

(2017) 06 GUJ CK 0052
In the Gujarat High Court
Case No : 881 of 2012

MURARI MUNSHIRAM YADAV

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 23-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#), [Section 201](#) -
Gujarat Police Act, 1951, Section 135

Citation : (2017) 06 GUJ CK 0052

Hon'ble Judges : Abhilasha Kumari, A.J. Shastri

Bench : Division Bench

Advocate : PH BUCH, JK SHAH

Judgement

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973, has been preferred by the appellantaccused against the judgment and order dated 01.05.2012, passed by the learned 3rd Additional Sessions Judge, Bharuch, Camp at Ankleshwar, in Sessions Case No.104 of 2011. The case has arisen out of C.R.No.I87/ 2011, filed in Ankleshwar GIDC Police Station, District Valsad. By way of the judgment under challenge, the appellant has been convicted and sentenced to undergo life imprisonment and fine of Rs.5,000/and in default, to undergo further one year simple imprisonment, being found guilty of committing the offence under Section 302 of the Indian Penal Code, 1860. The appellant has also been convicted and sentenced to undergo four months" simple imprisonment with a fine of Rs.1,000/and, in default, to undergo two months" simple imprisonment under Section 135 of the Gujarat Police Act, 1951, for breach of the Notification issued by the State Government.

2. The case of the prosecution, based upon the complaint dated 05.05.2011 (Exhibit 24), given by Asharfiben Lalsaheb Yadav, wife of the deceased, is that

the complainant was living at the address mentioned in the complaint with her husband (the deceased) and four sons, named Somkant, Umakant, Ramakant and Laxmikant, all of whom were pursuing their studies. The deceased had taken a textile company on rent in Panoli GIDC and was running the same. The complainant has five brothers-in-law, who are the younger brothers of the deceased, namely, Lalbahadur, Shyambahadur, Rajbahadur and Pandhari, the youngest being the accused, Murari. All her brothers-in-law live in Surat. It is further stated in the complaint that Rekhaben, the wife of the accused herein, belongs to her village. The accused nursed a suspicion that the deceased had an illicit relationship with his wife, therefore he would frequently come to the house of the complainant and quarrel with the deceased. On 04.05.2011, the accused came to the house of the complainant at about 10:00 am when the deceased was not present. After about five minutes, the accused said that he has some work in GIDC and went away. Thereafter, the accused again came to the house of the complainant at about 2:00 pm and went away after some time. The deceased returned home at about 8:00 pm. The accused came to the house of the complainant and had dinner with the deceased. Thereafter, he went to sleep. The next day, on 05.05.2011, the deceased was leaving for work at about 10:00 am. The accused stated that he, too, wants to accompany the deceased. The deceased declined to take the accused with him, however, the accused persisted and sat on the back seat of the motorcycle of the deceased. Both the accused and the deceased went on the motorcycle to Ankleshwar GIDC. At about 10:30 am, one Urvesh Yadav, who stays in the "GIDC 500 Quarters", came and informed the complainant that the deceased is lying in a bloodied condition on the road, near Kanoria Chemicals Company. The complainant, accompanied by her son Umakant, went there and saw that the deceased was covered with blood and was lying on the road. He was dead. There was a stabwound on the back of the deceased which was bleeding profusely. The motorcycle of the deceased was lying on the road. The complainant looked for the accused but he was not to be found and had run away.

3. Upon registration of the complaint, the investigative machinery was set into motion. A Chargesheet under Section 302 of the Indian Penal Code, 1860, and Section 135 of the Gujarat Police Act, 1951, was filed against the accused before the Court of the learned Additional Chief Judicial Magistrate, Ankleshwar. As the case was triable by a Court of Sessions, the learned Magistrate committed it to the Sessions Court. The Charge, at Ex.5, was framed against the accused and his statement was recorded at Ex.6. The accused denied the charge against him and claimed to be tried.

4. In support of its case the prosecution examined as many as fourteen witnesses and produced voluminous documentary evidence. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, was recorded. After appreciating the oral and documentary evidence, the trial Court arrived at the conclusion that the charge against the accused was proved beyond a reasonable doubt. It, therefore pronounced the judgment under challenge,

convicting the accused and sentencing him to life imprisonment.

5. Before this Court, Mr.P.H.Buch, learned counsel for the appellant, has made the following submissions: (I) The prosecution witnesses, such as the wife and two sons of the deceased, namely, PWs 4, 5 and 8, are interested witnesses, having a close relationship with the deceased. For this reason, their testimonies cannot be relied upon. The testimony of another witness, PW13, is also unreliable as the deceased was the LIC agent of this witness.

(II) There is no eyewitness to the incident and the so-called eyewitnesses are merely chance witnesses. Their testimony that they have seen the incident, is not believable. For instance, PW 6 Lakhiben states that her cabin is at a distance of 150 to 200 feet from the scene of crime. It is unbelievable that she could have seen the accused committing the crime from this distance. She has come to know of the incident from PW7, but has no personal knowledge regarding the same.

(III) There are contradictions between the testimonies of the complainant and her sons, especially regarding the reason for the alleged quarrel that took place between the accused and the deceased. These contradictions render the testimony of the interested witnesses untrustworthy.

(IV) The chain of events for the application of the theory of "last seen together" is not complete. This theory, therefore, cannot be made applicable in the present case.

(V) A material witness, namely, Urvesh Yadav, who informed the complainant regarding the deceased lying in a pool of blood on the road, has not been examined.

(VI) The blood group of the accused has not been ascertained and it is not clear whether the blood of the deceased was found on his clothes.

(VII) The charge under Section 201 of the Indian Penal Code, 1860, has not been framed.

(VIII) There is a material contradiction in the testimony of PW7. He says in the examination in chief that he was passing by the spot in a rickshaw. In the cross-examination he says that he was walking by. There are no independent witnesses and PW13, Bharatprasad Lotanram Gaur is a go-tup witness who says that he was passing by with his wife while returning from the Hospital when he saw the deceased lying on the road. He says that he went to get the complainant from her house but has not stated where his wife was at that time.

(IX) The theory regarding the illicit relationship between the wife of the accused and the deceased is not correct. No complaint has been filed in this regard and she has not been examined.

(X) It is, therefore, submitted that considering the above aspects and the overall evidence on record, as also the fact that the allegation is that the accused gave

only one blow to the deceased, it is a case of imposition of lesser punishment upon the appellant, which aspect may be considered by this Court.

6. On the other hand, Mr.J.K.Shah, learned Additional Public Prosecutor, has made the following submissions: (i) The entire evidence brought on record by the prosecution is cogent, credible and trustworthy. There is no need for a charge under Section 201 to be framed when the charge has been framed for a more serious offence, that is, Section 302 of the Indian Penal Code, 1860. This submission on behalf of the appellant is, therefore not relevant. That, the aspect that Urvesh Yadav was not examined makes no difference to the case of the prosecution, which is based on evidence of two eyewitnesses, among other witnesses. The family members of the deceased have given cogent and reliable evidence and only because they are related to the deceased cannot be a reason to disbelieve their testimonies.

(ii) That, PW6, is not a chance witness. She is an eyewitness. The testimonies of PWs6 and 7 cannot be disbelieved as they happened to be present on the spot in the natural course and have no axe to grind against the accused.

(iii) The socalled discrepancy in the testimony of PW7 as to whether he was passing by in a rickshaw or was walking, cannot discredit his entire testimony, which shows that he was actually at the scene of the incident. It is a minor discrepancy which does not detract from the case of the prosecution. He is also an eyewitness to the incident, as is PW6.

(iv) The report of the Forensic Science Laboratory shows that there was blood of only one bloodgroup on the clothes of the deceased and accused, namely, BGroup, which is the bloodgroup of the deceased. There was no injury to the accused, therefore, there was no question of his blood being on any of the Muddamal clothes or articles. The knife has been recovered at the instance of the accused from a place shown by him. A Panchnama has been prepared regarding the recovery of the bloodstained knife which has been supported by the Panch witnesses. The entire sequence of events narrated by the complainant is corroborated by the testimony of other witnesses. The accused was last seen with the deceased on the motorcycle of the deceased at 10:00 am and within half an hour, the complainant got the news that the deceased was lying in the bloodied condition on the road and the accused was not found there. The theory of "last seen together", therefore, can be applied in the present case.

(v) The aspect that only one blow is alleged to have been given by the accused to the deceased would not make the accused amenable to lesser punishment as the said blow was fatal and the evidence on record shows that it was a premeditated murder.

(vi) On the strength of the above submissions, learned Additional Public Prosecutor has submitted that the judgment under challenge does not deserve interference.

7. In the background of the above submissions, we may examine the salient features of the oral and documentary evidence on record.

8. PW1, Manish Surendrakumar Ahuja, has been examined at Ex.8. He is the Panch witness of the Panchnama of the place of incident. He has stated that he has willingly agreed to act as a Panch witness after being asked by the Police. He has stated that about 100 grams of bloodsoaked mud was taken from within the circumference of one foot of the blood lying on the spot. Another 100 grams of mud was taken from a distance outside the circumference of the blood in his presence, by the police. Both samples of mud were put in a box and the slip containing the signatures of the Panchas were placed in the boxes, which were sealed. He has identified the boxes in which the samples of mud were packed and sealed at the spot as well as his signatures on the slip. He has also stated that the other Panch witness has signed in his presence. This witness has identified the samples of mud as being those taken from the spot.

9. In crossexamination, this witness has repelled the suggestion that his signature was appended to a previously prepared Panchnama by the Police. He has stated that the deceased was known to him, but he is not deposing falsely for that reason.

10. PW2 Devendra Narayan Godavarinath, who has been examined at Ex.12, is a Panch witness of the Panchnama of the physical verification of the accused. This witness states that the clothes worn by the accused were taken into custody in his presence. He describes the clothes worn by the accused and identifies his signatures as well as the signature of the other Pancha on the slips and the Panchnama.

11. In crossexamination, he states that he does not know the deceased and denies the suggestion that he has signed on a prepared Panchnama.

12. PW3 Ramsinh Jasvantsinh Singh is the Panch witness of the recovery of the knife. His deposition is at Ex.17. This witness states that the accused was present in the Police Station when he was called there. He identified the accused in the Court. He states that the accused showed his willingness, in his presence, to reveal the place where the incident took place and the weapon of offence was hidden. He, along with the accused and Police personnel went in a Government vehicle to the place, as per the directions of the accused. The accused asked the vehicle to be stopped on the road near Kanoria Chemicals Company. The accused got down from the vehicle and showed the spot where the deceased was killed. Thereafter, the accused took them to a desolate place at a distance of about half a kilometer, where he pointed out to the place where the knife was concealed. The knife and its handle were taken out from a ditch. This witness has identified the weapon of offence in the Court as being the same one that was recovered at the instance of the accused. He has also identified his signature on the slips kept with the said weapon.

13. In his crossexamination, this witness has stated that he and the deceased

used to stay in the same residential society. He has maintained his stand that the knife was recovered a little away from the place where the body of the deceased was found, at the instance of the accused. He has maintained that the discovery was made at the instance of the accused, in his presence.

14. The complainant, Asharfiben Lalsaheb Yadav, wife of the deceased, has been examined as PW4 at Ex.23. She has stated that on 04.05.2011, a day prior to the incident, the accused came to her house at about 10:30 am. He sat there while this witness went to the kitchen to fetch water. However, the accused went away immediately. Thereafter, at about 2:00 pm, the accused once again came to the house of the complainant and sat there for two hours. Again, the accused said that he was going away. On her asking why he was going, the accused replied that he has to go to the GIDC to get his salary and left the house. Thereafter, the accused again came to her house between 8:00 to 9:00 pm when her husband, the deceased, was at home. The accused and the deceased were talking, while this witness was cooking in the kitchen. She further states that while she was in the kitchen, she heard the accused stating angrily to her husband that he should keep the wife of the accused at his house, to which the deceased replied that it was not his responsibility. The accused and the deceased took dinner together and later, the accused, along with PW8 Somkant and PW5 Umakant, sons of the deceased, went to sleep on the terrace. PW8 Somkant left early the next morning at 5:00 am, for Shirdi. The accused woke up at 6:00 am and asked the complainant where PW8 had gone, to which she replied that he had gone to Shirdi. This witness states that thereafter, the deceased and the accused both had tea together. When the deceased got ready to go for work at 10:00 am, the accused stated that he also wants to accompany him, as he has to go to GIDC. This witness states that the deceased refused to take the accused with him and asked him to go in a rickshaw. In spite of the fact that the deceased refused twice or thrice to take the accused with him on his motorcycle, the accused forcibly sat on the back seat of the motorcycle and both the accused and deceased left on the motorcycle. This witness states that after a while, she received the information that her husband has been stabbed and was lying on the road near Kanoria Chemicals Company. She, accompanied by PW13 Bharatprasad Lotanram Gaur and PW5, her son Umakant, as well as one Urvesh Yadav, a friend of Umakant, went to the scene of offence. There she saw her husband lying on the road, bleeding profusely. There was a wound on his back. His motorcycle and helmet were lying closeby on the road. The accused was nowhere to be found. This witness states that the reason why the accused killed her husband was that he suspected there was an illicit relationship between the deceased and the wife of the accused, regarding which he often used to quarrel with the deceased.

15. During her crossexamination, this witness states that the wife of the accused stayed in Panoli Village for about two and a half years and before that she used to stay in Uttar Pradesh. The accused had come to live in Gujarat only one month ago. He used to stay at Uttar Pradesh earlier. This witness has negated the

suggestion that when the accused came to her house, she had stated that her husband had gone for work and would come the next morning and that the accused had gone away thereafter. She has consistently maintained that the accused stayed at her house. This witness has accepted that she has not stated in the Police complaint that when the accused came to her house she had gone to the kitchen to fetch water. Though she has accepted that she has not witnessed the incident, she has denied the suggestion that some person, other than the accused, had stabbed her husband to death.

16. Umakant Lalsaheb Yadav, son of the deceased, has been examined as PW5 at Ex.25. His deposition is along the lines of his mother, the complainant. He states that the accused had come to his house on 04.05.2011 in the morning at about 10:00 am and left after about five to ten minutes. Thereafter, he came at about 2:00 pm, sat for some time and went away. The accused once again came to the house at about 8:30 pm when the deceased was at home. This witness also maintains that the accused and the deceased had dinner together and there were angry words between them. The next morning, that is on the day of the incident, the deceased was leaving for work and had started his motorcycle when the accused sat on the back seat of the motorcycle and accompanied him. After about 1520 minutes, his friend Urvesh came and informed them that the deceased is lying on the road in a bloodied condition, near Kanoria Chemicals Company. On hearing this, this witness along with PW4, Urvesh and PW13, went to the site and found the deceased lying lifeless on the road.

17. The crossexamination of this witness could not elicit any other aspect except what has been stated and he has maintained the stand taken in his examination in chief.

18. PW6 Lakhiben Chaganbhai Padhiyar, has been examined at Ex.26. She is an eyewitness to the incident. This witness states that she earns her livelihood by running a cabin for miscellaneous items, located on the untarred road going from GIDC Kanoria Chokdi to Miranagar. On the date of incident, she was in her cabin when she heard the sound of a motorcycle falling. She saw a man stabbing the person seated on the motorcycle and running towards the bushes. She states that she observed that person closely. She has identified the person who stabbed the deceased as being the accused person who is present in the Court. Thereafter, she closed the cabin and went home.

19. In her crossexamination, this witness has denied the suggestion that the back of the accused was towards her. She has stated that while the accused was running away, he turned his face left and right, in order to ensure whether anyone has seen him. She has therefore seen his face. She states that the place where the incident took place is about 150 to 200 feet away from her cabin. On being confronted with the question she has not recorded in her statement before the Police that she heard the sound of motorcycle falling, this witness answered that a person who is frightened would not record such a thing. This witness has denied the suggestion that the incident did not take place or that she did not see

the accused, when the incident took place.

20. The next witness is PW7 Hamidbhai Ismailbhai Diwan, whose deposition is to be found at Ex.27. This witness states that on the date of the incident, at about 10:00 am, he was going in his rickshaw from Miranagar to Kanoria Chokdi, when he saw a person riding pillion on a motorcycle stabbing the driver of the motorcycle in the back. He states that after stabbing the driver, the person ran away. This witness has identified the accused as being the person who stabbed the deceased.

21. In his crossexamination, this witness states that he had kept his rickshaw at Miranagar and was going on foot to retrieve it. He states that it is true that a little ahead of the railway lane, there are cabins and when he was going near the cabin, he saw the incident taking place. He maintains in the crossexamination that he saw the accused running away from the spot.

22. Somkant Lalsaheb Yadav, another son of the deceased, has been examined as PW8 at Ex.28. The testimony of this witness is along the same lines as that of his mother, PW4 and brother, PW5, with regard to material aspects such as the accused coming to the house of the deceased thrice on the day prior to the incident, having dinner with the deceased and spending the night there. However, he has stated that when the accused came there, he was behaving in a strange manner. He narrates the incident regarding the quarrel between the accused and the deceased regarding the alleged illicit relationship between the wife of the accused and the deceased. This witness states that he left the house early in the morning to go to Shirdi. Thereafter, at about 11:00 am, he received a phone call from his friend informing him of the incident.

23. In crossexamination, this witness states that he has not stated before the Police that the accused was behaving strangely when he came to his house but concedes that, as he was mentally disturbed due to the death of his father, he may have omitted it. He has denied the suggestion that he is deposing falsely regarding the aspect that the accused was quarrelling with the deceased.

24. Dr.Shital Sundarlal Bihari, who has conducted the postmortem of the deceased, has been examined as PW9 at Ex.30. He has stated that the deceased had a stab on his back which was inflicted by a sharp weapon that had penetrated to his lung. There was no other injury on the body of the deceased. This witness has stated that the cause of death was due to injury to the lungs and loss of blood.

25. In his crossexamination, this witness has stated that the injury sustained by the deceased on the left side of his back is possible if he is stabbed with a knife by a person sitting on the back of the motorcycle. This witness was shown the weapon of offence and stated that the injury sustained by the deceased can be inflicted with this knife. He has reiterated that apart from the stab wound, there was no other injury on the body of the deceased.

26. The postmortem report prepared by PW9 is to be found at Ex.32. It describes the injury sustained by the deceased as below: "(1) Stab wound 3.5x1 up to lung (12 cm total) Oval, Oblique at 3rd intercostal space just lateral to middle border of scapula it's Red colour blood and blood come out everted wound."

The cause of death is stated to be "haemorrhagic shock due to lung injury". The injury described in the postmortem report corroborates the testimony of PW9 in this regard.

27. PW10 Vikaskumar Rajbahadur Yadav has been examined at Ex.34. He appears to be a nephew of the deceased and the accused. His testimony is not of much importance, therefore it need not be discussed in detail.

28. PW11 is Mohammad Hanif Ismail, Police Station Officer, who has recorded intimation in the Station House Diary. He has deposed at Ex.40. His only role is that he has forwarded it to the higher officer.

29. PW12 Raghuvir Shantibhai Dabhi is the Police Inspector who has recorded the complaint.

30. PW13 Bharatprasad Lotanram Gaur has been examined at Ex.46. This witness states that on the day of the incident, he had gone with his wife for treatment to Jayaben Modi Hospital. While returning, at about 11:00 am, while he was passing by Kanoria Chemicals Company near Shantinagar, he saw five to six persons standing there. When this witness went to see what was happening, he saw the deceased lying on the road, in a pool of blood. The motorcycle and the helmet of the deceased were also lying there. The witness immediately went to the house of the deceased and informed PW4, the complainant, and brought her to the spot on his motorcycle. Thereafter, the 108Ambulance arrived and the deceased was taken to Bharuch Civil Hospital, after which this witness went home. Later on, he came to know that the accused has killed the deceased by inflicting a knife wound.

31. In crossexamination, this witness states that the deceased was his LIC agent, therefore he was known to him. He has denied the suggestion that he was not passing by the scene of incident, as narrated.

32. PW14 Jesingbhai Khetiabhai Chaudhary is the Circle Inspector in the Taluka Panchayat who has prepared the map of the scene of crime. He has been examined at Ex.47. He has stated that he reached the spot with the help of the Panchnama of the scene of offence and prepared the map, which is signed by him. He has denied the suggestion that the map was prepared only on the basis of the Panchnama of the scene.

33. PW15 Kantibhai Ramanbhai Patel is the Police Sub Inspector who has recorded the statements of some of the witnesses in the absence of the regular Investigating Officer.

34. The Investigating Officer, Mohammadali Abdulkarim Saiyed has been

examined as PW16 at Ex.51. He has stated that on questioning the accused regarding the knife, the accused had volunteered to disclose it, therefore the accused, along with the police personnel was taken in a Government vehicle to the spot indicated by the accused where the incident had taken place about half a kilometer from that spot. The accused took out the knife from where he had buried it. This witness has stated that there appeared to be bloodstains on the knife which was taken into custody. He also took into custody the clothes worn by the deceased.

35. In his crossexamination, this witness has stated that PW6 Lakhiben has not stated in her statement recorded before the Police that she has seen any person stabbing another with a knife. She has also not stated that she did not hear the sound of the motorcycle falling down. She has stated that when she was in her cabin, a customer came there and informed her that a person sitting pillion on the motorcycle had stabbed the person sitting in front with a knife and the person who had inflicted the injury had run away towards Dyestar factory. When she came to know this, she saw the deceased on the road near Kanoria Chemicals Company.

36. The Serological Analysis Report is at Ex.38. It indicates that on the bloodsoaked sample of mud and the handle of the knife which is the weapon of offence, there was the presence of blood of the "BGroup", as also on the clothes of the deceased as well as the accused.

37. The above, in a nutshell, is the evidence on record after appreciation of which the learned Sessions Judge arrived at the conclusion that the evidence points out, beyond reasonable doubt, that the accused has committed the crime and the charge of murder of the deceased, framed against the accused, is proved.

38. We may examine the veracity of this conclusion in the context of the evidence on record. From the evidence of PW4 Asharfiben Lalsaheb Yadav, the complainant and wife of the deceased, PW5 Umakant Lalsaheb Yadav, and PW8 Somkant Lalsaheb Yadav, both sons of the deceased, it is amply proved that the accused came to the house of the deceased on 04.05.2011, thrice. He first came between 10:00 to 10:30 am, sat for a while and went away. He then returned at about 2:00 pm and went away. His third visit was between 8:00 to 9:00 pm when the deceased had returned home from work and was present in the house. It is proved by the testimony of these three prosecution witnesses that the deceased and the accused had dinner together. There was a quarrel between them regarding the alleged illicit relationship of the deceased with the wife of the accused. It is also clear from the evidence of these three witnesses that the accused stayed the night at the house of the deceased and slept on the terrace with PWs5 and 8. PW8 Somkant Lalsaheb Yadav left the house at about 5:00 am, on 05.05.2011, for Shirdi. Both PW4 and PW5 have stated in their depositions that the accused took tea with the deceased and when the deceased got ready to leave for work at about 10:00 am, the accused insisted on accompanying him on his motorcycle, in spite of the refusal of the deceased to take the accused with

him. Ultimately, the accused sat on the back seat of the motorcycle being driven by the deceased and both left the house at about 10:00 am. Within half an hour, the complainant and PWs4 and 5 were informed that the body of the deceased was lying in a pool of blood on the road, near Kanoria Chemicals Company.

39. There is no discrepancy or inconsistency in the testimonies of PWs4 and 5 insofar as this version is concerned. They have narrated the events that took place in their house when the accused came there and stayed the night. The accused is also related to both these witnesses, being the brotherinlaw of PW4 and uncle of PW5. The presence of the accused at the house of the deceased on the day previous to the incident as well as upto the time when both the deceased and accused left the house on the motorcycle on the day of the incident, is unquestionable. In spite of the fact that the deceased refused to take the accused with him, the accused insisted on sitting on the back seat of the motorcycle and, eventually, left the house of the deceased on the motorcycle driven by the deceased. The deceased was, therefore, last seen alive in the company of the accused. The timegap between the point of time when the accused and the deceased were last seen together is only about twenty minutes to half an hour.

40. It has been submitted on behalf of the appellant that PWs4, 5 and 8 are the wife and sons of the deceased, respectively, and being closely related to the deceased, are interested witnesses and their testimonies cannot be relied upon for this reason.

41. It is required to be kept in mind that PWs4, 5 and 8 are related not only to the deceased but also to the accused. The accused is the brotherinlaw of PW4, being her husband's younger brother, and uncle of PWs5 and 8. They are natural witnesses who were present in the house and have described the events that took place from the time when the accused first came to their house till the time he left in the company of the deceased. Even if we apply the rule of evaluating their testimony with due care and caution, we find that the testimonies of these prosecution witnesses have a ring of truth. Their versions are interse corroborated. These witnesses cannot be termed as interested witnesses in the sense that they have no animus against the accused, who is also their close relative. They have deposed regarding the events that took place in their presence and their versions contain no contradictions of a nature that would render them suspect. Minor contradictions such as forgetting to say she went to fetch water by PW4, are immaterial. These witnesses cannot be termed as being unreliable and their testimonies cannot be discarded on the ground of relationship alone. Apart from the suspicion that the accused nursed against the deceased regarding the illicit relationship of the deceased with his wife, it appears from the testimonies of PWs5 and 8, that there was otherwise a cordial relationship between them and the accused. The accused visited the house of the deceased thrice the day prior to the incident. He had dinner with the deceased and slept at his house. The next morning he had tea with the deceased. The

accused then sat on the back seat of the motorcycle and went with the deceased. Had there been any animosity between the accused and the family of the deceased, the accused would not have spent so much time at their house, had dinner and slept there as well.

42. The testimony of these witnesses does not appear to have been given on the basis of any prior enmity or animosity and in the facts and circumstances of the case, they are natural witnesses who have deposed regarding the events that occurred in their home. Each case has to be looked in the context of its own facts. Even if PWs 4, 5 and 8 are described as interested witnesses solely on the basis of the relationship they had with the deceased, it cannot be taken as an invariable rule that the evidence of such witnesses cannot form the basis of conviction, until and unless it is corroborated in material particulars by independent witnesses. The requirement of law is that such evidence should be carefully scrutinised with due care and caution and after passing that test, if it is found to be reliable, it can form the basis of conviction.

43. In *Kanhaiya Lal And Others v. State of Rajasthan* - (2013)5 SCC 655 relied upon by learned Additional Public Prosecutor, the Supreme Court has held as below: 24. In *Hari Obula Reddy v. State of A.P.* [(1981)3 SCC 675], a three Judge Bench has opined that 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." (SCC pp.68384, para 13)

25. In *Kartik Malhar v. State of Bihar* [(1996)1 SCC 614], this Court has stated 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.

26. In the case at hand, the witnesses have lost their father, husband and a relative. There is no earthly reason to categorise them as interested witnesses who would nurture an animus to see that the accused persons are convicted, though they are not involved in the crime. On the contrary, they would like that the real culprits are prosecuted and convicted. That is the normal phenomena of human nature and that is the expected human conduct and we do not perceive that these witnesses harboured any ill motive against the accused persons, but have deposed as witnesses to the brutal incident. We may proceed to add, as stated earlier, that this Court shall be careful and cautious while scanning their testimony and we proceed to do so."

44. Further, in *State of Haryana v. Shakuntla And Others* - (2012)5 SCC 171,

also referred to by the learned Additional Public Prosecutor, the Apex Court has held as below: "24. The learned counsel appearing for the accused relied upon the judgments of this Court in the case of Waman and Ors. v. State of Maharashtra [(2011) 7 SCC 295] : (AIR 2011 SC 3327 : 2011 AIR SCW 4973), Jalpat Rai and Ors. v. State of Haryana [JT 2011 8 SC 55] : (AIR 2011 SC 2719 : 2011 AIR SCW 4222) and State of Haryana v. Ram Singh [(2002) 2 SCC 426] : (AIR 2002 SC 620 : 2002 AIR SCW 219), to contend that the statement of a related or interested witnesses should not be relied upon and made the sole basis of conviction by the court.

25. Firstly, none of these judgments state this principle as an absolute proposition of law. Each judgment deals with its own facts. In the case of Waman (supra), the Court clearly held that if the evidence of the related witnesses is found to be consistent and true, the same cannot be discarded. Similarly, in the case of Jalpat Rai (supra), the Court noticed that the presence of the witnesses at the time of incident would not guarantee their truthfulness. The question to be examined by the Court is whether their testimony is trustworthy and reliable insofar as complicity of the appellants in the crime is concerned, or whether they have tried to implicate the innocent along with the guilty.

26. In Ram Singh (supra), the circumstances were totally different. In that case, the interested and related witnesses were not only examined as witnesses to the incident but they were also witnesses to the arrests and in view of these facts, the Court felt that there existed a doubt about the trustworthiness of these witnesses, which must go to the benefit of the accused.

27. All these cases, in fact, would have no application to the present case. In the present case, it is more than clear that PW 4 and PW 5 were both present at the time of the incident. The prior animosity and clashes between the two families has come on record. In the cross-examination, no material was brought out to the contrary. On the other hand, there seems to be no challenge to vital facts. The facts of the cited cases being different and there being hardly any challenge to the vital aspects of the present case, ratio decidendi of those judgments would hardly further the case of the accused.

28. A Bench of this Court in the case of Mano Dutt and Anr. v. State of U.P. [(2012) 4 SCC 79], (to which one of us, Hon'ble Swatanter Kumar, J. was a member), while dealing with the issue of credibility of testimony by interested witnesses, held as under : (SCC pp.8890, paras 24-28)

""24. Another contention raised on behalf of the appellant accused is that only family members of the deceased were examined as witnesses and they being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law in examining family members, or any other person, as witnesses. More often than not, in such cases involving family

members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party.

25. There can be cases where it would be but inevitable to examine such witnesses, because, as the events occurred, they were the natural or the only eyewitness available to give the complete version of the incident. In this regard, we may refer to the judgments of this Court, in the case of *Namdeo v. State of Maharashtra*, [(2007) 14 SCC 150] : (AIR 2007 SC (Supp) 100 : 2007 AIR SCW 1835). This Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with the law.

26. This Court, in the said judgment, held as under: (*Namdeo case*, SCC p.161, paras 28-29)

"28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated.

29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, "highly interested" witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as "interested". The term "interested" postulates that the witness has some direct or indirect "interest" in having the accused somehow or the other convicted due to animus or for some other oblique motive."

27. It will be useful to make a reference of another judgment of this Court, in the case of *Satbir Singh and Ors. v. State of Uttar Pradesh*, [(2009) 13 SCC 790] : (AIR 2009 SC 2163 : 2009 AIR SCW 2809), where this Court held as under:

"26. It is now a wellsettled principle of law that only because the witnesses are

not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon. Furthermore, as noticed hereinbefore, at least Dhum Singh (PW 7) is an independent witness. He had no animus against the accused. False implication of the accused at his hand had not been suggested, far less established."

28. Again in a very recent judgment in the case of Balraje v. State of Maharashtra [(2010) 6 SCC 673] : (2010 AIR SCW 3707), this Court stated that:

"30. ... When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The Court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.""

29. When we examine the facts of the present case in light of the above principles, it is clear that the presence of PW 4 and PW 5 at the place of occurrence was natural and their statements, are trustworthy, corroborated by other evidence and do not suffer from the vice of suspicion or uncertainty. The Court has to give credence to their statement as they have lost their close relations and have no reason to falsely implicate the accused persons, who are also their relations. Thus, we find no merit in this contention of the learned counsel for the accused."

45. We have chosen to apply the rule of care and caution while scrutinising the evidence of the above referred to related witnesses. After scrutinising it from all angles, we are unable to agree with the submissions advanced on behalf of the appellant that the testimony of PW4, PW5 and PW8 is unreliable solely on the ground that they are related to the deceased. The relationship of these witnesses with the accused is as close. There is no reason why they would falsely implicate the accused. The description of events that took place is natural and trustworthy and each of their depositions corroborate the other in material aspects. There is no reason, therefore, to discard the evidence of these witnesses.

46. It has been submitted that the deceased was the LIC agent of PW13, therefore, the evidence of this witness, also, cannot be relied upon. PW13 has stated that he was passing by the scene of the incident at about 11:00 am when he saw five or six persons standing. On going there, he saw the dead body of the deceased lying in the pool of blood on the road. He went to the house of the complainant, fetched her and brought her to the scene of incident on the motorcycle. The evidence of this witness is corroborated by the evidence of PW4, the complainant, who states that when she received the information regarding

the body of her husband lying on the road, she went to the spot in the company of PW13, among others mentioned by her. The aspect that he does not mention where his wife was, is not at all relevant or material.

47. The submission on behalf of the appellant that Urvesh Yadav, a friend of PW5 Umakant, has not been examined, is also found to be irrelevant. His only role is stated to be to inform the complainant and Umakant regarding the incident which, undoubtedly, took place.

48. There is unimpeccable evidence on record that the deceased was last seen together in the company of the accused at about 10:00 am on the day of the occurrence. The accused sat on the back seat of the motorcycle being driven by the deceased and they both left together. Within half an hour, the family of the deceased was informed regarding his body lying in a pool of blood on the road. The deceased was, therefore last seen together in the company of the accused and the timegap between the point of time when the deceased was last seen alive in the company of the accused is as short as half an hour. The possibility, therefore, that any person other than the accused was the perpetrator of the crime is belied.

49. The smallness of the timespan rules out the possibility of any other person meeting the deceased between the time he left with the accused on the motorcycle and the time when his body was found on the road with his motorcycle lying nearby. The deceased was seen running from the scene of offence by PW6 PW7. He was, therefore, the last person who was with the deceased till the death of the latter.

50. Our conclusion is fortified by the principles of law enunciated by the Supreme Court in the case of State of U.P. v. Satish - (2005)3 SCC 114, in the following terms: "22. The lastseen theory comes into play where the timegap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

51. The evidence of "last seen together" would require some corroboration, which is found in the present case not only in the testimony of PWs4 and 5 but also the testimony of PW6, Lakhiben who has stated that she heard the sound of the motorcycle falling on the road when she was present in the cabin and saw the accused running away. She states that the accused was turning his face from side to side in order to see whether he was detected. She has identified the

accused as being the person who was running away from the scene of the crime towards the bushes. This witness has stated that she saw the accused stabbing the deceased. Though this witness has stated that her cabin is at a distance of 150 to 200 feet from the scene of crime, it cannot be assumed that she did not see the accused stabbing the deceased and running away. She has identified the accused in the Court. PW6 has maintained this stand throughout her testimony, even during cross-examination. Regarding the discrepancy that she did not state before the police that she heard the sound of the motorcycle falling, this witness has explained that she was puzzled and could not record it.

52. PW7 Hamidbhai Ismailbhai Diwan has deposed that he was passing by the scene of occurrence in his rickshaw when he saw the person driving the motorcycle being stabbed with a knife by the person sitting on the back seat. The person who had inflicted the injury ran away. This witness has stated that he recognises the perpetrator of the crime and has pointed out to the accused as being the person who inflicted the knife blow to the deceased. There is a minor discrepancy in the testimony of this witness, inasmuch as in his examination in chief, he states that he was passing by the spot in his rickshaw, whereas in his cross-examination he says that he was going on foot to fetch his rickshaw from Mirangar. However, this inconsistency is not material, as it does not shake the testimony of this witness. The aspect that he was passing by that spot, whether on foot or on a rickshaw and that he saw the crime being committed and recognised the accused as being the person who has committed the crime and run away, remains unshaken.

53. On the basis of the above evidence, we find that the theory of "last seen together" is very much applicable in the present case and gets sufficient corroboration from the material on record.

54. The submission advanced by learned counsel for the appellant that there are contradictions between the testimonies of the complainant and her sons, especially regarding the reason for the alleged quarrel that took place between the accused and the deceased, does not appear to have any substance as the said testimonies reveal that the altercation was regarding the alleged illicit relationship between the deceased and the wife of the accused. No material discrepancy or inconsistency has been pointed out.

55. Further, there was no reason to establish the blood group of the accused as the accused did not receive any injury. The only blood group that has been found on the bloodsoaked earth taken from the place of the incident, the knife used for the murder and the clothes worn by both the accused and the deceased, is of "B Group", which is the blood group of the deceased.

56. The aspect that no Charge under Section 201 of the IPC, has been framed and only a Charge under Section 302 is framed, is not material as a Charge for a graver offence has been framed. This would not affect either the evidence of the witnesses or the conclusion arrived at by the Trial Court in any manner.

57. It has been submitted on behalf of the appellant that the theory regarding the illicit relationship between the wife of the accused and the deceased is not correct, as no complaint has been filed in this regard and the wife of the accused has not been examined. We do not find any merit in this submission as the evidence that has come on record is not for the purpose of establishing or denying the alleged relationship. The evidence is to be appreciated in order to arrive at a conclusion regarding the complicity and guilt of the accused. The aspect that no complaint has been filed in this regard earlier, or that the wife of the accused has not been examined is, therefore, immaterial and irrelevant.

58. It has further been submitted on behalf of the appellant that only one blow was given to the deceased, therefore, without prejudice to the other submissions, it is a case where lesser punishment ought to have been imposed upon the appellant.

59. We are unable to agree with this submission for the simple reason that though it is a fact that only one blow has been inflicted, however, it is a stabwound with a knife on the back of the deceased, on an extremely sensitive part of his body. The knife has penetrated the lung of the deceased and death has resulted due to the stabwound and loss of blood. One blow was sufficient to take the life of the deceased. It further appears from the evidence on record that the accused had nursed the intention of killing the deceased, therefore he had visited the house of the deceased thrice, the previous day. He stayed the night there and left the house by forcibly sitting pillion on the motorcycle in the company of the deceased though the deceased did not want to take the accused with him on the motorcycle. This shows a certain premeditation of mind and, therefore, the accused cannot be given any benefit of lesser sentence. The accused sat on the back seat of the motorcycle and stabbed the deceased on the back. The injury sustained by the deceased is on the back. The entire evidence brought on record by the prosecution is reliable, cogent, credible and trustworthy. Any minor discrepancies that may have arisen in the testimonies of certain witnesses are not material and do not shake the foundation of the case of the prosecution.

60. The Panch witnesses have proved the Panchnamas signed by them and held their ground during cross-examination. The fact that PW3 Ramsinh Jasvantsinh Singh, the Panch witness of the recovery of the knife resided in the same residential society as the deceased, does not detract from his testimony which has remained unshaken. He has proved the recovery of the knife and the Panchnama. The appellant has himself led the police to the spot where the bloodstained knife, which is the weapon of offence, was hidden by him. It has come in the testimony of the Investigating Officer that the bloodstained knife was recovered at the behest of the accused from a place where he had concealed it. Thus, it is the accused alone who could have known the location of the knife.

61. From the above discussion, it is crystal clear that the implication and guilt of the accused in committing the crime is proved by the evidence on record. The

Sessions Court has, therefore, arrived at the correct conclusion that the guilt of the accused is proved beyond a reasonable doubt. We see no justifiable reason to interfere with the judgment of the Sessions Court.

62. The appeal is dismissed. The R & P be transmitted back to the concerned Trial Court.