
(2019) 08 MP CK 0037

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 442 Of 2015

Sonu Kushwah (Rajawat)

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 374
Indian Penal Code, 1860 — Section 294, 307, 327, 329, 504
Evidence Act, 1872 — Section 27
Arbitration Act, 1996 — Section 4, 11(6), 16

Citation : (2019) 08 MP CK 0037

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Rahul Chauhan, Alok Sharma

Final Decision : Allowed

Judgement

1. This criminal appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 19.3.2015 passed by 14th Additional Sessions Judge, Gwalior in S.T.No.319/2014 by which the appellant has been convicted under Section 307 of IPC and sentenced to suffer rigorous imprisonment of 10 years and a fine of Rs.3,000/-with default imprisonment and under Section 329 of IPC and has been sentenced to suffer rigorous imprisonment of 10 years and a fine of Rs.3,000/- with default imprisonment.

2. The necessary facts for the disposal of the present appeal in short are that on 18.12.2013 at about 8:00 in the night, the appellant caused multiple injuries to the injured Suraj Sen by means of knife. According to the prosecution case, on 18.12.2013 at about 8:30 PM the injured Suraj Sen was standing near Shitla Mata Temple and complainant Ramwati was also there. At that time the appellant came there and demanded Rs.500/- from the injured for purchasing liquor. When the victim refused to give money, then the appellant started abusing him and when it was objected by the injured Suraj Sen, then the appellant with a threat

that now he would kill him caused multiple knife injuries on the head of the injured. On hearing the screams of the complainant Ramwati, her another son Jeetu and her son-in-law Nitin came on the spot. The injured Suraj Sen fell down on the ground but the appellant continued to assault by knife. Thereafter the appellant ran away along with the knife. Ambulance 108 was informed and the injured was admitted in JAH Trauma Centre and Dehati Nalsi Ex.P/3 was recorded at Trauma Centre itself. On the basis of Dehati Nalisi, FIR Ex. P/8 was registered for offence under Sections 307, 327, 294 of IPC against the appellant. Multiple injuries were found on the body of the injured and his MLC is Ex.P/13. The statement of the complainant were recorded. The spot map Ex.P/10 was prepared. On 3.4.2014, the blood stained cloths of the injured were seized vide seizure memo Ex.P/4. The appellant was arrested vide arrest memo Ex.P/12. His memorandum under Section 27 of the Evidence Act was recorded which is Ex.P/9 and on 4.4.2014, the knife was seized by seizure memo Ex.P/4A and the seized articles were sent for FSL examination.

3. The Trial Court by order dated 27.5.2014 framed charges under Sections 307, 329, 504 of IPC.

4. The appellant abjured his guilt and pleaded not guilty.

5. The prosecution in order to prove its case examined Rajendra Prasad Jain (PW-1), Sakun Savita (PW-2), Ramwati (PW-3), Vinod Sen (PW-4), Suraj Sen (PW-5), Jitu Sen (PW-6), Parwat Singjh (PW-7), Dr. Shishir Agrawal (PW-8), Rajesh Singh Rathore (PW-9), Dinesh Chandra (PW-10), Randhir Singh (PW-11), G.K. Sharma (PW-12), Dr. V.S. Tomar (PW-13), Banwari Mishra (PW-14) as prosecution witnesses.

6. The appellant examined Vijay Ingle (DW-1) and Yogendra Singh Chandel (DW-2) as defence witnesses.

7. The Trial Court by judgment and sentence dated 19.3.2015 acquitted the appellant for offence under Section 504 of IPC and convicted him for offence under Sections 307 and 329 of IPC and sentenced him to undergo the rigorous imprisonment as mentioned above.

8. Challenging the judgment and sentence passed by the Court below, it is submitted by the counsel for the appellant that all the witnesses are the interested witnesses and the independent witnesses have not supported the prosecution case and thus the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt. It is further submitted that even otherwise since Dr. V.S. Tomar (PW-13) has not stated that any of the injury was dangerous to life, therefore, no offence under Section 307 of IPC is made out. It is further submitted that the appellant is already in jail for a period of five years and four months and, therefore, the jail sentence already undergone by the appellant is sufficient to meet the ends of justice.

9. Per contra, it is submitted by the counsel for the State that merely because

the independent witnesses have not supported the prosecution case would not mean that injured as well as other eyewitnesses are not reliable. Injured witness is best witness and he has supported the prosecution case. Further the number of assaults made by the appellant clearly indicates his knowledge or intention. It is further submitted that for making out an offence under Section 307 of IPC, nature of injury is not necessary. It is the knowledge or the intention and some overt act in furtherance of that knowledge are the decisive factors.

10. Heard the learned counsel for the parties.

11. Section 307 of IPC reads as under:-

"307. Attempt to murder.--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is hereinbefore mentioned."

12. From the plain reading of this Section it is clear that the nature of injury is not the decisive factor but the knowledge or intention on the part of the accused is crucial for making out an offence under Section 307 of IPC.

13. The Supreme Court in the case of Anjani Kumar Chaudhary vs. State of Bihar & Anr. reported in (2014) 12 SCC 286 has held as under:

"10. The scope of Section 307 IPC has elaborately been dealt with by this Court in Mohan case (SCC pp. 121-22, para 14), wherein this Court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract Section 307 IPC. Further, this Court has also taken the view that, in order to attract Section 307 IPC, the injury need not be on the vital part of the body.

x x x

16. The statements of the witnesses Baiju and Manoj Chaudhary are also in the same lines. What is discernible from the above statements is that the first accused and others, while committing the alleged offence, had exhorted that they would kill the appellant if the money was not paid. Open announcement by the accused and others that the appellant would not be alive to practise in the High Court, would prima facie indicate that the intention of the accused was, what he had spoken, followed by the infliction of injuries. Further, when several persons attack an unarmed person with deadly weapons, it is reasonable to presume that they had knowledge or intention that such an attack would result in death. In the instant case, as per the statements, the weapons used were lathi, rod, farsa, talwar, etc. and when we look at the nature of the injuries, it is clear that the injuries were caused by using sharp-cutting weapons and also with hard blunt substance. Injuries were inflicted on the right temporal region of scalp

at the base of the right ear, right side of occipital region of scalp, left side of occipital region of scalp, etc. Open declaration by the accused that a person would be killed, indicates his intention and, as held by this Court in *Vasant Vithu Jadhav v. State of Maharashtra*, the question as to whether there was an intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case which has to be attributed on evidence by the trial court. The above facts would indicate that the ingredients of Section 307 IPC are made out."

The Supreme Court in the case of *Union of India vs. Pam Development Private Limited* reported in (2014) 11 SCC 366 has held as under:

"12. The arbitration agreement contained in Clause 64 of the General Conditions of Contract is as under:

"64. (3)(a) Arbitration .-Matters in question, dispute or difference to be arbitrated upon shall be referred for decision to:

(i) A sole arbitrator who shall be the General Manager or a gazetted railway officer nominated by him in that behalf in cases where the claim in question is below Rs 5,00,000 (Rupees five lakhs) and in cases where the issues involved are not of complicated nature. The General Manager shall be the sole Judge to decide whether or not the issues involved are of a complicated nature.

(ii) Two arbitrators who shall be gazetted railway officers of equal status to be appointed in the manner laid in Clause 64(3)(b) for all claims of Rs 5,00,000 (Rupees five lakhs) and above, and for all claims irrespective of the amount of value of such claims if the issues involved are of a complicated nature, the General Manager shall be the sole Judge to decide whether the issues involved are of a complicated nature or not. In the event of the two arbitrators being divided in their opinions the matter under dispute will be referred to an umpire to be appointed in the manner laid down in Clause 3(b) for his decision.

(iii) It is a term of this contract that no person other than a gazetted railway officer, should act as an arbitrator/umpire and if for any reason, that is not possible, the matter is not to be referred to arbitration at all.

(iv) In cases where the claim is up to Rs 5,00,000 (Rupees five lakhs), the arbitrator(s)/umpire so appointed, as the case may be, shall give the award on all matters referred to arbitration indicating therein break-up of the sums awarded separately on each individual item of disputes. In cases where the claim is more than Rs 5,00,000 (Rupees five lakhs), the arbitrator(s)/umpire so appointed, as the case may be, shall give intelligible award (i.e. the reasoning leading to the award should be stated) with the sums awarded separately on each individual item of dispute referred to arbitration.

3. (b) For the purpose of appointing two arbitrators as referred to in sub-clause (a)(ii) above, the Railway will send a panel of more than three names of gazetted railway officers of one or more departments of the Railway to the contractor who

will be asked to suggest to the General Manager one name out of the list for appointment as the contractor's nominee. The General Manager, while so appointing the contractor's nominee, will also appoint a second arbitrator as the Railway's nominee either from the panel or from outside the panel, ensuring that one of the two arbitrators so nominated is invariably from the Accounts Department. Before entering upon the reference the two arbitrators shall nominate an umpire who shall be a gazetted railway officer to whom the case will be referred to and in the event of any difference between the two arbitrators officers of the Junior Administrative grade of the Accounts Department of the Railways shall be considered as of equal status to the officers in the intermediate administrative grade of other departments of the Railway for the purpose of appointment as arbitrators."

13. A perusal of Clause 64 would show that in case of claims which are below Rs 5,00,000 (Rupees five lakhs), the General Manager or a gazetted railway officer nominated by him shall be the sole arbitrator. In case of claims of Rs 5,00,000 (Rupees five lakhs) and above, the Arbitral Tribunal shall consist of three arbitrators to be appointed in terms of Clause 64(3)(b). Under Clause 64(3)(b), the Railways will send a panel of more than three names of gazetted railway officers from whom the contractor will be asked to suggest one name. The General Manager will appoint the second arbitrator on behalf of the Railways. The clause also provided that two arbitrators shall nominate an umpire who shall be a gazetted railway officer.

14. Since the Arbitration Act, 1940 had been repealed by the Arbitration Act, 1996, the provision in the arbitration agreement for the appointment of two arbitrators and an umpire had become redundant. Accordingly, the respondent requested the Railways to appoint the sole arbitrator. Since the Railways failed to appoint the arbitrator within 30 days of the receipt of the letter dated 30-9-1996, the respondent moved the application under Section 11(6) of the Arbitration Act, 1996 for appointment of a sole arbitrator on 3-1-1997 before the High Court.

x x x

16. As noticed above, the appellant not only filed the statement of defence but also raised a counterclaim against the respondent. Since the appellant has not raised the objection with regard to the competence/jurisdiction of the Arbitral Tribunal before the learned arbitrator, the same is deemed to have been waived in view of the provisions contained in Section 4 read with Section 16 of the Arbitration Act, 1996."

The Supreme Court in the case of State of M.P. vs. Kanha alias Omprakash reported in (2019) 3 SCC 605 has held as under:

"10. Several judgements of this Court have interpreted Section 307 of the Penal Code. In State of Maharashtra v Balram Bama Patil¹, this Court held that it is not necessary that a bodily injury sufficient under normal circumstances to cause death should have been inflicted: (SCC p. 32, para 9)

"9...To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

(Emphasis supplied)

This position in law was followed by subsequent Benches of this Court.

11. In *State of M P v Saleem*, this Court held thus:

(SCC pp. 559-60, para 13)

"13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

(Emphasis supplied)

12. In *Jage Ram v State of Haryana*, this Court held that to establish the commission of an offence under Section 307, it is not essential that a fatal injury capable of causing death should have been inflicted: (SCC p.370, para 12)

"12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and

(ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing

death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc."

13. The above judgements of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent."

14. Thus to justify a conviction, it is not essential that life threatening injury must be inflicted. The nature of injury and situs of body may be of some assistance to find out that whether the accused had an intention or knowledge to cause the death or not but the nature of injury by itself cannot be a consideration for establishing the commission of an offence under Section 307 of IPC.

15. Dr. V.S. Tomar (PW-13) had found the following injuries:-

(1) Incised wound present over the right side of forehead 8x1 cm x bone deep - blood oozing.

(2) Lacerated wound over the right external ear 2cm x 0.5cm x cartilage deep present.

(3) Incised cut in lower right external ear 1.5cm x 0.5 cm. x cartilage deep - blood oozing.

(4) Incised wound over left temporal region of head 5x0.5cm x bone deep present.

(5) Lacerated wound present to left ear 3x0.5 x bend present.

(6) Lacerated wound left temporal occipital region 3x0.5 cm x bone deep oblique deep present.

(7) Incised wound over the left cheek 3.5x1cm x through and through blood oozing obliquely.

(8) Incised wound right cheek 3x0.4 cm x skin deep obliquely blood oozing.

(9) Incised wound over the left lateral neck 2x1cm x skin deep present."

The MLC is Ex.P/13. According to query report Ex.P/14, the injuries were dangerous to life.

16. Thus it is clear that as many as 9 incised wounds or lacerated wounds were found on the body of the injured Suraj Sen (PW-5).

17. Dr. Shishir Agrawal (PW-8) had found Comminuted Depressed Fracture on right frontal bone convexity paramedian aspect extending to roof of right orbit. The CT SCAN report is Ex.P/6.

18. Now the only question for consideration is that whether the appellant is the author of the injury or not.

19. Rajendra Prasad Jain (PW-1) and Sakun Savita (PW-2) are the independent witnesses but they have turned hostile and have not supported the prosecution case.

20. Ramwati (PW-3), Vinod Sen (PW-4), Suraj Sen (PW-5) and Jitu Sen (PW-6) have supported the prosecution case. Ramwati (PW-3) had lodged the Dehati Nalsi Ex.P/3 and she is an eyewitness. Vinod Sen (PW-4) and Jitu Sen (PW-6) had reached on the spot after hearing the screams of Ramwati (PW-3), therefore, they have partially witnessed the incident and Suraj Sen (PW-5) is the injured. Suraj Sen (PW-5) has stated that on 18.12.2013 at about 8:30 he was coming alongwith his mother. The appellant demanded Rs.500/- for purchasing liquor and when he refused to do so he started abusing him. Thereafter, the appellant by means of knife gave multiple injuries on his face, cheek, neck, chest and both hands. After hearing the shouts of this witness as well as of his mother, his brother Jitu and sister-in-law Sakun came on the spot. The appellant ran away from the spot and this witness became unconscious. He was admitted on 18.12.2013 and he regained consciousness on 4.1.2014. His statements were recorded and it was further stated that because of old enmity the appellant had assaulted him. In the cross-examination, this witness was confronted with omissions about demand of money for purchasing liquor as well as use of abusive language in his statement under Section 161 of Cr.P.C. Ex.D/1. However, this witness could not narrate the reasons for the same. This witness also could not clarify as to how it was mentioned in the case diary statement that on hearing his shouts, his mother and brother and Sakun came on the spot in order to save him. He further denied that the appellant had not assaulted him but due to previous enmity he has falsely implicated him. However, nothing could be elicited by the defence to make the evidence of this witness unreliable.

21. Ramwati (PW-3) had lodged the Dehati Nalsi. The incident is alleged to have taken place at about 8:30 in the night and the Dehati Nalsi was recorded in the hospital at 9:30 in the night. Thus the Dehati Nalsi was lodged promptly without any delay. This witness has also narrated the incident.

22. Vinod Sen (PW-4) and Jitu Sen (PW-6) have stated that after hearing the screams, they reached on the spot and found that the appellant was assaulting the injured Suraj Sen. Ramwati (PW-3) is the mother of the injured whereas Vinod Sen (PW-4) and Jitu Sen (PW-6) are the brothers of the injured. Thus it is clear that so far as the eyewitnesses are concerned, either they are the victim/

injured or the mother and brothers of the injured.

23. Now the only question for consideration is that whether these witnesses can be treated as interested witnesses or their evidence can be relied upon.

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

"18. The High Court has attached a lot of weight to the evidence of the said Madho Singh (PW 9) as he is an independent witness. On perusal of the record, it appears that the said person already had deposed for the victim family on a number of previous occasions, that too against the same accused. This being the fact, it is important to analyse the jurisprudence on interested witness. It is a settled principle that the evidence of interested witness needs to be scrutinised with utmost care. It can only be relied upon if the evidence has a ring of truth to it, is cogent, credible and trustworthy. Here we may refer to chance witness also. It is to be seen that although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point more so when his deposition is being assailed as being tainted.

19. A contradicted testimony of an interested witness cannot be usually treated as conclusive. The said Madho Singh (PW 9) has admitted that he has been a witness in another case against the accused for the deceased. Here it is to be seen that the said Madho Singh (PW 9) has been acting as a pocket witness for the family. Further, the credibility of this independent witness can be challenged on the fact that the commotion was only heard by the said Madho Singh (PW 9) whereas the rest of the members of the locality did not come for help. As Madho Singh (PW 9) is a chance witness as well as an interested witness herein, causes suspicion and does not inspire confidence. This admission by Madho Singh (PW 9) not only forces us to doubt the veracity of his own deposition but also has created doubts on the version of Gambhir Singh (PW 7)."

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

"18. Further, the High Court has also concluded that these witnesses were interested witnesses and their testimony was not corroborated by independent witnesses. We are fully in agreement with the reasons recorded by the High Court in coming to this conclusion.

19. In Darya Singh v. State of Punjab, this Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities must be taken into account. This is what this Court said: (AIR p. 331, para 6)

"6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. ... But where the

witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. ... If the criminal court is satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised."

20. However, we do not wish to emphasise that the corroboration by independent witnesses is an indispensable rule in cases where the prosecution is primarily based on the evidence of seemingly interested witnesses. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement.

21. Further, in *Raghubir Singh v. State of U.P.*, it has been held that: (SCC p. 84, para 10)

"10. ... the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need to be produced without unnecessary and redundant multiplication of witnesses. ... In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind."

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

"31. In this regard reference to a passage from *Hari Obula Reddy v. State of A.P.* would be fruitful. In the said case, a three- Judge Bench has ruled that: (SCC pp. 683-84, para 13)

"[it cannot] be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in *Kartik Malhar v. State of Bihar* has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the

other, convicted for some animus or for some other reason.

The Supreme Court in the case of Shyam Babu vs. State of U.P. reported in (2012) 8 SCC 651 has held as under:-

"22. This Court has repeatedly held that the version of an eyewitness cannot be discarded by the court merely on the ground that such eyewitness happened to be a relative or friend of the deceased. It is also stated that where the presence of the eyewitnesses is proved to be natural and their statements are nothing but truthful disclosure of actual facts leading to the occurrence, it will not be permissible for the court to discard the statement of such related or friendly witnesses. To put it clear, there is no bar in law on examining family members or any other person as witnesses. In fact, in cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. If the statement of witnesses, who are relatives or known to the parties affected is credible, reliable, trustworthy and corroborated by other witnesses, there would hardly be any reason for the court to reject such evidence merely on the ground that the witness was a family member or an interested witness or a person known to the affected party or friend, etc. These principles have been reiterated in *Mano Dutt v. State of U.P.* and *Dayal Singh v. State of Uttaranchal*."

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

"24. First, we shall deal with the credibility of related witnesses. In *Dalip Singh v. State of Punjab*, it has been observed thus: (AIR p. 366, para 25)

"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. State of Rajasthan*."

In the said case, it has also been further observed:

(AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

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

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

26. The principles that have been stated in number of decisions are to the effect that evidence of an interested witness can be relied upon if it is found to be trustworthy and credible. Needless to say, a testimony, if after careful scrutiny is found as unreliable and improbable or suspicious it ought to be rejected. That apart, when a witness has a motive or makes false implication, the court before relying upon his testimony should seek corroboration in regard to material particulars. In the instant case, the witnesses who have deposed against the accused persons are close relatives and had suffered injuries in the occurrence. Their presence at the scene of occurrence cannot be doubted, their version is consistent and nothing has been elicited in the cross-examination to shake their testimony. There are some minor or trivial discrepancies, but they really do not create a dent in their evidence warranting to treat the same as improbable or untrustworthy."

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

"24. On the issue of appreciation of evidence of interested witnesses, *Dalip Singh v. State of Punjab* is one of the earliest cases on the point. In that case, it was held as follows: (AIR p. 366, para 26)

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

25. Similarly, in *Piara Singh v. State of Punjab*, this Court held: (SCC p. 455, para 4)

"4. ... It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is creditworthy there is no bar in the Court relying on the said evidence."

26. In *Hari Obula Reddy v. State of A.P.*, a three-Judge Bench of this Court observed: (SCC pp. 683-84, para 13)

"13. ... it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

27. Again, in *Ramashish Rai v. Jagdish Singh*, the following observations were made by this Court: (SCC p. 501, para 7)

"7. ... The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence."

28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witness is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See *Anil Rai v. State of Bihar*, *State of U.P. v. Jagdeo*, *Bhagaloo Lodh v. State of U.P.*, *Dahari v. State of U.P.*, *Raju v. State of T.N.*, *Gangabhavani v. Rayapati Venkat Reddy* and *Jodhan v. State of M.P.*)"

25. The Supreme Court in the case of *Kamta Yadav & Ors. vs. State of Bihar* reported in (2016) 16 SCC 164 has held as under:

"13. We have already narrated the deposition of the witnesses in brief. There are six eyewitnesses and three of them are injured eyewitnesses, which is a weighty factor to show the actual presence of these witnesses at the scene of occurrence.

Moreover, the credibility and trustworthiness of all these eyewitnesses could not be shaken by the accused persons. Once it is found that these witnesses, who are eyewitnesses, were present and they have truthfully narrated the incidence as it happened and their depositions are worthy of credence, conviction can be based on their testimonies even if they were related to the deceased. The only requirement, while scrutinising the interested witnesses, is to examine their depositions with greater caution and deeper scrutiny is needed, which exercise has been done by both the courts below. In fact, when the learned counsel for the appellants was confronted with the aforesaid factual and legal position, he could not even provide any answer to the same."

26. Thus it is clear that although the evidence of interested or inimical witness is to be scrutinized with care but cannot be rejected merely on the ground that he or she is an interested witnesses. In the present case, the Dehati Nalsi was lodged by Ramwati (PW-3) in the hospital at about 9:30 in the night whereas the incident took place at 8:30 in the night. Thus by no stretch of imagination it can be said that there was any delay in lodging the Dehati Nalsi. Further the evidence of the injured witness is the best evidence, which stands on higher pedestal than other witnesses. The evidence of Suraj Sen (PW-5) finds full corroboration from the Dehati Nalsi as well as the medical evidence.

27. Randhir Singh had recorded the memorandum of the appellant by which he had given an information that he has kept the knife in his room. The copy of memorandum is Ex.P/9.

28. G.K. Sharma (PW-12) had seized the knife on the production of the same by the appellant on 4.4.2014. The blade of the said knife was 10 inch long and handle was 5 inch and in all the knife was 15 inch long. It was seized vide seizure memo Ex.P/4A.

29. Thus it is held that the prosecution has established beyond reasonable doubt that the appellant has committed an offence under Section 307 of IPC.

30. So far as the offence under Section 329 of IPC is concerned, Ramwati (PW-3) has specifically stated in her Dehati Nalsi Ex.P/3 that the appellant had demanded money for purchasing liquor which was refused by the injured. Ramwati (PW-3) has also stated that the appellant had demanded Rs.500/- for purchasing liquor and when the injured refused to give the same, then he was assaulted by the appellant. Thus the offence under Section 329 of IPC is also proved beyond reasonable doubt. Accordingly the conviction of the appellant for offence under Section 307 and 329 of IPC is upheld.

31. So far as the question of sentence is concerned, the Trial Court has awarded jail sentence of rigorous imprisonment of 10 years. The appellant is aged about 20 years. He has a long life to live. No minimum sentence has been provided either for offence under Section 307 of IPC or for offence under Section 329 of IPC. The incident is of the year 2013 and the appellant is in jail from the date of his arrest. Under these circumstances, this Court is of the considered opinion

that the period of rigorous imprisonment of 10 years can be reduced to rigorous imprisonment of seven years by enhancing the fine amount. Accordingly, for offence under Section 307 of IPC the appellant is sentenced to seven years rigorous imprisonment with fine of Rs.10,000/- in default he shall undergo rigorous imprisonment of three months and for offence under Section 329 of IPC the appellant is sentenced to undergo the rigorous imprisonment of seven years with a fine of Rs.10,000/- in default he shall undergo the rigorous imprisonment of three months. Both the sentences are directed to run concurrently.

32. Accordingly, the judgment and sentence dated 19.3.2015 passed by 14th Additional Sessions Judge, Gwalior in S.T.No.319/2014 is hereby affirmed with above mentioned modification. The appellant is in jail.

33. The appeal succeeds in part and allowed accordingly.