

Mukesh Alias Muki Vs. the State

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Court : Delhi

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Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 307; Evidence Act - Sections 27 and 114

Appeal No. : Criminal Appeal No. 116 of 1989

Appellant : Mukesh Alias Muki

Respondent : The State

Advocate for Def. : B.T. Singh, and ; A.S. Anand, Advs.

Advocate for Pet/Ap. : K.B. Andley and; Sunil Sethi, Advs.

Judgement :

P.K. Bahri, J.

1. The appellant-Mukesh alias Muki has been convicted of an offence punishable under Section 302 of the Indian Penal Code vide judgment dated August 29, 1989 and has been sentenced to undergo imprisonment for life vide order dated August

31, 1989 by an Additional Sessions Judge, Delhi. He has filed the present appeal against the said conviction and sentence.

2. Facts, as have been revealed in the prosecution case, are that deceased-Ram Sarup was living along with his unmarried daughter Rajni (P.W. 3) and son Bhim Singh (P.W. 7) in certain rooms located at the rear of the ground floor of house No. 4505, Pahari Dhiraj. The typography of the said house, as is evident from the site plan prepared by the Investigating Officer Ex. P.W. 23/P shows that there is entrance to the said house from the east side. There exists a road in front of the house on the eastern side and after crossing the entrance there comes a gallery and on the northern side of the gallery, there are located a shop and a room and on the southern side of the gallery there are located latrines and staircase for going to the upper floor. The stairs open in the said gallery. After crossing the gallery, there comes a courtyard and the rooms at the rear which were occupied by deceased and his family open in the said courtyard. On the northern side of the courtyard, there is another room and there are stairs also going up at that place. On the southern side of the courtyard, there is another room which is not shown in the site plan but which has been disclosed in the evidence of the eye-witness.

3. Vidyadhar Sharma is the owner of the said house and was living in the upper floor at the relevant time P.W. 6 Gobind Sharma is his cousin brother and P.W. 5 Pradeep Sharma is a son of the said landlord. P.W. 1 Sarla is another married daughter of the deceased Ram Sarup. On the day of occurrence, it is the case of the prosecution that P.W. 1 Sarla, who is the author of the FIR in the present case, was visiting her father at the aforesaid house. Sarla is having her matrimonial house in Delhi. There is no previous history of any enmity between the appellant and the deceased. Appellant has an elder brother named Suresh. Appellant-Mukesh was resident in the vicinity.

4. Story of the prosecution is that on June 15, 1986, at about 6.25 p.m., Bhim Singh accompanied by his deceased father, was proceeding in Gali Phar Wali where Mukesh-appellant and his brother Suresh were found exchanging abuses. The deceased intervened and asked them not to indulge in such abuses on which appellant got provoked and started abusing the deceased. Bhim Singh and

deceased preferred to come back to their own house and Bhim Singh after leaving his father at his house had gone away to the bazar nearby.

5. P.W. 1 Sarla and P.W. 3 Rajni, the two sisters and the deceased were in the process of taking evening meals that the appellant is stated to have appeared on the scene at about 7.45 p.m. and required the deceased to come with him. The deceased followed the accused and when they had reached the gallery (Poli) mentioned above that the appellant inflicted injuries on the person of the deceased with a razor. The deceased gave a shriek uttering the words 'Mar Gaya, Mar Gaya'. The two sisters rushed towards the place and being terrified seeing the razor in the hand of the appellant could not apprehend the appellant and the appellant escaped with said razor. Mohinder, another son of the landlord, is stated to have given a call to the police as per testimony of P.W. 1 Sarla. It is further disclosed that P.W. 5 & P.W. 6 son and cousin brother of the landlord came there and they and Sarla took the deceased to a shop of a doctor which was found closed and while the said two relations of the landlord were thinking of taking the deceased to a hospital that Bhim Singh arrived and he took the deceased to the hospital while the two girls remained back in the house.

6. Mohinder Singh appears to have given a ring to the Police Control Room which in turn has passed on the information to Police Station Sadar Bazar and the same was recorded at 8.13 p.m. at DD No. 11-A. It was mentioned that Mohinder from unknown place had given the information that in house No. 4505, Lane Jatan, Near Tibial Mohalla, Sadar Bazar Crossing, Delhi, a stabbing incident had taken place. Ex. P.W. 15/A is the copy of the said DD report.

7. Shri Raj Singh P.W. 23 accompanied by Constable Om Parkash (No. 383) reached the place of occurrence. Before they reached the place, Constable Kulbir Singh P.W. 17, who was a beat constable of that area, had at about 8.15 p.m. arrived at the said place and had seen the injured lying on the road there surrounded by a crowd and a person came and took the injured in a three wheeler to Hindu Rao Hospital. He had seen the blood lying in the said Lane.

8. Raj Singh, Sub-Inspector, on coming to the spot had recorded the statement of Sarla which is Ex. P.W. 1/A and made his endorsement Ex. P.W. 23/A and had

sent the said Rukka through Constable Om Parkash for registration of case which was registered vide FIR, copy of which is Ex. P.W. 15/C and the substance of the FIR was recorded in DD report No. 15-D at 9 p.m. On the other hand, Bhim Singh had got admitted the deceased in the Hindu Rao Hospital at 8.25 p.m. and Dr. C. B. Dabas P.W. 2 had examined the deceased and found him unconscious and he found the following two injuries on the person of the deceased :

(1) Deep incised wound on left side of the neck;

(2) One deep incised wound on left flank, and front of abdomen;

and he prepared the MLC Ex. P.W. 2/A and opined that injuries were possible with a sharp edged weapon. He had also examined the cut mark on the shirt of the deceased pertaining to injury No. 2 and opinion as per Ex. P.W. 2/C on the application Ex. P.W. 2/B that this cut mark corresponded to the said injury on the abdomen. Constable Pawan Kumar P.W. 21, who was working as duty constable in the said hospital had intimated to the Police Station regarding the deceased having been brought in injured condition by his son Bhim Singh and he had been handed over the shirt and pant of the deceased by the doctor duly sealed which he handed over to the SI Daryao Singh vide recovery Memo Ex. P.W. 21/A.

9. The injured succumbed to his injuries in the hospital at 9 p.m. and on receipt of the information of the death of the injured; the case which was originally registered under Section 307 Indian Penal Code was converted into under Section 302 Indian Penal Code. SI Raj Singh P.W. 23 had found the blood lying in the said gallery of the house and also on the road just outside the house. He had taken the blood sample and the bloodstained earth from the said two places and converted the same into sealed parcels vide Memos Exs. P.W. 1/B and P.W. 1/C which were signed by Bhim Singh and Sarla. He had recorded the statements of the witnesses and he had deposited the case property in the Malkana. Further investigation was taken over by SHO Inspector Daryao Singh P.W. 25. He prepared the inquest papers in respect of the deceased Ex. P.W. 25/A and had got sent the dead body for post-mortem along with the papers through the constables and after the post-mortem the dead body was handed over to Bhim Singh vide memo Ex. P.W. 25/B. The doctor, along with the post-mortem report, handed over the blood sample duly

sealed of the deceased to the Investigating Officer.

10. On June 16, 1986, the accused-appellant was arrested from a railway crossing in Kishanganj area and is stated to have made a disclosure statement Ex. P.W. 19/A in presence of SI Ami Chand P.W. 19 and two public witnesses Abdul Rashid P.W. 9 and one Ram Dayal, who was not examined before the trial Court. The appellant is stated to have disclosed that he had kept the razor concealed in a pit in Idgah Park and he could get the same recovered and he is stated to have led the police party to the said place and got recovered the razor after removing certain stones where it stood concealed. After preparing the sketch of the razor Ex. P.W. 9/C, the said razor was got sealed and taken possession vide recovery memo Ex. P.W. 9/B. The blade of the razor was stated to be found bloodstained at the said time. The razor was initially exhibited as P1 but later on it was exhibited as P5 in the evidence. The pant and shirt of the accused, which were also found to have some blood, were also taken into possession in sealed parcel vide memo Ex. P.W. 9/D. Dr. C. L. Agarwal of the Police Hospital had examined the appellant and found two injuries on his person i.e. (1) abrasion on the right index finger size 1/4' x 1/6' x 1/6'; (2) a bruise on the left knee joint size 3/4' x 1/5' and opined the duration of the injury to be of 25 hours and gave his report Ex. P.W. 10/B mentioning that both the injuries were possible by blunt weapon and injury No. 1 could be possible with the blunt side of the razor.

11. During the investigation the police also examined P.W. 11 Ishratuddin, who is stated to have been selling scissors and razors and also performs the job of sharpening the blades of such scissors and razors. He had sold razors of Vishal Company having the word 'Vishal' written on the razors to various customers including one Mohd. Hasan P.W. 8. It was the case of the prosecution that Mohd. Hasan, a barber by profession, used to sit on the platform just outside the house of the deceased and appellant is stated to have picked up the said razor from his place with which he performed the ghastly act of murdering Ram Sarup. The test identification parade in respect of the razor in question was got held before Shri I. C. Tewari, Metropolitan Magistrate P.W. 22 and Mohd. Hasan is stated to have picked up this razor Ex. P5 from the different razors shown to him in the said identification proceedings.

12. The post-mortem on the dead body of Ram Sarup was performed by Dr. Bharat Singh P.W. 14. He gave his post-mortem report Ex. P.W. 14/A and opined that injury No. 1, which was on the neck of the deceased, was sufficient to cause death in the ordinary course of nature. He had found that stomach of the deceased contained two ounces of food material which was in semi-digested condition and small and large bowels also contained gases and some digested food. The death had taken place due to haemorrhage and shock resulting from the said injuries and the time of death was about 16 hours. He also opined that the two injuries noticed on the dead body of the deceased Ram Sarup were possible with the razor Ex. P5 with his opinion Ex. P.W. 14/B.

13. The appellant, however, has completely denied his involvement in the murder of Ram Sarup. He also denied that he had made any disclosure statement and got recovered any such razor.

14. The learned Additional Sessions Judge has brought home offence to the appellant beyond any reasonable doubt on the basis of the statements of the two eye-witnesses P.W. 1 Sarla and P.W. 3 Rajni. However, he has found the prosecution case doubtful with regard to the motive and with regard to the appellant having got recovered the razor in question. He held that probably the said weapon had been planted by the police.

15. The fact that Ram Sarup had received the fatal injuries by a sharp edged weapon and had succumbed to those injuries is not in dispute. The sole question to be decided is whether the appellant had, in fact, committed the murder of Ram Sarup or not

16. The learned counsel for the appellant Mr. K. B. Andley has with his usual ability helped us in going through the whole of the record and had urged that facts of the case, as are revealed from the prosecution evidence and keeping in view the natural human conduct of the persons witnessing a particular crime, the prosecution has not been able to establish beyond reasonable doubt that two girls Sarla and Rajni have actually witnessed the crime. He has argued that FIR in the present case has been ante-timed and in all probability the occurrence took place at a particular chowk located at a little distance from the house of the deceased

and there being no eye-witnesses, relations have been put up as eye witness to only implicate the appellant. He has urged that Bhim Singh, who was aware about the name of the assailant, yet has not disclosed the name of the assailant to the duty constable at the hospital or to the doctor who prepared the MLC pertaining to the deceased. He has also pointed out that no special report as required by the Police Rules is stated to have been promptly sent to the Metropolitan Magistrate concerned or to other higher authorities and that in the substance of the FIR recorded in the Daily Diary in pursuance to Rule 24.1 of the Punjab Police Rules no mention is made of the appellant as the assailant and as a matter of fact, no names of eye witnesses or of the accused have been mentioned. He has urged that there is no mention of any prior occurrence taking place between the deceased and the appellant in the FIR recorded by Sarla although in court she has deposed that she has been made aware of such dispute by the deceased when deceased came to the house.

17. He has then referred to some discrepancies appearing in the statements of the eye witnesses in support of his contention that in fact, the eye witnesses are not wholly reliable witnesses. He has argued that as the learned Additional Sessions Judge has found the case of the prosecution doubtful on many material points the benefit of doubt ought to have been given to the appellant in the present case. He has also urged that the conduct of the two girls was not normal as they did not come forward to help their own father, who was being assaulted by the appellant allegedly and had not even accompanied their injured father to the hospital and both the girls are stated to have supported the injured for taking him to the doctor's shop, yet no bloodstained clothes of the two eye witnesses have been taken into possession.

18. He has also urged that P.W. 1 and P.W. 3 could not have possibly seen the razor so closely so that they could be in a position to identify the weapon of assault in Court which they did while giving the testimony in Court which also shows that these two witnesses have not given any natural and convincing evidence before the Court. It was further urged by him that duty constable Kulbir Singh had found the injured lying on the road side and Mohinder had given the telephone message that stabbing incident had taken place at the chowk which

facts show that in fact, occurrence had not taken place in the gallery of the house of the deceased as is the case of the prosecution. It is also urged by Mr. Andley that there were other tenants, particularly one Bhagwan Singh who was invalid and was admittedly lying on a bed placed in the courtyard of the said house, had not been examined which also would show that in fact the occurrence had not taken place in that house otherwise the other tenants and particularly Bhagwan Singh would have been put forward as independent eye witnesses. So, it is urged that it would not be safe for this Court to confirm the conviction of the appellant on the shaky and interested evidence of the relation witnesses P.W. 1 and P.W. 3

19. The learned counsel Mr. B. T. Singh for the State has in his arguments urged this Court to unhesitatingly accept the cogent, convincing eye witness account given by the two daughters of the deceased, who had no reason to falsely implicate the appellant and allow the real assailant of their father to go scot free. He has argued that presence of the eye-witnesses. P.W. 1 and P.W. 3 was most natural as the occurrence had taken place inside the house and this fact stands confirmed on account of the presence of blood in the gallery and also just outside the entrance of the house. He has urged that mere inefficiency of the police in not recording the name of the accused in the substance incorporated in the Daily Diary pertaining to the FIR is no ground to disbelieve the eye witnesses. He has argued that Bhim Singh, who had taken his dying father to the hospital would not have been in such a mental condition so that he could give the name of the assailant to the duty constable or to the doctor as he would have been more anxious to see that his father was somehow saved by the doctors. He has urged that the factum of altercations taking place between the deceased and the appellant on the deceased having rebuked the appellant when he was giving abuses to his elder brother stands amply proved from the testimony of Bhim Singh and also from testimony of P.W. 1 & P.W. 3 which facts were not challenged by the defense while cross-examining said witnesses.

20. He has urged that rule 24.5 of the police Rules only requires sending of a special report in case the case was registered under Section 302 of the Indian Penal Code while in the present case the case was initially registered under Section 307 of the Indian Penal Code. So, there was no requirement of police rule

for sending any special report as contemplated by rule 24.5 of the Police Rules. He has argued that not even a suggestion has been given to any of the prosecution witnesses, particularly to the police official who had recorded the FIR and to the Investigating Officer who had investigated the case that the FIR had been ante-timed. He has also urged that finding of the Additional Sessions Judge that the recovery of the razor at the instance of the appellant is doubtful is also not correct and this Court should hold that the said razor was recovered at the behest of the accused-appellant.

21. He has urged that mere fact that two sisters are daughters of the deceased is no ground to discard their evidence as they are the most natural witnesses in the circumstances and have given convincing evidence in Court. He has also argued that mere fact that police had not been able to take testimony of any other tenants or Bhagwan Singh during the investigation does not mean that police has deliberately suppressed any eye-witnesses. In all probability either those tenants or Bhagwan Singh might not have come forward to become witnesses or they had not actually witnessed the occurrence and particularly, they might not think of deposing against the appellant who was also living in the same locality. He has urged that there was nothing abnormal in the conduct of the two daughters as Sarla had tried to come forward but seeing the open razor in the hand of the appellant she could not possibly move forward and try to apprehend the appellant. He has urged that there is nothing in evidence to show that the clothes of the two daughters should have been bloodstained because the two relations of the landlord, the male persons had supported the injured for taking him at first to doctor's shop and then to the hospital. So, it is not necessary that any blood ought to have come on the clothes of P.W. 1 and P.W. 3. He has pointed out that two quick blows have been given by the appellant on the person of the deceased, so there could be no occasion or opportunity for P.W. 1 and P.W. 3 to have come forward and rescue their father from the assault made by the appellant at him.

22. FIR was initially registered under Section 307 of the Indian Penal Code because the same was registered on the basis of the statement given by Sarla and that time Sarla was not aware that her father had died at the hospital. So, the rule 24.5 of the Police Rules which requires sending of a special report to the

Ilaqua Magistrate was not applicable as it applies if a case had been registered under Section 302 of the Indian Penal Code. No suggestion in cross-examination of any of the witnesses had been made that the FIR was ante-timed. The Daily Dairy report which contains the substance of the FIR shows that the FIR has been recorded on the statement given by Sarla. So Sarla has been fixed as eye witness in the Daily Dairy Report which was recorded on the basis of the FIR. The omission to mention the name of the appellant as accused or names of the witnesses in the said Daily Dairy report cannot be deemed to be fatal to the prosecution case if the Court comes to the conclusion that the two sisters are credible witnesses.

23. A Division Bench of this Court in Suresh v. State, Criminal Appeal No. 319 of 1976, decided on May 6, 1977, has laid down that mere non-mentioning of name of the accused in Daily Dairy in which substance of the FIR is required to be entered would not go to show that FIR was recorded later on. It at the most amounts to dereliction of duty on the part of the police official recording the Daily Dairy.

24. The CFSL reports Ex. P.W. 25/G and P.W. 25/H show that the sample of the blood lifted from the gallery of the house and also just outside the house was human in nature and was of 'O' group and blood of the same group was of the deceased as is evident from the said reports of the blood which were found on the pant and bush shirt of the deceased. The two relations of the landlord, who had assisted the deceased for making an effort to take him to hospital, had in fact turned hostile and went back on their police statements with which they were duly confronted where they had mentioned about Sarla and Rajni telling then that appellant had stabbed their father, still admitted this fact that they had tried to take the deceased to the hospital and they do not say that if the occurrence had taken place at the chowk and they had found the deceased lying in the chowk, that they had brought the deceased back to the house so that blood could fall in the gallery of the house. The beat constable, who also found the deceased lying at the chowk surrounded by a crowd, had not stated that deceased was taken back to the house by anyone. According to him, the deceased was taken in a three-wheeler scooter by one person to Hindu Rao Hospital. It is evident from narration of these facts

that the said constable must have noticed the deceased in the chowk when he was brought there by the two relations of the landlord with a view to take him to the hospital and thus, he made his statement as to what he saw but that does not mean that occurrence had not taken place in the house of the deceased.

25. It has been urged that Mohinder who had given the initial information to the police had not been examined. It is also urged that other eye witnesses, who were admittedly available, had not been examined, they being the tenants and one invalid Bhagwan Singh. So, the court should not believe the statements of the two daughters who perhaps had not witnessed the occurrence.

26. The Supreme Court in the case of Soma Bhai v. State of Gujarat : 1975 CriLJ1201 , has laid down that telephonic message to the Police Station which is too cryptic would not constitute the FIR. So, the cryptic information given by Mohinder to the police on telephone cannot be termed as FIR.

27. The Supreme Court in the case of State of U.P. v. Suresh alias Chhavan : 1982 CriLJ850 has laid down that the question is not whether the prosecution should have examined some other persons as witnesses who were present at the time of the occurrence but it is whether the evidence of witnesses examined and who have been put forward as eye witnesses is acceptable or not for proving the case of the prosecution against the accused. In Srichand K. Khotwani v. The State of Maharashtra : 1967 CriLJ414 , the Supreme Court has laid down that an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained it cannot be said what that evidence would have been and, therefore, no question or presuming that that evidence would have been against the prosecution under Section 114, Illustration (G) of the Evidence Act can arise.

28. It is to be remembered that the time of occurrence was about 7.45 p.m. and at that time the ladies of the house would be obviously busy in the process of serving evening dinner and the presence of Rajni and Sarla at that time in the house of their father was most natural. Even, two relations of the landlord who had turned hostile to the prosecution case had not been asked any questions by the defense

that the house of the deceased was lying locked at the time of the occurrence. Mere fact that they had not noticed Sarla and Rajni would not go to show that in fact, Sarla and Rajni were not present and had not witnessed the occurrence.

29. In *State of U.P. v. Anil Singh* : 1989 CriLJ88 , it was laid down that the witnesses who add embroidery to prosecution case or make some contradictory statements are not to be disbelieved if the main case is true. It was also held that even if all the eye witnesses are not examined, the same is not fatal to the prosecution case. It has been held in *Vijay Kumar Ramesh v. State*, 1980 RLR 203, that the conduct of the witness not making any effort the rescue or separate the parties is not enough to discard the testimony.

30. The two sisters, thus, in the present circumstances were the most natural witnesses of the occurrence. It is proved beyond any shadow of reasonable doubt that the deceased was stabbed in the gallery of the said house and if we keep in view the location of the rooms of the deceased and the presence of the two sisters in that place, it would show that they were the most natural witnesses to have seen the stabbing carried out by the appellant on the person of the deceased. Mere fact that they did not pick up enough courage to go after the accused for apprehending him would not mean that they had not witnessed the occurrence. Particularly when the appellant was stated to be having open razor in his hand, the conduct of the two girls in not trying to catch hold of the appellant for fear of being attacked themselves cannot be considered abnormal under any circumstances.

31. We have not found any serious material discrepancies in the version given by the two daughters. Mere fact that they had identified Ex. P5 as the weapon of the offence used by the appellant, in Court in our opinion, is not sufficient to hold that this part of the testimony being not natural, so their testimony with regard to the main occurrence should be disbelieved. We are aware of the law that in case the witnesses are the near relations the Court should be on its guard to scrutinise the statements of such witnesses more carefully. Keeping in view this salutary principle, we have gone through the statements of the two girls and find that they have given a cogent, convincing version of the incident and we find no reason to disbelieve their statements that it was the appellant who had caused the fatal

injuries to their father. Mere fact that the two girls did not think it fit to go to the hospital by itself is not abnormal conduct when their brother had taken the injured father to the hospital.

32. It has been urged that the sisters had not raised any alarm when their father was attacked. The sisters have deposed that other tenants were witnessing the occurrence and the two relations of the landlord had immediately come down while the appellant was escaping. The assault on the deceased had not taken much time and so the mere fact that they had not raised any alarm would not show that they had not witnessed the occurrence

33. The learned counsel for the appellant has made reference to Harbhej Singh v. State of Punjab, (1988) 1 RCR 655. In the said case keeping in view the various facts the Court held that as the mother of the deceased had not raised any commotion or protected her helpless son being butchered before her eyes would show that in all probability she was not the eye witness. Facts of that case are totally distinguishable. Here, as already pointed out, there were many tenants in that house besides the landlord's family living on the first floor who have allegedly seen the appellant escaping and particularly two relations of the landlord had immediately come down stairs. So, there was no occasion for P.W. 1 and P.W. 3 to raise any commotion or alarm when necessary help which has to be attracted by raising such alarm had already become available.

34. Reference is then made to Bagh Singh v. The State of Punjab, (1992) 1 RCR 145, where the Court found that neither the substance of the FIR has been entered into the Daily Diary which should contain names of the accused and the names of the witnesses nor independent witnesses who were admittedly available had been examined and statements of the two eye witnesses who were the brothers of the deceased were discrepant on material facts, thus the Court did not believe the statements of the said witnesses. It depends on the facts of each case in order to see whether statements of the eye witnesses are credible or not.

35. In the present case we find that the statements of the two daughters, who are natural witnesses, are credible. Hence these judgments cited by the learned counsel for the appellant would not apply to the facts of the present case.

36. Reference was made to Balbir Singh v. State of Punjab, (1988) 2 RCR 559, where the brother of the deceased was shown as eye witness but was not believed as he had not made any attempt to save his own brother being butchered. We have gone through the judgment and find that the account given, by eye witness was found to be improbable and incredible. So, this judgment is also based on its own facts.

37. In the case of Balwant Singh v. The State, 1976 CLR 41 the Court on the basis of the facts of that case found that the prosecution had failed to prove the case against the appellant in that case beyond reasonable doubt and it was held that failure to enter the substance of the FIR in the Daily Diary may lead to inference that full facts were not known when the substance was entered if the substance is bereft of names of the accused or the names of the witnesses. It is true that this particular omission of the police on its failure to record the substance as required by the rules may in some cases lead to such inference being drawn against the prosecution but this circumstance alone is not, in our view, sufficient to throw away the direct testimony of the witnesses rendered in Court which if otherwise is found to be credible.

38. The learned counsel for the appellant has also made reference to certain other judgments which lay down general principles which have to be kept in view while assessing the testimony of the eye witnesses who are relations. We need not refer to those judgments because such principles are wellknown.

39. In view of the above discussion, we are of the firm view that the Additional Sessions Judge in the present case was fully justified in bringing home the offence to the appellant beyond reasonable doubt.

40. As far as the occurrence which took place between the deceased and the appellant when the appellant was quarrelling with his elder brother, the same has been narrated by Bhim Singh and in cross-examination his statement on this point was not challenged. So, mere omission of Sarla to make reference to this occurrence in the FIR does not, in our view, show that the said occurrence had not, in fact, taken place. While narrating the facts to the Sub-Inspector who contacted her on reaching the spot, she might not have recollected the said

incident.

41. At any rate, although motive behind a crime is relevant fact of which evidence can be given but the absence of a motive also is a circumstance which is relevant for assessing the crime. But in case the evidence proves the guilt of the accused, the case is not to be thrown out on the ground that the motive has not been established. (See *Rajinder Kumar v. State of Punjab*, : 1966 CriLJ960).

42. In *Bahal Singh v. State of Haryana* : 1976 CriLJ1568 , it has been laid down that even if genesis or motive of the crime was not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on that account if otherwise it was reliable.

43. Although conviction of the appellant can be upheld in view of the above discussion with regard to the reliable evidence given by P.W. 1 and P.W. 3, yet in the present case we find that even the evidence led by the prosecution regarding the recovery of the razor in question is credible. The learned Additional Sessions Judge was too much swayed in disbelieving the said part of the prosecution case by the fact that the only public witness who was examined to prove the disclosure statement and the recovery of the weapon had turned hostile. If we closely examine the statement of that public witness, namely, Abdul Rashid P.W. 9, we find that he has deposed in support of the prosecution case regarding the accused being arrested and his statement being recorded by the police and recovery of razor from the Idgah Park but he went on to state that the razor was taken out by Sub-Inspector himself and not by the accused. He admitted that all the memos Exs. P.W. 9/B, P.W. 9/C and P.W. 9/D were prepared in the said park and were signed by him. SI Ami Chand and the Investigating Officer had no axe of their own to grind by planting any weapon of offence on the appellant. There was no reason to disbelieve the statements of the said two police officials when some corroboration was coming forward from the otherwise hostile statement of P.W. 9 Abdul Rashid.

44. In *Modan Singh v. State of Rajasthan*, and *State of Kerala v. M. M. Mathew*, : 1978 CriLJ1690 , it has been held that even a solitary statement of the Investigating Officer can be taken as sufficient in peculiar facts of the particular

case for proving recovery allegedly effected under Section 27 of the Evidence Act. Human blood was detected on the blade of the said razor although the grouping of the blood could not be ascertained.

45. A contention was raised that according to the police, accused was apprehended at a place which falls in jurisdiction of another police station yet no effort was made to record such incident in the records of the said police station, hence the case of the prosecution that accused got recovered any razor on making any disclosure statement is doubtful. We do not agree. The place from where accused was apprehended, is admittedly a crowded place and it is not any thing strange that the accused was brought to Kishanganj Police Post for purposes of showing his formal arrest and then for interrogating him with regard to the weapon used in the commission of the crime. We, hence, hold that the appellant had got recovered the razor in question in pursuance to his disclosure statement. It is true that the group of blood on the razor could not be ascertained, still we are of the opinion that the recovery of this weapon does furnish some corroboration to the present case. Even if we ignore this piece of the evidence, still the case against the appellant stands established on the basis of ocular evidence of P.W. 1 and P.W. 3.

46. Keeping in view the above discussion, we maintain the conviction and the sentence of the appellant and dismiss the appeal.

47. Appeal dismissed.