

**Anand Singh Vs. State**

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**Court :** Rajasthan

**Decided On :** Mar-22-2005

**Reported in :** RLW2005(3)Raj1998; 2004WLC(Raj)UC510

**Judge :** B. Prasad and; Satya Prakash Pathak, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 134; Code of Criminal Procedure (CrPC) - Sections 313; Indian Penal Code (IPC) - Sections 302 and 428

**Appeal No. :** D.B. Criminal Appeal No. 315 of 2001

**Appellant :** Anand Singh

**Respondent :** State

**Advocate for Def. :** V.R. Mehta, Public Prosecutor

**Advocate for Pet/Ap. :** Mahesh Boda, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Satya Prakash Pathak, J.**

1. This appeal has been directed against the judgment and order dated 5th May, 2001 passed by learned District & Sessions Judge, Jodhpur in Sessions Case No. 65/1998-State v. Anand Singh whereby the accused appellant has been convicted

under Section 302 and sentenced to imprisonment for life and pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo simple imprisonment for one month. The period of accused- appellant's remaining in police and judicial custody during investigation & trial of the case is made adjustable in the main sentence under the provisions of Section 428 IPC.

2. The present appeal arises in the following circumstances:

1. PW7 Mukesh submitted a written report Ex.P/12 at Police Station, Pratap Nagar, Jodhpur on 26.03.1998 at 10:10 in the morning, inter-alia stating that at about 9:30 in the morning when he was at his house, Bajrang Singh-a domestic servant (since deceased, hereinafter to be referred to as 'the deceased'), was doing some work in the Bara (a shelter place of cows and bufallows). At that time, accused Anand Singh came to the house of the informant PW7 and from the outside of the house he called the deceased. On his call, deceased Bajrang Singh went out and as he reached on the road, in front of his house, the accused started beating and inflicting knife blows on the person of the deceased. He alongwith his elder brother went there hearing the hue and cries and tried to get Bajrang Singh out of the clutches of the accused but the accused even after Bajrang Singh falling on ground sat on the chest of Bajrang Singh and gave knife blows. After a great deal of difficulty and catching hold of the accused and by exerting pressure and force the knife held by the accused could be released to fall on the ground. At that time, Barkat PW4 also came there. The deceased died at the spot due to several injuries sustained at the hands of accused. Information about the incident was also given at the Police Station. The dead body of the deceased was taken to Mahatma Gandhi Hospital by PW32 Sohanlal-elder brother of the deceased. The accused was caught at the spot and was handed over to the police. In the Police proceedings, the motive mentioned for the incident was that the deceased a few months before the incident had told the accused not to tease the school girls.

2. On the basis of above report, a case No. 117/1998 was registered in the Police Station, Pratap Nagar under Section 302 IPC and a regular FIR Ex.P/18 was chalked out. During the investigation, site was inspected and inspection memo of site Ex.P/1 and Site Plan Ex.P/2 were got prepared by PW14 Dinesh in the

capacity of SHO, Police Station, Pratap Nagar on 26.03.(1998). The blood smeared soil and control soil samples were taken and seized through Fard Ex.P/3 & Ex.P/4. The accused was arrested through Fard Ex.P/6 on 26.03.1998. The knife smeared with blood lying on the earth was seized and sealed through Fard Ex.P/7 and the clothes of the deceased smeared with blood were seized and sealed through Ex.P/8. All these memos & Fards were prepared in the presence of PW1 Mool Singh & PW5 Pukhraj. Fard Panchayatnama was also prepared. The Panchas were of the opinion that the deceased died due to injuries sustained by the deceased by sharp edged weapon. The clothes of the accused were also taken by the police. Clothes of PW7 Mukesh were also seized by the police through Fard Ex.P/5 as the same were having blood spots. The post-mortem of the dead body of the deceased was got conducted by PW13 Dr. N.S. Kothari and the Post-mortem Report is Ex.P/15 wherein it was opined that the cause of death of deceased was shock and haemorrhage due to injuries sustained on lungs, heart and anterior wall of stomach on account of multiple stab wounds.

3. After usual investigation, police submitted challan against the accused for the offence under Section 302 IPC in the Court of Addl. Chief Judicial Magistrate, Jodhpur. After committal from there, it came to the Court of learned District & Sessions Judge, Jodhpur and on 14.07.1998 after hearing both sides, the learned District & Sessions, Jodhpur framed charge under Section 302 IPC against the accused appellant. The charge was read over and explained to the accused appellant, who denied the charge and claimed trial. During the course of trial, the prosecution got examined 15 witnesses and tendered 18 documents in evidence. Thereafter, the statement of accused under Section 313 Cr.P.C. was recorded wherein accused made a simple denial and claimed to be innocent. In defence, no witness was produced. However, certain police statements were got exhibited. After conclusion of the trial, the learned Sessions Judge, Jodhpur, through impugned judgment and order dated 05.05.2001 convicted the accused appellant for the offence under Section 302 IPC and sentenced him as indicated above.

4. The accused being aggrieved of the said judgment and order dated 05.05.2001 passed by the learned District & Sessions Judge, has filed this appeal.

3. In this appeal, following submissions have been made by the learned counsel for the accused-appellant:

i) That the learned Sessions Judge disbelieved the three eye witnesses PW2 Sohanlal, PW11 Rameswaroop and PW1 Moolsingh but believed the evidence of Mukesh, Pukhraj and Barkat Khan and convicted the accused. According to the learned counsel, when one set of the eye witnesses was disbelieved then there was no reason to place reliance on the other set of eye witnesses.

ii) That the documents were not prepared at site and in fact it is not known where the same were got prepared. There is no mention of time on any of the Fards prepared by the police. The investigation is faulty.

iii) That the whole investigation of the case is tainted and the recovery of clothes, knife and the memos prepared are contradictory to the time given in the FIR and also as stated by the witnesses.

iv) That there was no motive for the accused to have committed murder of Bajrang Singh deceased.

v) That the learned Sessions Judge in fact has failed to properly appreciate the evidence.

vi) That the prosecution has miserably failed to explain the injuries sustained by the accused.

4. On the other hand, the learned Public Prosecutor supported the judgment and order dated 05.05.2001 passed by the learned Sessions Judge, Jodhpur and made following submissions:-

i) That the learned Trial Court has correctly appreciated the matter and rightly came to the conclusion that it was accused who inflicted knife blows on the person of the deceased and as a result of that died.

ii) That those eye witnesses, who have actually seen the incident, have been believed and the reasons for their trustworthiness have been mentioned in the impugned judgment and order.

iii) That some small injuries on the index finger and thumb of hand of accused has been found therefore to say that the entire case of the prosecution should be thrown out will not be the correct preposition of law.

5. We have heard learned counsel for the accused appellant and the learned Public Prosecutor and gone through the record of the case.

6. Before we proceed further, we consider it proper to examine the medical evidence adduced in the case.

7. PW13 Dr. N.S. Kothari in his statement recorded in the Court has stated that on 26.03.1998 he was posted in Mahatma Gandhi Hospital as Professor of Forensic Medicines. On that day, on police requisition he conducted post-mortem of the dead body of deceased Bajrang s/o Kesuram, resident of Suthala at about 12.45 noon. He noticed following injuries on the person of the deceased.

1. Incised wound (stab) 1.5cm x 0.5cm upper 1/3rd left side of neck (vertical) below left ear lobule near angle of mandible (muscle deep)

2. Incised wound 1.5cm x 6.5cm on the right chest just below medial end of clavicle (oblique)

3. Incised wound (stab) 2.0cm x 0.5cm on the upper bone of left chest below left clavicle about 2.0cm away from mid line.

4. Incised wound (stab) 1.5cm x 0.5cm on the upper part of chest left side about 1.0cm away from midline and about 3.0cm below injury No. 3.

5. Incised wound (stab) 2.0cm x 0.5cm on the left chest near left nipple oblique and medial to nipple.

6. Incised wound 2.0cm x 0.5cm on the upper bone of right chest near axilla and shoulder

7. Incised wound (stab) 1.5cm x 0.5cm on the upper part of abdomen about 1.5cm away to midline on the upper side of abdomen.

8. Incised wound 1.5cm x 0.5cm muscle deep lower 2/3 left arm anteriorly

9. Incised wound 2.0cm x 0.5cm muscle deep left lumbar region.

10. On opening the chest and abdomen-There is cutting of muscle in space between 1st and 2nd inter costal space with cutting of right upper lobe of lung about 1.0cm x 0.3 cm with hemorrhage about 350 ml. (underneath the injury No. 2) There is cutting of muscle between 1st and 2nd rib left side of chest with cutting of left upper lobe of lung 1.0cm x 0.5cm x 0.5cm underneath injury No. 3. There is cutting of pericardium and heart 1.0cm x 0.3cm x muscle deep left ventricle underneath injury No. 4. There is also cutting of pericardium and heart 1.5cm x 0.5cm x muscle deep (through upto cavity) underneath injury No. 5 with cutting of 4th rib and peritoneal cavity is full of blood about 200 ml. And 1.5cm x 0.5cm there is full peritoneal cavity about 500ml. Left side.

11. On opening the abdomen there is cutting of muscle, perforation presenting and anterior wall of stomach underneath injury No. 7 and peritoneal cavity contains blood about 300ml.

All the injuries were ante-mortem in nature. In the opinion of the doctor the cause of death was shock and haemorrhage due to cutting of both lungs (respiration), heart and anterior wall of stomach due to multiple stab wounds.

8. In cross-examination, on a question being put to the witness, he answered that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. The doctor has proved Post-mortem Report Ex.P/15 which contains his signatures at place 'A' to 'B' and the opinion of the doctor is available at place 'C' to 'D'.

9. A perusal of the statement of Dr. Kothari and the Post-mortem Report Ex.P/15, amply proves that the deceased died an unnatural death and it was homicidal.

10. Before considering the evidence of the eye witnesses in the matter, it shall be useful to first see as to what are the principles in relation to appreciating the evidence of eye witnesses and other witnesses. In assessing the value of the evidence of the eye witnesses two principal considerations are there; firstly,

whether in the circumstances of the case, it is possible to believe their presence at the scene of occurrence and such situation as would make it possible for them to witness the facts deposed to by them and secondly whether there is anything inherently improbably or unreliable in their evidence. In respect of both these considerations circumstances either elicited from those witnesses themselves or established by other evidence tending to improbablize their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence.

11. In *Lehna v. State of Haryana* : [2002]1SCR377 , their Lordships of the Supreme Court have held that if after going through the evidence led not the prosecution as a whole the Court comes to the conclusion that the evidence is reliable and trustworthy then in that event the single testimony of an eye witness is sufficient to hold the guilty. Minor discrepancies of trivial nature not touching the core of the case, hyper technical approach by taking witnesses torn out of context here and there from the evidence attaching important to some technical issue committed by the Investigating Officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

12. In the case of *State of U.P. v. Hakam Singh* : AIR 1980 SC184 , it has been held by the Hon'ble Supreme Court that law does not require a plurality of witnesses. Conviction can be based on the testimony of a single witness, provided the evidence of the witness is trustworthy. No particular number of witnesses are required to prove a facts.

13. In another case of *Hadmana Ram v. State of Rajasthan* [RLW 2004 (4) Raj. 2489], it has been held that 'Section 134 of the Evidence Act enshrines the well recognized maxim that 'Evidence has to be weighted not counted'. The matter thus depends upon the circumstances of each case and the quality of evidence even of a single witness by the testimony has either to be accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even, as the guilt of an accused person may be established by the testimony of a single witness, the innocence of the accused may be established by the testimony of a single

witness'.

14. In the case of Chacko alias Aniyam Kunju and Ors. v. State of Kerala (RLW 2004 (1) SC 97), the Hon'ble Supreme Court has held:

'Section 134 of the [Evidence Act, 1872](#) states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of the single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the Court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained. Undisputedly, there were injuries found on the body of the accused persons on medical evidence that per se cannot be a ground to totally discard the prosecution version. This is a factor which has to be weighed along with other materials to see whether the prosecution version is reliable, cogent and trustworthy. When the case of the prosecution is supported by an eye witness, who is found to be truthful as well, mere non-explanation of the injuries on the accused persons cannot be a foundation for discarding the prosecution version.

15. In the case of Mohan Singh and Anr. v. State of Madhya Pradesh : (1999)11LLJ590SC , the Hon'ble Court has observed:

'. . . Mere variance of the prosecution story with medical evidence in all cases should not lead to the conclusion, inevitably to reject the prosecution story. Efforts should be made to find the truth. This is the very object for which courts are created. To search it out, the Courts have been removing the chaff from the grain. It has to disperse the suspicious clouds and dust out the smear of dust as all these clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the court, within permissible limit to find out the truth. It means, on the one hand that no innocent man should be punished but on the other hand to see that no person committing an offence should go scot free. In spite of such efforts, suspicion is not dissolved, it remains writ large, benefit of doubt has to be credited to the accused. For this, one has

to comprehend the totality of the facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of eye witnesses including the medical evidence, of course, after excluding those parts of the evidence which are vague and uncertain. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeanour, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So courts have to proceed further and make genuine efforts within the judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.'

16. Their Lordships of the Hon'ble Supreme Court in the case of Takhaji Hiraji v. Kubersingh Chamansingh and Ors. : 2001 CriLJ2602 , observed that where the Court can distinguish the truth from falsehood, the mere fact that the injuries on the side of the accused persons are not explained of the prosecution, cannot be itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case. The Hon'ble Supreme Court said that in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons without making an effort at searching out the truth on material available on record as also to find out how much of the prosecution case was proved beyond reasonable doubt and was worthy of being accepted as truthful, is not proper.

17. The Hon'ble Apex Court in the case of Mangu Khan and Ors. v. State of Rajasthan reported in 2005 (3) RDD 1 (SC) while relying on the earlier authoritative pronouncement rejected the contention made on behalf of the accused that in every case there is such an inexorable burden upon the prosecution to explain the injuries on the body of the accused failing which the prosecution case must be thrown out lock, stock and barrel. The Hon'ble Court observed:

'. . .As far as the injuries sustained by the accused persons are concerned, the injury report shows that small abrasions and laceration on non-vital parts of the

body. . . . We are unable to accept the contention that merely because the appellants Mangu Khan and Sirdar Khan had a few abrasions and minor lacerated wound on their bodies, the evidence which is otherwise acceptable becomes suspect or that the prosecution must fail on that score.'

18. Keeping in view the above principles, we now propose to examine the evidence of eye witnesses led by the prosecution.

19. PW5 Pukhraj in his statement before the Court has stated that he knew deceased Bajrang Singh from before as he was his servant and looking after his cows and buffalows. The witness has stated that on 26.03.1998 in the morning at about 9.30 when he was at his house, the deceased was in the Bada. At that time, accused came to his house and called the deceased while standing on the road. The deceased in turn went out. The accused started beating deceased and also gave knife blows on the person of the deceased. After hearing hue and cry, he alongwith his brother Mukesh went there and tried to save the deceased. The accused was also overpowered by them. At that time Barkat Khan, Sohanji, Rameswaroop and Mool Singh also came there. The witness has further stated that the police was informed and the accused was taken away from the scene of occurrence by the police. The knife which was lying on the earth was also seized by the police. The witness has described the injuries inflicted on the person of the deceased. The reason for the incident according to him was forbidding the accused not to tease the school girls a few months ago and not to indulge in those activities. The witness has narrated the circumstances of police coming to the spot, preparing site-plan, inspecting the site, taking samples of control soil and blood smeared soil, so also taking blood smeared clothes worn by his brother and arresting the accused. In the cross examination, the witness has stated that when accused Anand Singh called the deceased out from his house, at that time he was taking meals but after hue and cry he came out and saw the accused inflicting knife blows.

20. PW9 Mukesh is the witness, who has lodged the first information report at the Police Station, Pratap Nagar. The witness has stated that in the morning of 26.03.1998 at about 9- 9:30 A.M. his servant deceased Bajrang Singh was doing

work in the Bada At that time, accused came to his house and the deceased was called out. When deceased came out, the accused started inflicting knife blows on the person of the deceased. Hearing hue and cry, he alongwith his brother came out of the house and tried to save the deceased but the accused did not stop and inflicted several injuries. Accused even did not stop when deceased fell down rather sat on the chest of the deceased and inflicted knife blows. The witness has further stated that the accused tried to run away from the spot but was caught and subsequently police arrested and taken him away with them. The witness has given version about taking of the dead body to the hospital. In the cross-examination, nothing could be extracted out from the witness except some minor contradictions. The cross examination has been made regarding occurrence time etc. and in our considered opinion, there is nothing on the record which may disentitle the testimony of this witness to be untrustworthy.

21. PW4 Barkat is also an eye witnesses. This witness is an independent witness and in his statement he has stated that on 26.03.1998 at about 9-10 in the morning when he was sitting at the house of Ramdayal Ghanchi, Ramdayal's son Pukhraj made a cry 'Voh Marta Hai'. On this, he reached at the spot and asked about inflicting injuries then it was revealed that it was the accused Bajrang Singh who had inflicted knife blows. The witness has further stated that he specifically asked the accused that why he had stabbed Bajrang Singh then accused replied that the deceased had abused him. The cross-examination had been addressed to some of the omissions and contradictions in the police statement. The witness has also been cross-examined about the distance from where the incident could be seen but as regards the catching hold of the accused on the spot and the incident which had taken place is concerned, nothing has come on record which may suggest that this witness is telling a lie.

22. An argument has been raised that there are several material contradictions in the evidence of above eye witnesses and in fact the accused has wrongly been involved in the case as there is no motive to commit the murder of the deceased. It has also been contended that since one set of the evidence of other eye-witnesses namely PW1 Mool Singh, PW11 Rameswaroop and PW2 Sohanlal have been disbelieved, therefore, the evidence of above witnesses cannot be

relied upon. We do not find any merit in the argument of the learned counsel for the reason that it is not a case based on circumstantial evidence but it is a case where in a daylight not one knife blow but several repeated knife blows were given on the person of the deceased. The deceased was called out from the house of PW5 Pukhraj and PW7 Mukesh. The accused was also apprehended at the spot. The minor discrepancies regarding the time of lodging of FIR and the time mentioned on the Fards so also the accused having unexplained injuries on his person, in our humble view cannot be a reason to disbelieve and throw the entire prosecution evidence. What is required by the courts is to scrutinize the evidence carefully. The learned Trial Court while discussing the evidence of above witnesses has given cogent reasons. There is no explanation available in the statement under Section 313 Cr.P.C. of the accused regarding incriminating material available on record. Further, the argument that since the injuries on the person of the accused has not been explained, the entire evidence of the prosecution should be disbelieved, in our humble opinion, is not sustainable for the reason that the injury on the person of the accused taking into consideration the injuries sustained by the deceased on his person can very well lead to a conclusion that some injuries on the person of the accused even if not explained by the prosecution will not entitle the accused to get benefit of doubt. Since the injuries were inflicted by a knife which was in the hand of the accused it was quite possible that while inflicting injuries on the person of the deceased and accused might have received those injuries which are not of any significance.

23. After carefully examining the evidence of above eye witnesses, we are of the opinion that the contentions of the learned counsel for the appellant that on account of non- explanation of the injuries of the accused the prosecution case deserves to be thrown out and further there has not been proper appreciation of evidence in view ,of faulty investigation and that the prosecution has not been able to lead evidence which may inspire confidence regarding trustworthiness of the evidence, are not sustainable.

24. The Hon'ble Supreme Court in the case of State of Rajasthan v. Kishore : 1996 CriLJ2003 has observed that even the grave irregularity committed by the Investigating Officer in omitting to send the burnt clothes and other incriminating

material for chemical examination to lend corroboration to the evidence during the course of investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account.

25. In Mohan Singh (supra), the Hon'ble Apex Court has clearly observed that there is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised, it would depend on the evidence of each case including the manner of deposition and demeanour of the witnesses and it is the duty of the Court to make genuine efforts within the judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

26. The Hon'ble Supreme Court in the case of Mangu Khan (supra), while considering the contentions made on behalf of the accused that it is always the duty of the prosecution to explain the injury on the person of the accused failing which the prosecution case must be thrown out lock, stock and barrel, has observed that merely because the appellants Mangu Khan and Sirdar Khan had a few abrasions and minor lacerated wound on their bodies, the evidence which is otherwise acceptable becomes suspect or that the prosecution must fail on that score. Thus, such a contention must be repelled.

27. In the present case also, the learned Sessions Judge while considering the evidence of the eye witnesses has made sincere efforts by discussing each and every witness of the prosecution. The evidence which has not been taken into consideration, has been discussed with reasons. Therefore, we are of the opinion that the learned Sessions Judge has made sincere efforts to find out truth in the matter and when on the basis of the evidence of PW7 Mukesh, PW5 Pukhraj and PW4 Barkat came to the conclusion that the witnesses were telling truth, there is no reason why the findings arrived at by the learned Sessions Judge should not be considered as the findings based on proper appreciation of evidence.

28. So far as other contention raised in the present case that there was no motive of the accused to commit murder of the deceased, is concerned, we are of the opinion that in criminal cases motive is not always relevant but at the same time if

the prosecution proves the motive then it strengthens the prosecution case. In the present matter also, the motive which has been attributed is that the accused used to tease school girls and the deceased warned him not to do so. The learned Trial Court has also considered this aspect of the matter and came to the conclusion that motive aspect could not be proved by the prosecution. We do not find any reason to take a different view than the one which has already been taken by the learned Sessions Judge. It shall be useful to refer here the case of Rajesh Govind Jogesha v. State of Maharashtra [(2000 Cr.L.R. (SC) 1] their Lordships of the Supreme Court held as under:

'We are not impressed with the arguments that as the earlier occurrence in which Sarita alias Rita was teased has been established by the prosecution, the appellants were entitled to acquittal as, according to them, there did not exist any motive for the commission of the crime. 'Motive' in a criminal case based on ocular testimony of witnesses is not at all relevant. This Court in Gurucharan Singh and Anr. v. State of Punjab : 1956 CriLJ827 held that 'but it has repeatedly been pointed out by this Court that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.' Again in Datar Singh v. The State of Punjab (AIR 1979 SC 1193), this Court reiterated that mere absence of a strong motive for committing the crime cannot be of any assistance to the accused if the offence could be proved by evidence. Where the direct evidence regarding the commission of offence is worthy of credence and can be believed, the question of motive becomes, more or less academic 'Motive' may be relevant in a case based upon circumstantial evidence only, being one of the circumstances.'

29. In light of above discussion, we find from the evidence of the eye witnesses that accused called the deceased from the house of PW7 Mukesh and when deceased came out, several knife blows repeatedly were given on the person of the deceased. The accused did not stop inflicting knife blows even when the deceased fell down and further when unimpeachable evidence of eye witnesses is available on record, which shows that the accused was caught at the spot. The knife was found lying at the spot. The Post-mortem Report Ex.P/15 coupled with the statement of PW13 Dr. N.S. Kothari further corroborates the testimony of the

eye witnesses in the present case. There appears no reasons to disturb the findings of guilt recorded by the learned Trial Court.

30. In view of foregoing discussions, we do not find any merit in this appeal and the same deserves to be dismissed.

31. In the result, we dismiss the appeal after confirming the judgment and order dated 05.05.2001 passed by District & Sessions Judge, Jodhpur in Sessions Case No. 65/1998.

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