

Pyara and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-06-1997

Reported in : 1997CriLJ1065; 1997(2)WLC53; 1997(1)WLN42

Judge : B.R. Arora and; A.K. Singh, JJ.

Acts : [Evidence Act, 1872](#) - Sections 60, 118 and 134; Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 157, 162, 162(1) and 162(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304, 323, 325 and 342

Appeal No. : Criminal Appeal No. 491 of 1994

Appellant : Pyara and ors.

Respondent : State of Rajasthan

Advocate for Def. : J.P. Singh Choudhary, Public Prosecutor

Advocate for Pet/Ap. : B.N. Kalla, Adv.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 12-9-94 passed by the Additional District & Sessions Judge No. 1, Chittorgarh, by which the learned

Additional Sessions Judge convicted the appellants for the offences under Sections 302/34, 342, 325/34 and 323/ 34, IPC and sentenced each of the accused-appellants to undergo imprisonment for life and a fine of Rs. 3000/- and in default of payment of fine further to undergo one year's rigorous imprisonment for the offence under Section 302/34, IPC; six months' rigorous imprisonment for the offence under Section 342, IPC; one year's rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine further to undergo one month's rigorous imprisonment for the offence under Section 325/34, IPC and 323/34, IPC each. All the sentences were ordered to run concurrently.

2. Appellants Pyara, Uda, Shambhu and Gopi were tried by the learned Additional Sessions Judge, Chittorgarh for keeping Nathu Khan in a wrongful confinement and thereafter committing his murder; and inflicting injuries to Rahim Bux and Smt. Halima. The case of the prosecution, in nut shell, is that on 8-3-86 deceased Nathu Khan and his wife PW 6 Smt. Chhoti were going from their field to their house situated in the village. In the way the accused met them and forcibly took Nathu Khan in their house. At that time accused Pyara was armed with a Kulhari and the remaining accused were armed with Lathis. All the accused started beating Nathu Khan. Smt. Chhoti, on seeing the accused inflicting injuries to her husband Nathu Khan, ran towards her field and called her mother-in-law and father-in-law. Rahim Bux and Smt. Halima, the parents of the deceased, when heard about the incident from their daughter-in-law Smt. Chhoti, they, along with Smt. Chhoti, proceeded towards the house of the accused and entered into the house of the accused. Smt. Halima and Rahim Bux entered into the house of the accused while Smt. Chhoti was not allowed to enter the house and was forcibly turned-out. The accused thereafter closed the doors. The accused gave beatings to Nathu Khan, who was lying on the ground, in their presence, also. Smt. Halima and Rahim Bux tried to save Nathu Khan and in that process they also received injuries. Smt. Chhoti thereafter proceeded towards the house of Ram Chandra Sarpanch and called him. Ram Chandra Sarpanch came there, knocked at the doors of the accused. The accused opened the door and turned-out Smt. Halima and Rahim Bux from the house. Nathu Khan succumbed to the . injuries. The accused thereafter dragged his deadbody and threw it on the open way. In the night, no information could be given to the police. In the morning, Ram Chandra

Sarpanch called PW 7 Ram Swaroop-a part-time Post Master- and requested him to inform the police about the incident. PW 7 Ram Swaroop thereafter, on 9-3-86, telephonically informed at Police Station, Kotwali, Chittorgarh that the deadbody of Nathu Khan is lying in Gariyon Ka Mohalla of Village Ghatiyawali. After receiving this information, PW 13 Moolchand Sub-Inspector of Police Station, Kotwali, Chittorgarh, came at the place of the incident on 9-3-86 at 8-00 a.m., recorded the statement Ex. D-2 of Smt. Halima and sent the same through Bheru Singh to Police Station, Kotwali, Chittorgarh, for registration of the FIR. On the basis of this statement Ex.D. 2 of Smt. Halima, the FIR was registered at the Police Station at 10-00 a.m. on that day. He prepared the Panchnama-Lash Ex. P. 1. Thereafter PW 12 Azad Khan, S.H.O., along with PW 11 Hasan Khan, A.S.I, and the Deputy Superintendent of Police came there and took-over the investigation from Moolchand. The investigation was again handed over to Moolchand on 10-3-86. After completion of the investigation, the challan was filed against the accused.

3. The prosecution, in support of its case, examined thirteen witnesses. P.W. 5 Smt. Halima-the mother and PW 6 Smt. Chhoti - the widow, of the deceased are the two eye-witnesses of the occurrence. PW 1 Gordhan Singh is a Motbir witness to Ex. P. 1 to Ex. P. 4. P.W. 2 Tejraj and PW 3 Kashi Ram are the two other Motbir witnesses but they have not supported the prosecution case. PW. 9 Ranu and PW. 10 Bheru have been produced to show the enmity between the complainant party and the accused and they have seen the deadbody of Nathu Khan lying in the lane. P.W. 9 Ranu has, however, not supported the prosecution case and he has been declared hostile. PW 7 Ram Swaroop was the part-time Post Master in the Post Office of village Gatiyawali, who was called by Ram Chandra Sarpanch and was informed regarding lying of the deadbody of Nathu Khan in the lane. He telephonically informed the police that the deadbody of Nathu Khan is lying in Gariyon Ka Mohalla of village Ghatiyawali. PW. 8 Dr. R.D. Bhatt is the Medical Jurist posted at the relevant time at Government Referral Hospital, Chittorgarh, who conducted the post-mortem on the deadbody of Nathu Khan and, also, medically examined Rahim Bux and Smt. Halima. He, also, medically examined accused Udai Chand, Pyara and Shambhu and found some injuries on their person. The injury reports of accused-appellants are Ex. P. 11, Ex. P. 12 and Ex. P. 13. The remaining are the police witnesses who were connected with the

investigation at one stage or the other.

The accused did not examine any witness in their defence.

The learned Additional Sessions Judge, after trial, convicted and sentenced the accused-appellants as stated above. It is against this judgment that the appellants have filed the present appeal.

4. It is contended by the learned counsel for the appellants that (i) Ex. D.2 cannot be treated as the F.I.R. as prior to this, a telephonic message had already been received at the Police Station and which set the police in motion; (ii) the F.I.R. (Ex. D.2) was lodged after an inordinate and unexplained delay and is the result of consultation and deliberation; (iii) the person who recorded the F.I.R. has not been produced; (iv) the injuries found on their person of the accused-appellants have not been explained; (v) the place from where the witnesses are alleged to have seen the occurrence has not been shown in the site plan; (vi) independent witnesses of the locality, who had seen the occurrence, have not been produced and only the partisan and interested witnesses have been produced, whose presence at the scene of the occurrence is highly doubtful; (vii) the recoveries of the Kulhari and other incriminating articles have not been established as the witnesses to the recoveries have not been examined; (viii) the medical evidence does not corroborate the prosecution case; and (ix) the accused had no motive to commit the murder of the deceased and looking to the nature of the injuries, the case against the accused-appellants does not travel beyond Section 304, Part II of the Indian Penal Code.

The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned trial Court.

5. The F.I.R. has been challenged by the learned counsel for the appellants on three grounds, namely, (i) Ex. D.2 cannot be treated as an F.I.R. (ii) it has been lodged after an inordinate and unexplained delay and (iii) the person who recorded the F.I.R. has not been produced. The telephonic message received in the Police Station was given by P.W. 7 Ram Swaroop and he only informed to the Police that the deadbody of Nathu Khan was lying in Gariyo Ka Mohalla of village

Ghatiyawali. It was a cryptic message received by P.W. 13 Moolchand which only made the investigating agency to reach at the place of the incident and to ascertain whether any cognizable offence has been committed or not; and (iii) P.W. 13 Moolchand, on receiving the message on telephone, proceeded to the place of the occurrence to find-out the details and the nature of the offence. By the telephonic message, the presence of the deadbody of Nathu Khan in Gadri Mohalla was communicated. It did not disclose who were the assailants and how the incident took place.

6. The object and purpose of giving the telephonic message was not to lodge the report but a request was made to the Incharge of the Police Station to reach at the place of the incident and to take the stock of the situation. He reached at the place of the incident, recorded the statement Ex. D.2 of Smt. Halima and on the basis of this statement, the F.I.R. was registered. This statement (Ex. D.2) of Smt. Halima is not hit by Section 162, Cr.P.C. and is the F.I.R. of the case.

7. A cryptic telephonic message giving no details and the nature of the offence cannot be treated as the F.I.R. It can be treated as an F.I.R. only if on this information the Incharge of the Police Station is satisfied about the commission of a cognizable offence and if he proceeds from the Police Station after recording such information and starts investigation. The report received on telephone by P.W. 13 Moolchand, therefore, cannot be treated as the F.I.R.

Similar controversy came-up for consideration before the Hon'ble Supreme Court in: *Dhananjay Chatterjee Dhana v. State of West Bengal*, (1994) 1 JT (SC) 33 and the Supreme Court held that the cryptic telephonic message received at the Police Station, which made the police agency to reach the place of the incident to record the statement of the mother of the girl who was raped and murdered by the Security Guard, may not be treated as the F.I.R. and the statement of the mother of the prosecutrix, recorded by the investigating officer was rightly treated as the F.I.R. by the prosecution as well as by the trial Court under Section 154, Cr.P.C.

8. In : *Ramsinh Bavaji Jadeja v. State of Gujarat*, (1994) 2 JT (SC) 135 : 1994 Cri LJ 3067, the investigating officer, after having received the telephonic message giving information of the cognizable offence, immediately reached the hospital and

recorded the statement of injured P.W. 6. He sent this statement to the City Police Station for registering the case. Thereafter he proceeded with the investigation. The question which came before the Hon'ble Supreme Court, was: whether the statement of P.W. 6 recorded by the investigating officer after receiving the telephonic message can be treated as the F.I.R., or the telephonic message is to be treated as the F.I.R.? The Supreme Court held that the cryptic message given on telephone by the Head Constable to the Incharge of the Police Station cannot be treated as the F.I.R. and the statement of the brother of the deceased, recorded by the investigating officer after reaching the hospital, has to be treated as the F.I.R.

9. Similar controversy again came-up for consideration before the Hon'ble Supreme Court in : Sheikh Ishaque v. State of Bihar, 1995 Cri LJ 2682 : 1995 AIR SCW 2001 wherein the same cryptic message was received at the Police Station to the effect that there was a commotation in the village as firing and the brick-batting were going-on. This information was recorded in the Police Diary. The information neither disclosed the commission of a cognizable offence nor it disclosed who were the assailants or the victims. The Supreme Court, therefore, held that the cryptic message received on telephone cannot be treated to be an F.I.R. within the meaning of Section 154, Cr.P.C.

10. In view of the law laid down by the Supreme Court, the cryptic message received by P.W. 13 Moolchand did not disclose the names of the assailants, the manner in which the incident took place, the commission of a cognizable offence or other details of the incident and, therefore, that cannot be treated as an F.I.R. under Section 154, Cr.P.C. The statement Ex.D.2 of Smt. Halima recorded by P.W. 13 Moolchand, on the basis of which the information was recorded, was thus, rightly treated as the F.I.R. by the learned trial Court.

11. The non-production of the person, who registered the F.I.R. will not affect the prosecution case as the person, who recorded the statement, viz., P.W. 13 Moolchand, has been produced and he has proved the statement Ex.D. 2 of Smt. Halima. The contention raised by the learned counsel for the appellants is, therefore, bereft of any substance,

12.- 13. The second limb of this argument is that there is an inordinate and unexplained delay of about ten hours in lodging the report and the F.I.R. is the result of deliberation and consultation. The incident took place in the night at about 8.00/9.00 p.m. It has come on evidence that the Post Office was closed by that time. The Post Master was working on part-time basis. It was the night time and the poor and old parents and the widow of the deceased were there. Early in the morning, i.e. about 6.00/7.00 a.m. of the next day, the telephonic message was given to the police. The police came at 8.00 a.m., recorded the statement (Ex.D.2) of Smt. Halima and sent it to the Police Station, on the basis of which the F.I.R. was registered. The delay in lodging the report has, therefore, properly been explained by the prosecution and after going-through the evidence produced by the prosecution, we are of the opinion that the F.I.R. (Ex.D.2) is not the result of any deliberation or consultation nor any such question has been put to the witnesses in their cross-examination by the defence. The contention raised by the learned counsel for the appellants is therefore, bereft of any substance.

14. The next contention raised by the learned counsel for the appellants is that the injuries found on the person of the accused-appellants have not been explained by the prosecution and on account of unexplained injuries, a presumption may be drawn that the true genesis of the incident has been suppressed by the prosecution and the benefit of doubt must be given to the appellants. It is true that where the witnesses are interested witnesses, the omission on the part of the prosecution to explain the injuries on the person of the accused-appellants assumes greater importance. But where the injuries sustained by the accused are minor or superficial and the evidence produced by the prosecution is clear, cogent and creditworthy then the prosecution case cannot be thrown away on this count.

In the present case the injuries received by the accused-appellants are minor and superficial. They are simple in nature and are bruises. It has also, not been established from the evidence produced on record that the injuries received by the appellants were received in the same incident. No question was put to the prosecution witnesses regarding the injuries found on the person of the appellants. The four injuries found on the person of accused Udai Chand are admittedly of a later period and the duration of injuries Nos. 1 to 4, as per the medical report Ex.

P. 11, was between six to eight hours while the injuries were caused between 12 to 24 hours. The injuries received by the accused are minor and superficial, they were not put to the witnesses in the cross-examination and appear to have not been received in the same incident and, therefore, the alleged omission on the part of the prosecution not to explain the injuries found on the person of the accused, does not affect the prosecution case.

15. The next contention raised by the learned counsel for the appellants is that the place from where the witnesses have claimed to have seen the occurrence, has not been shown in the site plan, which is a serious infirmity and the appellants, therefore, deserve to be acquitted. In support of this contention, learned counsel for the appellants has placed reliance over : Savia v. State of Rajasthan, 1985 Cri LR (Raj) 18 and Jai Singh v. State of Rajasthan, (1990) 1 Rajasthan LR 671.

The Investigating officer prepared the site plan, who was not an eye-witness of the occurrence. He had no personal knowledge regarding . the place from where the witnesses has seen the occurrence, or from where the accused had assaulted the deceased. He can make the entries in the site plan what he himself had seen and observed and that will be the direct and substantive piece of evidence being based on his personal knowledge; but as he has not himself seen the incident, therefore, he could have mentioned the place from where the witnesses had seen the occurrence only after ascertaining the same from the eye-witnesses, which is not admissible in evidence being hit by Section 162, Cr.P.C.

16. In Jagdish Narain v. State of Uttar Pradesh, (1996) 3 JT (SC) 89 : 1996 AIR SCW 1666 the site plan was prepared by the investigating officer who failed to indicate in the site plan the spot wherefrom the shots were allegedly fired by the appellants. While considering the effect of failure of the Investigating officer to indicate the spot, the Supreme Court held (at P. 1669 of AIR SCW)

While preparing a site plan an investigating police officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but as he was not obviously present when the incident took place, he has to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he

heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from whom he heard is examined to give direct evidence within , the meaning of Section 60 of the Evidence Act, the former's evidence would be admissible to corroborate the latter in accordance with Section 157, Cr.P.C. However such a statement made to a police officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162(1), Cr.P.C. appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where Sub-section (2) of the section applies. That necessarily means that if in the site plan P. W. 6 had even shown the place from which the shots were allegedly fired after ascertaining the same from the eye-witnesses it could not have been admitted in evidence being hit by Section 162, Cr.P.C.

17. In this view of the matter, the failure on the part of the investigating officer to point-out the place in the site plan from where the eye-witnesses had seen the occurrence, is not material and it cannot be read in evidence being hit by Section 162, Cr.P.C. The judgments, on which reliance has been placed by the learned counsel for the appellants, in view of the aforesaid judgment of the Supreme Court, are, therefore, not applicable to the present case.

18. The next contention raised by the learned counsel for the appellants is that the independent witnesses of the locality, who had seen the incident, have not been produced and only the partisan and interested witnesses have been produced and their presence at the scene of the occurrence is, also, doubtful. Though P.W. 5 Smt. Mali ma and P-W. 6 Smt. Chhoti have admitted that certain persons were collected there but the accused caught-hold of Nathu Khan in the lane, took him inside their house and gave him beatings after bolting the doors. Smt. Halima and Rahim Bux - the parents of the deceased - went inside the house of the accused and they were, also, given beatings. Smt. Chhoti had seen the accused forcibly taking her husband Nathu Khan in their house and giving beating to him by the accused. No other witness has even come forward who had seen the occurrence. Moreover, in the villages, where there are party-fractions, nobody comes forward

to give evidence. In the present case when nobody other than these witnesses, had seen the occurrence then the non-production of those witnesses will not affect the prosecution case.

Section 134 of the Evidence Act, which deals with the production of the witnesses, provides that no particular number of witnesses shall be required to prove any fact. This section, therefore, gives weight to the quality of the evidence and not the quantity of the evidence. It is not the number of the witnesses produced by the prosecution that counts, but it is the quality and trustworthiness of the witnesses which count in the matter, Ram Chandra Satpanch was the person who only was called by Smt. Chhoti and who knocked at the doors of the house of the accused and rescued Smt. Halima and Rahim Bux. Bheru Singh was the Police Constable who took the statement Ex. D.2 of Smt. Halima to the police station, on the basis of which the information was recorded. Khima was the person through whom Smt. Chhoti informed Sarpanch Ram Chandra as she was keeping veil (Parda) from him. In these circumstances, therefore, their non-production does not affect the prosecution case in any way as they are not the material witnesses to the occurrence. So far as Rahim Bux is concerned, he was an eye-witness of the incident and was an injured person in the incident. He was a material witnesses, but looking to his state of mind, poor understanding, hard of hearing and old age, he was given-up by the prosecution under Section 118 of the Evidence Act after the permission was accorded by the learned trial Court vide order dated 30-10-90. Since he was given-up under Section 118 of the Evidence Act for the aforesaid reasons, it does not affect the prosecution case as it is not the number of the witnesses that counts but it is the quality of the evidence that counts. The contention raised by the learned counsel for the appellants is, therefore, bereft of any substance.

19. Now, coming to the evidence of the eyewitnesses, viz., P.W. 5 Smt. Halima and P.W. 6 Smt. Chhotti; their evidence has been challenged by the learned counsel for the appellants on the ground that they are the close-relatives of the deceased and are interested witnesses and the prosecution has failed to examine the independent witnesses although they were available. We have discussed above that no independent witness has been suppressed by the prosecution. The

evidence of the relative and interested witnesses cannot be discarded only on this ground that they are related to the deceased. The law only requires that the evidence of the interested and related witnesses may be subject to close scrutiny and while considering their evidence, the Court may not over-look the fact that the interested witnesses are, also, interested in stating the truth and they will not leave the actual culprit and implicate the other persons. While examining the evidence of the relative witnesses, the Court may put on guard and to see whether the presence of these witnesses is probable, the version given by them are consistent and the narration of the events given by them is natural?

20. P.W. 6 Smt. Chhoti is the widow of deceased Nathu Khan. She has stated that the relations between the deceased and Pyara Gadri and other accused were strained. Both the parties have their adjoining fields. Accused Pyara cut the trees from their field. On the day of the incident, at about 7.00/8.00 a.m. she and her husband Nathu Khan left their field and were proceeding towards their house in the village for sleeping. In the way, Gopi, Pyara, Uda and Shambhu Gadris met them. All the four accused forcibly took her husband in Narain Gadri's house and started beating her husband. Pyara was armed with the Kulhari and the remaining accused were armed with Lathis. She went towards the well to call her father-in-law and mother-in-law and on being informed all the three persons, namely, Halima, Rahim Bux and she came to the house of Narain] Gadri. At that time the accused were giving beating to Nathu Khan. Her father-in-law and mother-in-law entered into the house of the accused but Shambhu did not allow her to enter the house, pushed her out and thereafter locked the door. The accused were giving beatings to her husband inside the house. She went to call the Sarpanch. As she did not use to speak with the Sarpanch, therefore, she asked Khuma Gujar to inform the Sarpanch what she wanted to state. Thereafter Sarpanch Ram Chandra came at the place of the incident, requested the accused to open the door and rescued her father-in-law and mother-in-law. The accused thereafter allowed her mother-in-law and father-in-law to go out-side the house but her husband was lying inside the house of the accused and all these accused murdered her husband by giving beatings and after killing him, dragged his deadbody out-side and threw it in the lane. Her mother-in-law and father-in-law were, also, given beatings by the accused and they received injuries. She took them to the house

and after leaving them in the house, she went to make a telephonic call,

21. P.W. 5 Smt. Halima - the mother of the deceased-has stated that their field and the field of Narain are adjacent fields in village Ghatiy awali. Prior to the date of the incident, Pyara cut the trees from their field, which was objected by them. On the date of Shivratri (the day of the incident) her son Nathu Khan and his wife, after taking their meals, had gone to the house situated in the village to sleep. All these four accused, namely, Gopi, Pyara, Uda and Shambhu gave beatings to her son Nathu Khan. Her daughter-in-law Smt. Chhoti Bai came running and informed them that the accused had given beatings to Nathu Khan. She, along with her husband and the daughter-in-law went to Gopi's house. She and her husband went inside the house. They were, also given beatings by the accused. Chhoti was not permitted to enter the house and she was pushed by Shambhu Sarpanch Ram Chandra came thereafter, who rescued them. Nathu Khan was given beatings by these accused persons in their presence in the house and Nathu Khan, after receiving the injuries, fell down in the pole of the house.

A lengthy cross-examination has been performed on these two witnesses but nothing could be elicited which could discredit their testimony. They have stood the test of cross-examination well and a close scrutiny of the evidence of these witnesses reflects that they are the truthful witnesses. The presence of Smt. Chhoti (P.W. 6) along with her husband was most natural. The presence of the broken pieces of bangles and the chain of Smt. Chhoti found at the place of the occurrence and the recovery of the blood-stained earth from the house of the accused, which contained AB Group of the blood (which was that of the deceased) and the signs of dragging the deadbody found in the house of the accused leading towards the place where the deadbody of Nathu Khan was lying, further corroborate the evidence of these witnesses and conclusively establish that the murder of Nathu Khan was committed in the house of the accused and thereafter the accused threw the deadbody in the lane. These two eye-witnesses have stated what they had actually seen. The presence of Smt. Chhoti along with her husband (deceased Nathu Khan) was most natural. She, on seeing the accused inflicting injuries to her husband and taking him inside their house, ran towards the well and called her mother-in-law and father-in-law. They all came there and her mother-in-

law and father-in-law went inside the house of the accused but she was restrained. The injuries found on the person of P.W. 5 Smt. Halima, also, unerringly proves the presence of this witness at the scene of the occurrence. She received the injuries in order to save her son. Their evidence, therefore, inspires confidence and they have rightly been believed by the learned trial Court. We see no infirmity in the evidence of these two eye-witnesses.

22. The next contention raised by the learned counsel for the appellants is regarding the recoveries and non-production of Malkhana Incharge and sending the clothes of the accused for determining the blood-group. Now, so far as the recoveries of the articles are concerned, the witnesses of the recoveries have not been produced. The other two Motbir witnesses have, also, not supported the prosecution case. The Kulhari was, also, not put to the doctor. The doctor has opined that the injuries found on the person of the deceased can be caused by a weapon which has a width of 1/2 inch. The blade of the Kulhari recovered in the present case is much more and, therefore, these injuries could not be caused by this Kulhari. The recovery of the Kulhari and the other articles are, therefore, of no consequence. But the evidence of the eye-witnesses which we have found reliable, cannot be discarded merely on the ground that the recoveries have not been proved. If the recoveries of the articles and the medical evidence would have supported the prosecution case then they would have been an additional ground, but the evidence of the eye-witnesses cannot be discarded on this count. The result is that the recovery of the Kulhari, therefore, cannot be read as an incriminating circumstance against the appellant. Since we have not believed the recovery of the Kulhari, therefore, determination of the blood-group of the accused and sending the clothes for such purpose would, also, be of no consequence in view of the reliability of the evidence of the eye-witnesses.

23. The next submission made by the learned counsel for the appellants is that no offence under Section 302 I.P.C. is made-out against the appellants and the appellants can be convicted only for the offence under Section 304 Part II, I.P.C. We do not find any merit in this submission, also. The accused caught-hold of Nathu Khan while he was going to his house along with his wife, forcibly took him into their house, gave beating to him by Kulhari and Lathis and committed his

murder. It was done with an intention to kill Nathu Khan that the accused inflicted injuries to the deceased. It is a clear-cut case of murder and the case against the appellants does not fall within any exception. It was with an intention of committing the murder that the accused inflicted injuries to deceased Nathu Khan. Even when his mother and father tried to save Nathu Khan, the accused inflicted injuries to them, also. The intention of the accused is very much clear and they have rightly been convicted and sentenced by the learned trial Court for the offence under Section 302/34 I.P.C. and no case for interference is made-out. The prosecution has, therefore, been able to prove the case against the accused-appellants beyond reasonable manner of doubt and we do not find any infirmity in the judgment passed by the learned trial Court.

24. In the result, we do not find any merit in this appeal and-the same is hereby dismissed.

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