save herself from him, she fled away from the spot. In the circumstances, it was very natural for her to have not seen the further injuries, which were caused by the appellant to the deceased."
>
> (**Emphasis Supplied**)

40. In this view of the matter, the difference in number of injuries will not cause any injury to the prosecution story.

41. The another important defence relating to recovery is that knife was recovered from a road which is an open place accessible to everyone. On the first blush, argument appeared to be attractive but lost much of its strength when examined minutely. No doubt, the knife was recovered nearby a busy road, but the seizure witnesses categorically deposed that it was kept inside a bush. The bush was not visible to all passerbys/passengers. This point is no more *res integra*. In **(2002) 1 SCC 622 (State of Maharashtra vs. Bharat Fakira Dhiwar)**, the Supreme Court held as under :-

> "**21.** Mr Muralidhar submitted that, for the reasons given by the High Court, the evidence of the child witnesses should not be believed. This submission is not acceptable. Mr Muralidhar further submitted that the grinding stone was found from an open place i.e. from a place very close to the house of the respondent. He submitted that the full pants were found from the same field where the body had been found. He submitted that since they were found from an open place no reliance can be placed on such recoveries. This Court has observed, in the case of *State of H.P.* v. *Jeet Singh* [(1999) 4 SCC 370 : 1999 SCC (Cri) 539] as follows: (SCC pp. 378-79, paras 26-27)
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> "*26*. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is 'open or accessible to others'. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate

the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or **if it is concealed beneath dry leaves lying on public places or kept** hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

27. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it. The said ratio has received unreserved approval of this Court in successive decisions. (*Jaffar Hussain Dastagir* v. *State of Maharashtra* [(1969) 2 SCC 872] , *K. Chinnaswamy Reddy* v. *State of A.P.* [AIR 1962 SC 1788 : (1963) 1 Cri LJ 8] , *Earabhadrappa* v. *State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447] , *Shamshul Kanwar* v. *State of U.P.* [(1995) 4 SCC 430 : 1995 SCC (Cri) 753] , *State of Rajasthan* v. *Bhup Singh* [(1997) 10 SCC 675 : 1997 SCC (Cri) 1032] ."

22. In the present case the grinding stone was found in tall grass. The pants and underwear were buried. They were out of visibility of others in normal circumstances. Until they were disinterred, at the instance of the respondent, their hidden state had remained unhampered. The respondent alone knew

> where they were until he disclosed it. Thus we see no substance in this submission also.
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> **(Emphasis Supplied)**

42. Similarly, in **Gurjinder Singh vs. State of Punjab (2011) 3 SCC 530,** it was held that :-

> "**27.** With regard to the recovery of the pistol, the learned counsel is right that the pistol was recovered from a public place but it was recovered from the place which could not have been easily located by anyone and, therefore, the accused cannot get benefit which the learned counsel wanted him to get. From the memo of recovery, it is clear that the pistol had been hidden by digging earth under a plant of Sarkanda about half a kilometre away from a bridge of Ladhuwala Uttar. Thus, it is very clear that the pistol had been hidden by digging earth under the plant of Sarkanda about half a kilometre away on the eastern katcha path from the bridge of Ladhuwala Uttar and, therefore, in our opinion, the recovery cannot be said to be from a place which could have been easily accessible to anyone."
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> **(Emphasis Supplied)**

43. The aforesaid ratio was again considered by Supreme Court in **Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1**, in para-1846 and 1847, the Apex Court opined :-

> "**1846.** Thus, in view of the above, the submission made by Mr Mushtaq Ahmed, stating that as the recovery had been made from an open place to which all persons had access, cannot be relied upon and is not worth acceptance.
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> **1847.** Undoubtedly, the appellant's disclosure statement had been made before the police, as well as the panch witness. The fact that he did not

> disclose the place where the contraband had been hidden remains entirely insignificant, for the reason that he had led the police party to the said place, and that the said recovery had been made at his behest. The open space from where the recovery had been made though was accessible to anybody, it must be remembered that the contraband had been hidden, and that it was only after digging was done at the place shown by the appellant, that such recovery was made. Hence, it would have been impossible for a normal person having access to the said place, to know where the contraband goods were hidden."
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> **(Emphasis Supplied)**

44. In view of the aforesaid judgments, it is clear that when weapon is recovered from an open space but was kept under the cover of a bush in such a manner that it was not visible to all and about which applicant had exclusive knowledge, no doubt can be raised on recovery. Thus, this argument pales into insignificance.

45. Another argument was that knife ('*Katar*') is normally carried by bridegroom in marriages. As a Rule of Thumb, it cannot be said that if knife like *Katar* was used to cause injury, the story will be unbelievable because *Katar can* only be used by bridegroom in the function of marriage. If Roshan was not produced as prosecution witness, it is difficult to fathom how it will cause dent on the prosecution story. Similarly, if blood stained clothes of appellant were not recovered, it will not make story unbelievable because eye-witness account is trustworthy and blood was found on the weapon. The source and recovery of weapon is proved beyond doubt. Appellant failed to putforth any defence about blood stained knife when this incriminating material was brought to his notice.

46. We will be failing in our duty if the alternative argument advanced by Shri K.S. Rajput, learned counsel for the appellant is not considered. The argument is that nature of incident shows that appellant did not have any motive or intention to cause death of the deceased Sewantibai. The weapon is also not of that nature which can be said to be dangerous and fatal. In this backdrop, at best, offence under Section 304 Part – II of IPC is made out and not under Section 302 of IPC. We do not see any merit in this contention. Although, eye witness Sewantibai (P.W.9) deposed that three knife injuries were caused by the present appellant on the left side of chest of deceased Sewantibai, the autopsy report shows that there were nine fatal/grievous injuries on the person of deceased. Such injuries on vital part by means of a knife brings it within the purview of Section 302 of IPC and not under Section 304 of IPC. In a case of this nature, the presence of 'motive' is not always necessary. There is an eye-witness Sewantibai (PW-9). Thus, absence of showing 'motive' will not cause any harm to the prosecution story.

47. In **(2013) 12 SCC 236 (Birandra Das and another vs. State of Assam)** Apex Court held as under **-**

> "**21.** The last ground of attack on the sustainability of the conviction is that the prosecution has not been able to prove any motive. The learned counsel would submit that when the animosity between some of the witnesses and the deceased has been admitted, there can be a ground for false implication. We have already analysed the evidence brought on record and there is nothing to discard the same. In *Balram Singh* v. *State of Punjab* [(2003) 11 SCC 286 : 2004 SCC (Cri) 149 : AIR 2003 SC 2213] , it has been clearly stated that: (SCC p. 291, para 11)

> "*11*. … If the incident in question as projected by the prosecution is to be accepted then the presence or absence of a motive or strength of the said motive by itself also [would] not make the prosecution case weak."

23. In *State of U.P.* v. *Kishanpal* [(2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] , while dealing with the presence of motive, a two-Judge Bench had to say thus: (SCC p. 88, para 39)

> "*39*. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

24. Thus, acceptation of the direct evidence on record on proper scrutiny and analysis of proof of existence of motive or strength of motive does not affect the prosecution case. That apart, it is always to be borne in mind that different motives may come into operation in the minds of different persons, for human nature has the potentiality to hide many things and that is the realistic diversity of human nature and it would be well-nigh impossible for the prosecution to prove the motive behind every criminal act. Therefore, when the appellants armed with lethal weapons were present and witnessed the

> occurrence and participated in dragging the deceased to the courtyard of Birendra, establishment of any motive is absolutely inconsequential."
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> **(Emphasis Supplied)**

48. Learned counsel for the appellant made another effort to convince us regarding genuineness of statement of prosecution witnesses by contending that most of them are relatives of deceased Sewantibai and witness Sewantibai (P.W.9). This argument also deserves to be rejected for the simple reason that as per settled legal position, 'related' cannot be equated with 'interested'.

49. A witness may be called "interested" only when he/she derives some benefit from the result of a litigation, in the decree of a civil suit or in seeing an accused person punished. A witness who is a natural one and is the possible eye-witness in the circumstances of a case, cannot be said to be "interested". This principle laid down in **State of Rajasthan vs. Kalki, (1981) 2 SCC 752** is consistently followed by the Supreme Court in **State of A.P. v. S. Rayappa, (2006) 4 SCC 512, Ashok Kumar Chaudhary v. State of Bihar, (2008) 12 SCC 173, State of U.P. v. Kishanpal, (2008) 16 SCC 73, Maranadu v. State (2008) 16 SCC 529, Sahabuddin v. State of Assam, (2012) 13 SCC 213, ViJendra Singh v. State of U.P., Sudhakar v. State (2018) 5 SCC 435, Laltu Ghosh v. State of W.B. (2019) 15 SCC 344 and Mohd Rojali Ali v. State of Assam (2019) 19 SCC 567.**

50. A Division Bench of this Court followed the said *ratio decidendi* in **I.L.R. 2019 M.P. 2098 (Ajay Tiwari vs. State of M.P.).** Nothing could be established during the cross-examination of prosecution witnesses that "interested" witnesses. Thus, this argument deserves to be rejected.

51. In view of foregoing analysis, in our view the court below has appreciated the evidence and drawn its conclusion on correct legal parameters. The view taken by court below is plausible and not liable to be interfered with. The prosecution has established its case beyond reasonable doubts. Resultantly, the appeal fails and is hereby dismissed.

(SUJOY PAUL) **JUDGE**	**(PRAKASH CHANDRA GUPTA)** **JUDGE**

manju/ahd/
akm/PK/bks

PARITOSH KUMAR
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