

Lekhraj vs.the State

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Court : Delhi

Decided On : Aug-21-2019

Appellant : Lekhraj

Respondent : The State

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on:

12. h July, 2019 Judgment Pronounced on:

21. t August, 2019 CRL.A.16/2002 Lekhraj The State Advocates who appeared in this case: For the Appellant : Versus Appellant Respondent Mr. Sandeep Sethi, Senior Advocate with Mr.Sidhant Kumar, Advocate with Appellant. Mr. Ravi Nayak, APP for the State : For the Respondent CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J1 The appellant has instituted the present appeal under section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C) against the impugned judgment dated 23.08.2001 and order on sentence dated 24.08.2001, in Session Case No.22/2001, arising out of FIR No.485/1996, registered at Police Station-Nangloi; whereby the Trial Court has convicted the CRL.A.16/2002 Page 1 of 45 accused Lekhraj (hereinafter referred to as the appellant) of a charge framed against him under section 302 Indian Penal Code,

2. Before going into the merits of the present appeal, it is relevant to recapitulate the brief facts of the present case which are as follows: On 09.07.1996, at about 5.30 p.m., one Dhara Singh came to the police post Nihal Vihar, PS Nangloi and informed that one Lekh Raj had murdered his wife Smt Mamta. On receipt of this information, SI Zile Singh, in-charge Police Post Nihal Vihar, reached the spot of crime i.e. house No.B-2777, Nihal Vihar, Delhi along with HC Bhagwati, Ct. Dharinder and Surinder where they found the dead body of deceased Mamta lying in a pool of blood. There were injuries on her forehead till her nose towards the right side and also on her left hand palm. The injuries had been caused by some sharp edged weapon and blood was oozing out from the injuries. In the meantime, Insp. Sh. P.S.Patwal, SHO PS Nangloi reached at the spot where Sh. Sri Pal, father of deceased Mamta was found present and his statement was recorded by SI Zile Singh. In his statement, Sh. Sri Pal, father of deceased Mamta told that he was working as meson and has two daughters and two sons. His eldest daughter namely Mamta(now deceased) was married to Lek Raj @ Titu R/o Bapa Nagar, Karol Bagh, Delhi on 10.05.1992 and from the said wedlock, one son namely Ashish, now aged 3 years, was born. On 10.06.1996, he had given Rs. 10,000/- to his son-in-law for construction of his house at Bapa Nagar and he himself worked there for CRL.A.16/2002 Page 2 of 45 inside the room. about two and half months. Even then, his son-in-law remained short of funds and demanded Rs. 25,000/- from him on 06.07.1996 but he refused to give. On this, his son-in-law told him that he would not take his daughter with him and he should remove his articles. Thereafter, he took his son Ashish and went to his house at Bapa Nagar, Karol Bagh, Delhi. While leaving from the house, Lek Raj, son-in-law of Sh. Sri Pal, threatened that he should remove his articles from his house otherwise he would kill his daughter. Sh. Sri Pal further told that on 09.07.1996, deceased Mamta and her brother Suresh aged about 5-6 years were present at their house. At about 5.00 p.m., when he returned to his house from work, he found his son Suresh weeping while standing near the door and he saw his daughter Mamta lying in a pool of blood While he was watching, his son-in-law Lekh Raj @ Titu set Mamta on fire with a match stick. Seeing him, his son-in-law whose clothes were soaked with blood and who was having a knife in his hand fled away from there.

He chased him for some distance but he succeeded in fleeing away from the spot. He immediately returned back and with the assistance of the people of the locality, extinguished the fire from the body of deceased Mamta. However by then, his daughter Mamta had expired. Sh. Sri Pal further told the police that due to the non fulfillment of the demand of Rs. 25,000/-of Lekh Raj @ Titu, he has burnt and killed his wife. FIR was registered on the basis of the above statement of Sri Pal. Inspector P.S.Patwal prepared site plan and conducted the inquest proceedings. Postmortem on the dead body of deceased Mamta was got conducted. SI Zile Singh called the photographer and got the scene of crime photographed. Appellant Lekh Raj was arrested on the same day and on his disclosure statement and on his pointing out, his blood stained shirt was recovered which CRL.A.16/2002 Page 3 of 45 for was lying in a park behind the bushes. Insp. Patwal also seized baniyan, pant and shoes of appellant having stains of blood on them which the appellant was wearing at the time of his arrest. Burnt clothes of deceased Mamta were seized. One acid bottle containing the acid, one empty kerosene can, one broken blade having blood on it which was having wooden dasta and a bolt on it were also seized. One hand bag on which Genius was written was also lifted from the spot apart from four burnt match sticks and one match box having unborn sticks. All the exhibits of this case were sent to the FSL for examination. After completion of the investigation, charge- sheet against the appellant was filed before the Court the offences punishable under Sections 302 of the IPC. Case was committed to the learned Sessions courts. Charge under section 302 IPC was framed against the appellant. The prosecution examined 12 witnesses in support of the case. Statement of accused was recorded and after hearing arguments, Learned Additionl Session Judge, Delhi vide impugned judgment dated 23.08.2001, convicted appellant Lekh Raj for the offence punishable under section 302 IPC and vide order dated 24.08.2001,he was sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/-. In default of payment of fine, the appellant was directed to further undergo RI for a period of three months. 3. Aggrieved by the impugned judgment and order on sentence, the appellant has filed the present appeal.

4. Learned Senior Counsel Sh. Sandeep Sethi for the appellant has argued that Learned Trial court has erred in law by placing heavy reliance on the

uncorroborated testimonies of PW-3 Sri Pal CRL.A.16/2002 Page 4 of 45 and PW-10 Suresh who are father and brother of the deceased respectively and failed to appreciate the fact that they being relatives were not independent witnesses. The prosecution has also failed to prove any motive on the part of the appellant to commit the offence. The testimony of PW-3 Sri Pal, father of the deceased is full of contradictions and stands completely rebutted by the defence evidence. Complainant (PW-3 Sri Pal) had never lodged any police report with regard to the alleged demand of a sum of Rs. 25,000/-by the appellant. On the contrary, the appellant in his defence has proved that the deceased Mamta had illicit relations with one Shyam Singh. The prosecution version is, thus, unreliable as the complainant had the motive to falsely implicate the appellant. It is further argued that there was undue delay in lodging the FIR which gave ample time and opportunity to the complainant to falsely implicate the appellant.

5. It is further argued by learned Senior Counsel that prosecution has failed to prove the recovery of the weapon of offence and could not link the same to the alleged commission of offence by the appellant. It is argued that the prosecution version is self- CRL.A.16/2002 Page 5 of 45 contradictory and not reliable as PW-3 has deposed that the appellant had run away from the spot with the knife whereas prosecution version is that the knife was recovered from the spot. It is further submitted that the photographs taken on the spot show two knives lying there and even if the prosecution version is believed for the sake of argument that the knife was recovered at the spot, it has failed to explain as to why only one of the knife was taken into possession and not the other one.

6. It is next argued by learned Senior Counsel that prosecution has failed to lift finger print impression from the knife for examination by the expert and this is a serious lapse since it would have proved that the knife was used by the appellant in commission of offence. Further the knife was also not sent to the Doctor, who had conducted the post-mortem, for his opinion on the point whether the injuries found on the body of deceased were inflicted by it.

7. Learned Senior Counsel has next argued that there are different versions regarding the place from where the appellant was arrested and there are other

contradictions in the statement of witnesses which go to the root of the matter and throw grave doubt CRL.A.16/2002 Page 6 of 45 on prosecution version. PW-5 HC Bhagwati has deposed that the appellant was arrested on the pointing out of PW-3 Sri Pal from his house at Karol Bagh. On the other hand PW-9 SI Zile Singh has stated in his cross examination that the appellant was arrested near a bridge in Nihal Vihar on receipt of a secret information. PW-12, Insp. Prem Singh Patwal on the other hand has stated in his cross examination that the appellant was apprehended on the pointing out of PW-3 from a park. PW-12 has further deposed that the disclosure statement of appellant was recorded in the park itself under an electric pole whereas PW-9 SI Zile Singh has stated in his cross examination that the disclosure statement of the appellant was recorded while sitting on the Kacha road near park. It is further argued that no independent public witnesses were joined during the above proceedings which makes the prosecution version unreliable.

8. Learned Senior Counsel has further argued that learned Trial Court has failed to appreciate the fact that non-examination of one Dhara Singh, who had allegedly informed the police first about the incident, is a grave lapse on the part of the prosecution. The explanation for his non examination given by the prosecution is not CRL.A.16/2002 Page 7 of 45 tenable for the reason that he was relative of PW-3 and his address was also available with the police.

9. It is lastly argued by learned Senior Counsel that learned Trial Court erred in convicting the appellant by totally ignoring and not applying its mind on the defence evidence, which is quite convincing and inspires confidence.

10. Per contra, Sh. Ravi Nayak, Learned APP for the State has submitted that there is no infirmity in the impugned judgment passed by the learned Trial Court and no interference is called by this Court. It was argued that the prosecution has proved commission of the offence with the help of statement of witnesses, medical as well as forensic evidence. It is further submitted that PW-3 Sri Pal and PW-10 Suresh are the eye witnesses to the incident and have seen the appellant committing the offence and keeping in view their consistent and cogent testimonies, the learned Trial Court has rightly convicted the appellant. It is further

submitted that the blood stained shirt of the appellant which was recovered at his instance connects him to the commission of offence. It is further submitted that eye-witnesses have given a CRL.A.16/2002 Page 8 of 45 consistent version of the incident and there are no such contradictions or discrepancies in their statements which may demolish the prosecution case. It is lastly submitted that since, the prosecution has proved its case beyond reasonable doubt, the present appeal be dismissed and the judgment of learned Trial Court be upheld.

11. We have considered the rival contentions and carefully examined the impugned judgment, order on sentence and the evidence appearing on record.

12. The prosecution case is primarily based upon the testimony of PW-3 Sri Pal, who is the father of deceased Mamta, and had seen the appellant Lekh Raj setting deceased Mamta on fire and PW-10 Suresh, who is brother of deceased and had seen the appellant inflicting injuries on the person of deceased with a knife. Before proceeding further, let us examine the testimony of PW-10 Suresh to find out whether Ld Trial Court has rightly appreciated his evidence. His deposition before the court is being reproduced for appreciating the arguments advanced by the learned Senior Counsel and learned APP for the State and it runs as follows:-

"CRL.A.16/2002 Page 9 of 45 to Q1: How old are you?. Ans: I am nine years old. Q2: In which school do you study?. Ans: I study in Govt. Boys School No.5 Jawalpur, Delhi. Q3: Which subject do you like most?. Ans: I like social studies. Q4: Do you speak truth or lie?. Ans: I should speak truth. Q5: what happens when you tell lie?. Ans: It is a sin From above questions and answers given by the witness, I am satisfied that the child witness is able to understand the questions properly and answer logically. He is fit to be examined. I remember the date of the incident which was 9/7/96. On that day, my elder sister Mamta and myself were at home. On that day, at about 5:15 PM my brother in law present in court came the house and started threatening my sister and also inflicted knife injury on her nose. My jeeja Lekhraj slapped me and thrown me out of the room. I remained standing at the door of the room. My jeeja poured Kerosene on my sister and set her a- fire. My sister was shouting for help bachao, bachao, I also started shouting bachao, bachao, meanwhile my father reached there, seeing my father the accused fled

with the knife. At the time the clothes of accused were soaked with blood. My sister died on the spot. XXXXXX by Cl. Sh. S.C. Dogra My father was working in camp in No.5 but I do not know the name of his employer. He was mistry by profession. I do not remember the colour of the clothes which I was wearing on that day. On the date of incident I was not studying in any school. Besides myself, my sister Mamta and my father, my elder brother Madan use to reside in the house. It is incorrect that Madan was also present in the house on that day. My sister used to the reside with her husband who was staying in Karol Bagh. As far as I remember Mamta had been CRL.A.16/2002 Page 10 of 45 staying in our house for one week before the incident. Accused was not staying in our house that time. It is incorrect that any boy of the name Shyam Sunder used to come to meet my sister Mamta in the absence of my father. People had gathered when I raised the alarm. I do not know my date of birth. I also do not remember the date of my admission in the school. It is incorrect that I was tutored to narrate the story. On the date of incident I did not know to read the time. The time was told to me by the police. I was aware of the date on the date of incident. Police made enquiries from me. I had narrated to the police that accused slapped me. Confronted with EX.PW10DA where it is not so recorded. I do not remember the colour of the clothes of the accused on the date of incident. The quarrel had taken place on account of money. It is incorrect that I was not present in the house but was playing outside the house and had not seen any incident and deposing falsely at the instance of police. 13. We are conscious of the fact that PW-10 Suresh was 9 years old at the time of incident. However, perusal of his testimony reveals that it is cogent, consistent and trustworthy. Though, he was thoroughly cross examined by the learned defence counsel but no such contradiction, discrepancy or inconsistency has appeared in his testimony which may impeach his creditworthiness. On thorough examination, we find his testimony natural and free from any tutoring. His specific and vivid testimony with regard to his presence at the spot at the time of incident and his deposition CRL.A.16/2002 Page 11 of 45 regarding seeing the appellant inflicting knife blows on his sister is trustworthy and reliable. Learned Trial Court has also recorded the reasons as to why PW-10 Suresh was a competent witness and why his evidence is unblemished. We do not find any reasons to disagree with the findings of the learned Trial Court. Learned

Trial court has rightly held that PW-10 Suresh has fully stood the test of cross-examination and has given rational answers to the questions put to him in his cross examination. Learned Trial Court has further rightly held that under Section 118 of the Indian Evidence Act, the competency of a child to give evidence is not regulated by the age but by the degree of understanding, he appears to possess. Learned Trial court has further held that his testimony is pure and unpolluted and is entitled to the highest credit and we, therefore, find no reasons to disbelieve his testimony. It is a settled law that conviction can be based upon the testimony of a child witness if he is able to understand the questions and gives rational answers thereto. However, the rule of caution demands that his evidence is to be evaluated very carefully so as to rule out any possibility of him being tutored. In this regard, we may also refer to the observation CRL.A.16/2002 Page 12 of 45 of the Honble Supreme Court in Dattu Ramrao Sakhare v. State of Maharashtra [(1997) 5 SCC341, which are as follows:-

"the questions and able "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

14. In light of the above proposition of law, we have carefully examined the testimony of PW-10 Suresh and are of the opinion that though he was of tender age but he has given a consistent version of the incident. We also find his testimony clear, cogent and independent. Thus, learned Trial Court has not committed any illegality by relying upon the same for convicting the appellant.

15. The next material witness examined by the prosecution is PW-3 Sri Pal, who is father of deceased Mamta. He had reached at the spot when appellant was setting

the deceased Mamta on fire. He has also narrated the incident in detail and has deposed as follows:-

"CRL.A.16/2002 Page 13 of 45 Deceased Mamta was my daughter. In the year 1992 I married my daughter Mamta with accused Lekh Raj today present in court. After marriage she started living at her matrimonial House situated at Bapa Nagar, Karol Bagh. After

months from marriage accused started Maltreating with my daughter and he used to demand money from me. Once after about

years from marriage he demanded Rs.10,000/- from me to meet with his expenses, which I paid to him at his house. Prior to death of my daughter i.e. about 1 prior, accused started construction of his house at Bapa Nagar, Since I was mason, I worked for construction of his house at the site for about 2 months. He had then raised the demand of Rs. 25,000/- from me, when he had come to me at my house but I do not remember the date, month or year, however it was prior to her death, however I refused to make this demand. Upon my refusal, he declared that either I should bring my daughter back from his house, or to pay Rs. 25,000/- Then

days prior to the incident, when I had gone to his house, he had ousted my daughter from his house, whom I had brought back to my house. About 3 days before the final incident accused had again come to my house and threatened to kill my daughter in case I do not pay Rs. 25,000/- to me, however I did not take his words as true, but he left my house at that time. On 9.7.1996 about 5 p.m., accused today present in court came to my house where my younger son Suresh along with my daughter Mamta was present and I was a way to my work, at about 5:15 p. m. when I returned to my house and found my son Suresh weeping at the door of the house. Immediately I entered the house and found my daughter Mamta lying on the floor of the house, while she was bleeding from her face. At that time accused today present in court was setting my daughter on fire with a matchstick which he ultimately did in my presence. At that time accused was armed with a knife, with which he had run away from the CRL.A.16/2002 Page 14 of 45 spot. I then with the help of neighbourers, extinguish fire on the body of my daughter Mamta, but by that time my daughter had already expired. I had narrated this incident to the police, vide my statement EX.PW3/A, which is correct and is under

my sig. at point A. Police on arrival at the spot had seized one saree of my daughter, one kerosene oil cane, one bottle of acide, one match box, also lifted the blood from the spot etc., after sealing these items into different parcels, vide memo EX.PW3B which bears my sig. at point A. On the same day accused today present in the court was arrested from DDA park on the same day. At that time accused was wearing a vest, a pant, and a shoes, which he was wearing at that time having blood stains, which was also sealed and seized vide memo EX.PW3C. During his interrogation accused volunteered a discl. statement EX.PW3D and consequent upon this discl. he got recovered a blood stain shirt from a bushes of a DDA Park which was also sealed into a parcel and it was seized vide memo EX.PW3/D. I can identify these articles if shown to me. (at this stage a sealed parcel having seal of ZSS is opened and found to contain a bag) accused had brought on the day of incident this bag EXP1, which police lateron seized. (at this stage another parcel having FSL seal is opened and found to contain in a blood stain white shirt). White shirt EX.P2 is the same which accused got recovered from bushes.(at this stage another sealed parcel having FSL seal is opened and found to contain pair of shoes, a pant and a vest) pair of shoes EX.P

to 2, pant EX.P4 and vest EX.P5 are the same as stated by me above. (at this stage another sealed parcel having FSL seal is opened and found to contain burnt clothes, bed sheet et. of diseased). These clothes collectively are EX.P6. At the spot one pattinuma blood stained knife was also recovered by the police, which I also can identify. (at this stage it is revealed that CRL.A.16/2002 Page 15 of 45 A. Discl. statement acide bottle, kerosene oil cane and the Plattinuma knife are not produced, so further examination of witness is deferred). When I entered in the room on 9.7.96, I had found my daughter lying in pool of blood on floor. The police had also seized a Acid bottle EX. P7, can of kerosene EX. P8 from the house. Before the dead body was sent to mortuary, for post mortem I had identified her dead body, and my statement in this report is EX.PW3/ E. I had also joined in the proceedings and death repost EX. PW3/F bears my sig. at point A. The articles seized by the police from our H.No.RZ-B-277, Nihal Vihar, were seized vide memo EX.PW3/B, which bears my sign. at point A. Accused on the same day was arrested, on 9.7.96., his P.S. was taken vide memo EX. PW3/G which bears my sign. at point of accused EX.PW3D also bears my sig. at point A, recovery memo

of the shirt recovered at the instance of accused EX. PW3/B also bears my sig. at point A. The clothes, which accused was wearing at the time of crime, was seized vide memo EX. PW3/C, which bears my sig. at point A. SDM had also recorded my statement which is EX.PW3 H, bears my sig. at point A. (at this stage parcel No.4 sealed with court seal is opened and knife is taken- out. The knife with broken blade which police also sealed from my house is EX.P9.(at this stage another sealed parcel having seal of CFSL is opened and found to contain empty matchbox is taken) (at this stage another sealed parcel having seal of CFSL is opened and found to contain empty match box is taken), which is partially burnt. This is the same match box which was found from the spot by the police and same is EX. PW10 another in which 4 matchsticks were placed and sealed is EX.P11 xxxxxxxxxxxx by Sh. S. Singh, Adv. for accused. empty matchbox CRL.A.16/2002 Page 16 of 45 Police had recorded my statement twice and I had signed those statements. I had signed my statements. Police had reached the spot for the first time, at about 5/5.30PM.

police officers have come but I cannot tell their names. Occurrence took place at about 5 PM and police reached at the spot at about 5.30PM. My daughter had expired at the spot, and she was not taken to any hospital for treatment. Police was informed by Dhara, who resides in Peera Garhi. On the date of occurrence I had gone to my work. Dhara had not gone with me. Dhara is my relation and he had come to my house to take me for some work. It is wrong to suggest that when I returned from my work, Dhara was already present. When accused had come out of the house public had come. Since the knife was in the hands of the accused, so nobody dared to apprehend the accused. On that day, I was working at 5 No., Jawalapuri and I was free from my duty at about 5PM. It was a distance covered within 10 minutes from Jawalapuri, to my house. It is correct that I had given Rs.10000/- to the accused. It is correct that before the occurrence, there were tensed relation between my daughter and her husband. In my house, I live with my son. Mamta had come to my house

days before the date of occurrence. Her son was with her. On Saturday, prior to date of occurrence, accused had taken away his son from my daughter and he had warned my daughter to be at my house as he was to return on Monday. I had raised an alarm and there was no occasion to express the happiness after seeing

my daughter in pool of blood. My daughter was lying dead in burnt condition. There were many persons, and I can name if there were persons to extinguish the fire. In my presence, statements of these persons were not recorded by the police. At the time of raising construction by the house of accused, my daughter was residing with his uncle. CRL.A.16/2002 Page 17 of 45 I am unable to stand for a long time. First of all my statement was recorded by the police. I do not know who is SDM. My statement was also recorded at Tis Hazari in court and that statement was recorded after the dead body was criminated. I had stated whatever incident had taken place to the police and SDM. I had stated in my statement to the police that after months of marriage, her husband had started harassing, beating and maltreating her. (con. with Ex.PW3/DA where it is not so recorded). I had stated to the police that I had given Rs.10000/- to my son in law after about years of the marriage. 16. Perusal of testimony of PW-3 Sri Pal reveals that he has fully supported the case of the prosecution and also given the motive behind commission of the offence by the appellant. Though, this witness has not seen the appellant inflicting injuries upon the person of deceased Mamta as he was not present at that particular time, however, he was present when appellant was setting the deceased Mamta on fire with the help of match stick. This particular fact also stands corroborated by the testimony of PW-10. The learned Trial Court has analyzed the testimony of this witness and has given following reasons as to why he should be believed:-

"33.A careful scrutiny of the evidence of PW-3 Sri Pal would show that his evidence could not be demolished or shaken at all in the cross- examination. He had fully stood the test of cross- examination. His evidence, therefore, is liable to CRL.A.16/2002 Page 18 of 45 be accepted in this case. The presence of Sri Pal at the spot could not be put in doubt despite a searching cross-examination. The evidence of Sri Pal also corroborates the version of PW-10 Suresh that he was present at the spot at the time of the incident. When Sri Pal had returned to his home at about 5.15 PM, he found his son Suresh PW10 weeping at the door of his house. Sri Pal found his daughter lying in a pool of blood on the floor of the room. In his presence, the accused even had set his daughter on fire with a match stick and therefore he had fled away from there with a knife with which he was armed. 17. We find no infirmity or illegality in appreciation of the evidence of PW-3 by the

learned Trial Court. Though, this witness was thoroughly cross examined but nothing beneficial to the defence has emerged out of the same. In fact, a suggestion was given to the witness that he had given Rs. 10,000/- to the appellant and the relations between his daughter and her husband were tense. The said suggestion was admitted by the witness to be correct, thereby proving that money was given to the appellant and there were strained relations between appellant and deceased. Perusal of statement of PW-3 further reveals that there is no cross-examination by the learned Defence Counsel on the point that appellant had raised a demand of Rs. 25,000/- from him and he (PW-3 Sri Pal) had refused to meet the same and upon his refusal, he (the appellant) had CRL.A.16/2002 Page 19 of 45 declared that either PW-3 should bring his daughter back from appellants house or to pay Rs. 25,000/- and about eight to ten days prior to the incident, the appellant had ousted his daughter Mamta from the house. Further, there is no cross examination of PW-3 on the point that about three days prior to the final incident, the appellant had come again and threatened to kill his daughter in case he did not pay Rs. 25,000 to him. Since there is no cross examination at all on these vital points, it proves that appellant had reason to commit the offence since PW-3 Sri Pal had refused to meet the demand of Rs. 25,000/-, raised by the appellant and the appellant had threatened that in case of refusal, he would kill his daughter. This, thus, proves the motive behind commission of the offence by the appellant. This also answers the contention of learned Senior Counsel that accused had no motive to kill the deceased Mamta. Though it is a settled law that existence or absence of motive is of little significance when the offence is proved by way of evidence of eye-witnesses as well as by medical and forensic evidence. In this context, reliance can be placed upon Om CRL.A.16/2002 Page 20 of 45 Prakash Vs. State of Uttaranchal, (2003) 1 SCC648 wherein the Honble Supreme Court, has held as under:-

"We are not concerned with the sufficiency or otherwise of the motive which would have prompted the appellant to commit the crime. The correctness of conviction cannot be tested on the touchstone of lack of sufficient motive, if the evidence establishes beyond reasonable doubt that the accused committed the crime. Such evidence in abundant measure in the instant case. is available 18. Perusal of the testimonies of PW-3 Sri Pal and Pw-10 Suresh further reveals that there is no

cross examination on the point that appellant had set his wife on fire in the presence of these two witnesses. There is also no cross examination on the point of the arrest of the appellant from DDA Park and that he was wearing vest, pant and shoes which were having blood stains. There is further no cross examination on the point that appellant had got recovered blood stained shirt from the bushes in a DDA park. In these circumstances, we are of the opinion that PW-3 Sri Pal and PW-10 Suresh have fully supported the prosecution version and learned Trial Court has rightly appreciated the evidence appearing on record CRL.A.16/2002 Page 21 of 45 and has given a reasoned finding and there is nothing on record to suggest that findings are perverse.

19. Learned Senior counsel for the appellant has next argued that learned Additional Sessions Judge did not apply his mind to the fact that as per the testimony of PW-3 Sri Pal, the appellant had run away from the spot with a knife in his hand. On the other hand, the prosecution version is that the knife was recovered from the spot. There is, thus, a major contradiction regarding recovery of alleged weapon of offence and it goes to the root of the matter and makes the prosecution version unbelievable.

20. We have given our thoughts to the matter. PW-3 Sri Pal has deposed that knife Ex.P-9 was recovered from the spot and it is also clear from the photograph Ex.PW11/A4 that knife is lying at the spot. The said knife was also sent to FSL for forensic examination. As per FSL report, the blood stains were detected on the alleged knife and the same were of B Group. Perusal of FSL report Ex.PW12/E reveals that one burnt piece of toshak(Gudari) Ex.1a, burnt piece of bed-sheet Ex.1b, burnt blouse piece Ex.1c, broken knife having wooden handle Ex.4, pant of appellant Ex.5a, T-shirt CRL.A.16/2002 Page 22 of 45 of appellant Ex.5b, pair of leather shoes Ex.5c, shirt Ex.6, one sealed bottle containing bunch of hairs Ex.7 and one gauze cloth piece having brown stains Ex.8, were sent to FSL for opinion. As per FSL report Ex.PW12/E, blood was detected on exhibits 1a, 1b, 1c, 2, 4, 5a, 5b, 5c, 6,7 and 8 except Ex.3 which is a control sample of earth. Further, as per the Serological report of Biology Division, FSL which is also a part of FSL report Ex.PW12/E, blood stains over all the above mentioned exhibits (except Ex.3 which was a control sample of earth) were of human origin having B Blood group.

21. The FSL report EXPW12/E has been proved by PW-12 IO Insp. Prem Kumar. There is no cross examination by learned Defence counsel of PW-12 IO Insp. Prem Kumar on the FSL report. Not even a suggestion has been given to the effect that the report is not correct. Thus, it is clear from the testimony of PW-3 Sri Pal and FSL report Ex.PW12/E showing human blood of B group on the knife as well as on the other exhibits, that knife Ex.P-9 was the same that was recovered from the spot and used by appellant for commission of offence. No doubt, PW-3 Sri Pal has stated that CRL.A.16/2002 Page 23 of 45 appellant had run away from the spot with knife, however, it is a settled law that the statement of witness has to be read as a whole if it is otherwise trustworthy and reliable. Minor discrepancies need not be looked with an eye of suspicion. Testimony of PW-3 Sri Pal remains unshattered in the cross examination and he has given a consistent version of the incident. Minor contradictions and improvements are bound to appear in the statement of a witness and these do not demolish the prosecution version when otherwise the statement is trustworthy and reliable. The Honble Supreme Court in State of Rajasthan Vs. Smt. Kalki and Another, (1981) 2 SCC752 has also held as under; to place reliance on 8. The second ground on which the High Court refused the evidence of P.W. 1 was that there were "material discrepancies". As indicated above we have perused the evidence of P.W.

1. We have not found any "material discrepancies" in her evidence. The discrepancies referred to by the High Court are, in our opinion, minor, insignificant, natural and not 'material'. The discrepancies are with regard to as to which accused "pressed the deceased and at which part of the body to the ground and sat on which part of the body; with regard to whether the respondent Kalki gave the axe blow to the deceased while the latter was standing or lying on the ground, and whether the blow was given from the side of the head or from the side of the legs. In the depositions of witnesses there are always some normal discrepancies CRL.A.16/2002 Page 24 of 45 however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1. and the 22.

Learned Senior Counsel for the appellant has next argued that learned Trial Court failed to consider the fact that as per the testimony of PW-3 Sri Pal and PW-10 Suresh, public persons were present at the time of incident but none of them have been joined as witness. He has further argued that public persons were also not joined at the time of arrest of the appellant and recovery of shirt from the park and this throws grave doubt on the prosecution version.

23. We have carefully considered the contention of Learned Senior Counsel. It is a matter of common knowledge that public persons are generally reluctant to join police proceedings and there is general apathy and indifference on their part to join such proceedings. It is a general tendency of people that they do not like to get themselves involved in any kind of legal impediments. In CRL.A.16/2002 Page 25 of 45 these circumstances, non-joining of public persons present at the time of apprehension of the appellant does not make the prosecution case unreliable. Further, non joining of public witnesses who are unwilling and hesitant in recovery proceedings is also not a legal requirement as police officials who are witness to the same are equally competent witnesses as held by the Honble Supreme Court in Gian Chand & Ors. Vs. State of Haryana, (2013) 14 SCC420 wherein it was held as under; to the conclusion in the investigating or 32 In Rohtash Kumar v. State of Haryana this court considered the issue at length and after placing reliance upon its earlier judgments came that where all witnesses are from the police department, their depositions must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belong to the police force, and are either interested the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars should be sought. The Court held as under: Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon. (See also: Paras Ram v. State of Haryana, Balbir Singh v. State, Akmal Ahmad v. State of Delhi, M.Prabhulal v. Directorate of Revenue CRL.A.16/2002 Page 26 of 45 the Intelligence and Ravindran v. Supt. of Customs).

34. In Appabhai & Anr. v. State of Gujarat AIR 1988 SC696 this court dealt with the issue of non-examining independent witnesses and held as under (SCC pp.245-46, para

11) 11the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of indeed unfortunate, but it is there everywhere whether -in village life, towns or cities. One cannot ignore the investigating agency has to discharge its duties. this handicap with which the general public is 24. Learned Senior counsel has next argued that since both PW-3 Sri Pal and PW-10 Suresh were relatives of the deceased being father and brother respectively, their testimonies, therefore, ought not to have been relied upon by the learned Trial Court for convicting the appellant.

25. We have considered the submission of learned Senior Counsel and are of the opinion that testimony of PW-3 & 10 cannot be disbelieved merely on the ground that they are relatives of the deceased Mamta, since their testimonies are cogent, consistent and CRL.A.16/2002 Page 27 of 45 trustworthy. The Honble Supreme Court in Harbans Kaur v. State of Haryana, (2005) 9 SCC195, has held that there is no proposition of law that related witnesses cannot be reliable witnesses. The Honble Court has held as under; 7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason falsely implicate the accused. to shield actual culprit and 26. In another case titled Israr Vs. State of U.P. (2005) 9 SCC616 the Honble Supreme Court has further held that relationship is not a factor to affect credibility of a witness. The observation runs as follows; counsel actual 12. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would culprit and make not allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to

adopt a careful approach and analyse evidence to find out whether it is cogent and credible. 27. In view of the above proposition of law, we have no hesitation to hold that learned Trial Court has rightly relied upon the statement of PW-3 & PW-10 who were natural witnesses and have CRL.A.16/2002 Page 28 of 45 given a consistent, reliable and trustworthy account of the incident. Since the incident had happened at the residence of PW-3 Sri Pal as well as PW-10 Suresh, the presence of these witnesses at the spot is natural and, therefore, they were not planted witnesses.

28. Learned Senior Counsel for the appellant has next argued that prosecution version is not reliable for the reason that if number of public persons were present at the spot, the appellant could not have managed to flee from there.

29. We have given our thoughts to the matter. The people are concerned about their own safety and it is difficult to expect from them to catch hold of a fleeing murderer wearing blood stained clothes. There is always a reasonable apprehension in the mind of the people that that they may also meet with the same fate as that of the victim or may suffer grievous injuries in the process of overpowering the offender. We cannot shut our eyes to the ground realities and, therefore, the contention of learned senior counsel cannot be accepted.

30. It is next argued by learned Senior counsel that learned Trial Court has failed to appreciate the fact that the recovery of shirt CRL.A.16/2002 Page 29 of 45 Ex.P2 affected at the instance of appellant is not admissible in evidence for the reason that the same is alleged to have been recovered from a public place and it cannot be said to be such a place which was within the exclusive knowledge of the appellant. He has, therefore, argued that the prosecution version regarding the recovery of blood stained shirt in the park is not believable.

31. We have given our thoughts to the matter. The appellant was arrested on 09.07.1996 and during interrogation, he had made a disclosure statement Ex.PW3/D and on his pointing out, his blood stained shirt which was lying in a park behind the bushes was recovered. We are of the opinion that since the blood stained shirt was recovered at the instance of appellant from park behind the bushes and the place of recovery was in exclusive knowledge of appellant, the

recovery of the same is admissible in evidence. In this regard reliance can be placed upon State of Himachal Pradesh vs. Jeet Singh, (1999) 4 SCC370, wherein the Honble Supreme Court has held as under; There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion CRL.A.16/2002 Page 30 of 45 that when recovery of any incriminating article was made from a place which is open or accessible to others. It would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For Example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. is not whether 32. Learned Senior Counsel for appellant has, however, drawn our attention to Makhan Singh Vs. State of Punjab, Crl. Appeal No.238 of 1988 decided by Honble Supreme Court on 27.07.1988 and has argued that recovery effected from the appellant does not prove that he had committed the offence for the reason that shirt was recovered from an open place i.e. park and it cant be said to be a place within exclusive knowledge of appellant.

33. We have carefully gone through the above case and are of the opinion that the same is distinguishable on the basis of facts and circumstances stated therein. In the case before the Honble CRL.A.16/2002 Page 31 of 45 Supreme Court, one witness Amrik Singh had told IO that dead body and other articles were buried by the accused in the field. The field was an open place. In the said case, the IO had admitted that after recording the statement of one witness Amrik Singh, he knew that the bodies were buried in the field. It was, therefore, held by Honble Supreme Court that since one of the witness Amrik Singh also knew that bodies and articles were buried and concealed in open field, therefore, exclusive knowledge of the place and articles concealed therein cannot be attributed to the appellant and the evidence under section 27 of Indian Evidence Act cannot be said to be a

circumstance against the appellant. In these circumstances, the Honble Supreme Court had held that recovery which was effected at the instance of accused could not be said to be in his exclusive knowledge whereas in the present case, blood stained shirt of appellant was recovered from behind the bushes in the park and except appellant, no one else knew about this fact. The appellant had led the police officials and got the blood stained shirt recovered. Thus, the authority cited by learned Counsel for the CRL.A.16/2002 Page 32 of 45 appellant does not help the appellant in proving the fact that blood stained shirt recovered at his instance is not admissible in evidence.

34. Learned Senior counsel for the appellant has next relied upon, Varghese vs. State of Kerala, JT19982) SC436 wherein the Honble Supreme Court has held that the only evidence against the accused was that of discovery of knife and gloves recovered in pursuance of the statement made by him in police custody and since the knife and gloves were found lying in open paddy field and there was no statement indicating concealment of the weapon or articles by the appellant, this evidence cannot be made the basis for conviction of the appellant.

35. We have given our thoughts to the matter. The present case is clearly distinguishable since there was a statement made by appellant and in pursuance of the same, recovery of blood stained shirt was effected and there was other evidence also in the form of statement of eye-witnesses, medical and forensic evidence before learned Trial Court to connect the appellant and the authorities cited by learned Senior counsel, therefore, do not help the appellant. Lastly, it will also be relevant to point out that learned defence CRL.A.16/2002 Page 33 of 45 counsel had not cross examined the IO on the point relating to the recovery of shirt from the park and this fact remains unchallenged and proved on record.

36. Learned Senior Counsel for the appellant has next argued that learned Trial Court did not apply its mind to the fact that one of the material witness i.e. Dhara Singh has not been examined by the prosecution, though he was the first to inform about the incident on 09.07.1996 at 5.30 PM at PP Nihal Vihar (PS Nangloi) and a DD No.14, Mark A, was also recorded in this regard. It is argued that since Dhara Singh was an important witness and, therefore, an adverse inference has to be

drawn against the prosecution for his non examination and benefit of doubt should be given to the appellant.

37. We have given our thoughts to the matter. It is a settled law that prosecution is not bound to produce all the witnesses cited by it. Only those witnesses who are considered necessary by the prosecution for unfolding its version need to be produced before the court. However, in the present case, PW-12 IO Insp. Prem Singh Patwal has deposed that Dhara Singh was not traceable. The CRL.A.16/2002 Page 34 of 45 learned Senior counsel for the appellant was also not able to show us as to how the prosecution version is rendered less trustworthy if the said witness was not examined in the court. Dhara Singh was not an eye witness to the incident and in case, the defence was of the opinion that Dhara Singh ought to have been examined by the prosecution and it has deliberately not examined him, nothing prevented the appellant to examine him as a defence witness. (Ref.:-

"Reghubir Singh vs. State of Uttar Pradesh (1972) 3 SCC79.

38. Learned Senior Counsel has next argued that learned Trial Court did not apply its mind to the fact that testimonies of all the official witnesses (i.e. police officials) are full of contradictions, particularly with regard to arrest of appellant. He has argued that PW-5 HC Bhagwati has deposed that the appellant was arrested on the pointing out of PW-3 from his house at Karol Bagh. On the other hand PW-9 SI Zile Singh stated in his cross examination that the appellant was arrested near a bridge in Nihal Vihar on receipt of a secret information. Further, PW-12, Insp. Prem Singh Patwal has stated in his cross examination that the appellant was apprehended CRL.A.16/2002 Page 35 of 45 on the pointing out of PW-3 from a park and that his disclosure statement was recorded in the park itself under the electric pole whereas PW-9 SI Zile Singh stated in his cross examination that the disclosure statement of the appellant was recorded while sitting on the Kacha road near park.

39. We have considered the contradictions pointed out by learned Senior Counsel and are of the opinion that minor contradictions in the statement of police officials with regard to the place of arrest of the appellant or where the writing work was

done do not go to the root of the case. We cannot be oblivious of the fact that incident had happened on 09.07.1996, whereas PW-3 Shri Pal, PW-5 HC Bhagwati, PW-7 Ct. Dharmender, PW-9 SI Zile Singh & PW-12 IO Insp. Prem Singh Patwal were examined in the year 1999 to 2000 i.e. approximately after 3 to 4 years of the incident. It is very difficult for a witness to remember each and every detail of his statement or what he had done or seen. Minor contradictions, which are not material, need to be disregarded if they do not demolish the prosecution version. As discussed earlier, there is authentic ocular evidence on record which stands supported by medical and forensic CRL.A.16/2002 Page 36 of 45 evidence and, therefore, these contradictions are not fatal to the prosecution version.

40. It is next argued that learned Trial Court has failed to appreciate the fact that there has been undue delay in lodging the First Information report and this gave ample time and opportunity to the complainant to falsely implicate the appellant by concocting a totally false story.

41. We have carefully gone through the evidence. As per record, the incident had taken place at around 5.00 p.m. and one Dhara Singh had first informed PP Nihal Vihar at about 5.30 p.m. about the incident. DD no.14 dated 09.07.1996 was recorded to this effect and thereafter IO SI Zile Singh along with HC Bhagwati, Ct. Dharmender and Ct. Surinder had reached the place of occurrence. On the basis of statement of complainant Sri Pal, rukka was prepared by IO SI Zile Singh and he had sent HC Bhagwati to PS for lodging the FIR at about 7.25 p.m. and on the basis of the rukka, the present FIR No.4

U/S302IPC was recorded at 7.45 p.m. Since, the FIR has been lodged on the same day i.e. the date of incident and within two hours and 45 minutes after the happening of CRL.A.16/2002 Page 37 of 45 the incident, it, therefore, cannot be said that appellant was falsely implicated in the present case by delaying the lodging of FIR.

42. It is next argued by learned Senior Counsel that learned Trial Court has failed to consider the fact that the photographs of the spot Ex.PW11/A4 clearly show two knives. The prosecution has, however, seized one knife and has failed to explain as to why only one knife Ex.P-9 was taken into possession particularly when

evidence does not support that knife Ex.P-9 was used in commission of the offence.

43. We have seen the photographs placed on record. The prosecution has seized one knife Ex.P-9 which had blood stains on it and as discussed earlier, that was used by the appellant for inflicting blows on his wife. So far as other knife in the photograph is concerned, it may be a pencil or paper cutter or any other kind of knife. However, since the prosecution has not relied upon the same and in fact it has proved that Ex.P-9 was used by the appellant, therefore, the submission of learned Senior counsel as to why the second knife was not taken into possession is not relevant and does not render the prosecution version unreliable. CRL.A.16/2002 Page 38 of 45 44. It is next argued by learned Senior Counsel that findings of learned Trial Court are not in accordance with law as it has failed to consider the fact that prosecution had not taken finger print impression from the knife which is a grave lapse as the same was necessary to prove that the knife was used by the appellant in commission of the offence. It is further argued that the knife Ex.P-9 was also not sent to the Doctor, who had conducted the post-mortem, for opinion on the point whether the injuries found on the body of deceased were inflicted by the same.

45. We have considered the contention of learned Senior Counsel. The prosecution has proved its case beyond reasonable doubt by leading cogent and trustworthy ocular and forensic evidence. In these circumstances, even if the knife was not sent for finger print examination and the same was also not sent to the doctor who conducted postmortem, it does not, in any way, dilute the prosecution version. Though, it is a settled law that in a case where there is trustworthy ocular evidence, non recovery of weapon of offence has not much consequence. In *Mritunjoy Biswas Vs. Kuti Biswas and Anr.*, (2013) 12 SCC796 the Honble Supreme Court has held that when there is unimpeachable ocular evidence, non recovery of weapon is not fatal to the prosecution case. However, as discussed earlier, in the present case knife has been recovered and it has also been proved that it was used by the appellant for inflicting fatal blows upon the deceased. The contention of the learned Senior Counsel, therefore, does not affect the prosecution case.

46. Learned Senior counsel has lastly argued that appellant has been falsely implicated as he had caught his wife red handed with one Shyam Singh with whom she had illicit relations and learned Trial court has failed to consider the said fact. He has also drawn the attention of this court to the defence evidence. He has argued that trial court has totally ignored the evidence of DW-1 Sh. Pooran Chand and DW-2 Sh. Mukesh who have deposed that they knew the appellant from childhood. The wife of the appellant had developed illicit relations with one Shyam Singh and appellant had caught his wife red-handed and there was a meeting in which Sh. Shyam Singh had told that either Mamta should be married to him or he would destroy appellants house. CRL.A.16/2002 Page 40 of 45 47. DW-3 Shyam Lal has deposed that in the year 1996, he had gone to the house of appellant to work as a labour. He had worked there for one month. The appellant used to leave the house leaving him, PW-3 Sri Pal who was also working there and two other labourers in the said house. At that time, son of Lekh Rajs Tau Mr. Shyam Singh used to visit Mamta and they both used to sit in a room together. He has further deposed that Shyam Singh had visited Mamta on the date of incident at about p.m. and he had heard the noise of a quarrel between Mamta and Shyam Singh.

48. Learned Senior counsel has argued that learned Trial Court has not fully appreciated the statements of DW-1, 2 & 3 who have proved that deceased had illicit relations with one Shyam Singh who has falsely implicated the appellant.

49. We have considered the contention of learned Senior Counsel and carefully perused statements of all the defence witnesses i.e. DW-1, 2 & 3. The learned Trial Court has given reasons for not relying upon the testimonies of these witnesses. So far as DW-1 and DW-2 are concerned, the learned Trial court has observed that both the DWs could not tell the date when deceased Mamta was CRL.A.16/2002 Page 41 of 45 caught red handed by the accused, when she was with Shyam Singh. There is absolutely no trustworthy and convincing evidence to show that the deceased had illicit relations with any Shyam Singh. The DWs have failed to tell even the date when the accused had caught his wife with Shyam Singh red handed. What the deceased was doing with that alleged Shyam Singh has not even been clarified by these DWs. Ld. Trial Court has, therefore, held that the evidence of these two DWs in no way helps the accused in creating any kind

of doubt in the trustworthiness of the prosecution case.

50. Learned Trial court has also given its reasons for not relying upon the testimony of DW-3 and has observed that DW-3 Shyam Lal, a neighbor, has made a fantastic statement. According to him, on the date of the incident, Shyam Singh had visited Mamta at about

PM and he had heard the noise of a quarrel from the house of Mamta and the quarrel was between Mamta and Shyam Singh. In cross-examination, this witness has admitted that he was at his house on 09.07.1996. If he was present at his house on 09.07.1996, how could he see and depose that Shyam Singh had CRL.A.16/2002 Page 42 of 45 visited the house of Mamta at about

PM. Learned Trial Court has, therefore, held that the evidence of DW3 Shyam Lal is absolutely untrustworthy and he rejected the same. In any case, his evidence also in no way helps the case of the accused.

51. We find no infirmity or perversity in the appreciation of defence evidence by learned Trial Court. As discussed by learned Trial Court, DW-1 Pooran Chand and DW-2 Mukesh have failed to give the date when appellant had caught deceased Mamta with one Shyam Singh. There is no clear, cogent and convincing evidence on record to prove illicit relationship between deceased Mamta and Shyam Singh and defence evidence, therefore, does not help the appellant in proving the fact that he has been falsely implicated. Similarly, the testimony of DW-3 Shyam Lal is also not believable for the reason that in his cross-examination, he has stated that he was in his house on 09.07.1996 and, therefore, learned Trial Court has rightly observed that since he was in his house, it was not possible for him to state that Shyam Singh had visited the house of Mamta at

p.m. He has also failed to prove any illicit relationship between deceased and Shyam Singh. His evidence is CRL.A.16/2002 Page 43 of 45 not convincing and reliable and it, therefore, does not help the appellant in proving his innocence.

52. A careful examination of testimonies of DW-1, 2 & 3, thus, reveals that defence evidence is totally unbelievable and does not inspire that confidence and trust which may compel us to ignore the ocular testimony of PW-3 Sri Pal and PW-10 Suresh as well as medical and forensic evidence. The appellant despite leading

defence evidence has, therefore, failed to prove the fact that he was falsely implicated for the reason that Mamta (deceased) had illicit relations with one Shyam Singh.

53. In view of the foregoing discussion, we find the testimonies of PW-3 Sri Pal and PW-10 Suresh reliable and creditworthy. Their testimonies are completely and demonstrably corroborated by the medical as well as forensic evidence. Therefore, we have no hesitation in arriving at a conclusion that the evidence on record leads to but one inescapable conclusion, that appellant was guilty of committing murder of his wife.

54. The appeal is devoid of merit and is accordingly dismissed. In our view the sentence awarded by the trial court also does not warrant any modification. The impugned Judgment dated 23.08.2001 and order on sentence dt. 24.08.2001 are, therefore, hereby upheld.

55. Accordingly, the present appeal fails and the same is dismissed. Appellant is on bail. His bail bond is cancelled. He is directed to surrender before the Jail superintendent, Tihar Jail within 7 days.

56. Copy of the judgment be sent to the Jail Superintendent, Tihar Jail and also be sent for updation of records. AUGUST21 2019 A.K. BRIJESH SETHI (JUDGE) SIDDHARTH MRIDUL (JUDGE) CRL.A.16/2002 Page 45 of 45

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