

Jeeva @ Khema Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-11-2004

Reported in : RLW2005(1)Raj137; 2004(4)WLC403

Judge : Sunil Kumar Garg and; K.K. Acharya, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 307, 324, 326 and 447

Appeal No. : D.B. Criminal Jail Appeal No. 313 of 2001

Appellant : Jeeva @ Khema

Respondent : State of Rajasthan

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

Advocate for Pet/Ap. : Jog Singh, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal from Jail has been filed by the accused appellant against judgment and order dated 7.3.2001 passed by the learned Addl. Sessions Judge Banswara in Sessions Case No. 88/99 by which he while acquitting for the offence under Sections, 307, 326 and 447 IPC, convicted he accused appellant for the offence

under Sections 302 and 324 IPC and sentenced him in the following manner:-

of	appellant	convicted	Under	Section	Sentence
awarded					
Jeeva @ Khema	302 IPC	Imprisonment for life	and To pay fine of Rs. 1000/-,	In default of pay-ment of Fine,	to further undergo Six months im-prisonment.
324 IPC	Six months RI	and to pay fine of Rs. 500/-,	in de-fault of payment of fine,	to further undergo	im-prisonment for 15 days.

the aforesaid substantive sentences were ordered to run concurrently.

2. Since this appeal was preferred by the accused appellant from jail and he was not represented by any counsel, therefore, this Court vide order dated 24.5.2004 appointed Shri Jog Singh as Amicus Curiae to argue the case on behalf of the accused appellant and he has argued the case.

3. It arises in the following circumstances:

On 12.2.1999 at about 9.00 AM, PW1 Mani daughter of Narayan lodged an oral report before PW 7 Girvar Singh, who was at that time ASI and Incharge of Police Station Lohariya District Banswara, stating inter-alia that on 11.2.1999 at about 6.00 PM in the evening, she was standing outside her house and at that time, she saw that her grand father Khuspal (hereinafter referred to as the deceased) and uncle Jeeva @ Khema (accused appellant) both were in the chowk of house of PW 5 Devji and the accused appellant was giving beating to deceased with Kulari and the deceased was crying and upon this, she and her mother PW 4 Santu rushed towards the place of occurrence to save deceased and when they intervened, the accused appellant also gave beating to her mother PW 4 Santu, as a result of which, she fell down on the earth. It was further stated by PW 1 Mani that deceased also fell down in the chowk as a result of beating given to him by accused appellant and deceased died on the spot. It was further stated by PW 1 Mani that accused appellant gave kulari blow on the neck of deceased and wooden handle of the Kulari had broken and the accused appellant, after taking kulari as well as its wooden handle, ran away from the place of occurrence. It was

further stated by PW 1 Mani that she cried loudly and upon this, PW 2 Vijaypal and PW 3 Nathu also came there and she narrated the whole story to them. It was further stated by PW1 Mani that there was a dispute between the accused appellant and her grant-father (deceased) in respect of land and because of that enmity, accused appellant had killed deceased and dead body of deceased was lying on the spot and her mother PW 4 Santu has been taken to Ganoda for treatment.

The oral report of PW 1 Mani was reduced into writing by PW 7 Girvar Singh in the shape of FIR Ex. P/1 and he started investigation.

During investigation, site plan Ex. P/2 was got prepared by PW 7 Girvar Singh on 12.2.1999 in presence of PW 2 Vijaypal and phuliya and from the site, blood smeared soil and control soil (sample) were taken and seized through fard Ex.P/3 and the fard of panchayatnama of dead body of deceased was also got prepared and the same is Ex.P/4.

PW4 Santu was got medically examined by PW 8 Dr. Paras Kumar Jain and her injury report is Ex.P/5.

The post mortem of dead body of the deceased was got conducted by PW 8 Dr. Paras Kumar Jain and the post mortem report is Ex.P/13, where it was opined that cause of death of deceased was opined that cause of death of deceased was injuries to neck by sharp cutting weapon. Cutting esophagus trachea & large blood vessels causing bleeding shock & death.

The accused appellant was got arrested by PW 7 Girvar Singh on 12.2.1999 through arrest memo Ex.P/6 and during arrest, accused appellant gave information Ex.P/7 about recovery of kulari and its wooden handle and in pursuance of that information Ex.P/7 the accused appellant got recovered kulari, which was stained with blood, and the same was seized by PW 7 Girvar Singh through far Ex.P/8 in presence of PW 5 Devji and PW 9 Moga. The site plan of recovery of kulhari was also got prepared by PW7 Girvar Singh and the same is Ex.P/9.

The recovered and seized articles were sent to FSL and the FSL report is Ex. P/14.

After usual investigation, police submitted challan for the offence under Sections 302, 307, 326, 324 and 447 IPC against the accused appellant in the Court of Magistrate and from where the case was committed to the Court of Session.

On 1.9.1999, the learned Addl. Sessions Judge, Banswara framed the charges for the offence under Sections 302, 307, 447, 326 and 324 IPC against the accused appellant. The charges were read over and explained to the accused appellant, who denied the charges and claimed trial.

During the course of trial, the prosecution got examined as many as 9 witnesses and exhibited several documents. Thereafter, statement of the accused appellant under Section 313 Cr.P.C. was recorded. In defence, no evidence was produced by the accused appellant.

After conclusion of trial, the learned Addl. Sessions Judge, Banswara through impugned judgment and order dated 7.3.2001 while acquitting for the offence under Sections 307, 326, 447 IPC, convicted the accused appellant for the offence under Sections 302 and 324 IPC and sentenced him in the manner as indicated above holding inter-alia that the accused appellant had murdered the deceased and also caused injuries to PW 4 Santu and in coming to the above conclusions, he has placed reliance on the statements of PW 1 Mani and PW 4 Santu as eye witnesses and he has also sought corroboration from medical evidence and recovery of blood stained kulari at the instance of accused appellant.

Aggrieved from the said judgment and order dated 7.3.2001 passed by the learned Addl. Sessions Judge, Banswara, this appeal has been filed by the accused appellant from jail.

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

(i) That PW 1 Mani and PW 4 Santu could not be regarded as eye witnesses as the distance between the place where they were sitting and the place where the

incident took place, is about 300 feet as stated by PW 1 Mani and from that distance, it was not possible for them to see the occurrence, especially when the incident had taken place near about 6.00 PM in the evening when darkness was spreading.

(ii) That apart from this, PW 1 Mani is grand daughter of deceased and PW 4 Santu is daughter-in-law of deceased and therefore, they are interested witnesses and their evidence should have not been believed by the learned trial Judge.

(iii) That it is also not clear whether accused appellant caused injuries to Narayan, father of PW 1 Mani or deceased as there is confusion in this respect.

(iv) That so-called recovery of kulari does not connect the accused appellant with the commission of crime.

Hence, it was submitted that prosecution has, failed to prove its case beyond all reasonable doubts against the accused appellant and therefore, the findings of conviction recorded by the learned trial Judge cannot be sustained and liable to be set aside and the accused appellant is entitled to acquittal.

5. On the other hand, the learned Public Prosecutor supported the impugned judgment and order dated 7.3.2001 passed by the learned Addl. Sessions Judge, Banswara.

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

7. Before proceeding further, first medical evidence of this case has to be seen.

Injuries of PW 4 Santu

8. The injury report of PW 4 Santu is Ex.P/5 and to prove the same, the prosecution has produced PW 8 Dr. Paras Kumar Jain.

9. PW 8 Dr. Paras Kumar Jain in his statement recorded in Court has stated that on 12.2.1999 he was Medical Officer in C.H.C. Ganoda and on that day, he medically examined PW 4 Santu and found the following injuries on her person:-

1. Incised wound 4 cm x 1/2 cm x skin deep on right side chest upper part. Simple caused by sharp edged weapon.
2. Incised wound 7 cm x 1/2 cm, 4 cm x 1/2 cm and 4 cm x 1/2 cm on left side of neck. Simple caused by sharp edged weapon.
3. Incised wound 4 cm x 1/2 cm on chin lower part Simple caused by sharp edged weapon.
4. Incised wound 1 cm x 1/4 cm x skin deep on left side cheek. Simple caused by sharp edged weapon.
5. Incised wound 1 cm x 1/4 cm x skin deep on left side of face near angle of eye. Simple caused by sharp edged weapon.
6. Incised wound 3-1/2 cm x 1/4 cm x 1/2 cm on left ear. Grievous caused by sharp edged weapon.
7. Incised wound 4 cm x 1/2 cm x skin deep on left side scalp. Simple caused by sharp edged weapon.
8. Incised wound 1 cm x 1/4 cm x skin deep on left side neck. Simple caused by sharp edged weapon.

He has proved the injury report Ex. P/5.

10. Thus, from the statement of PW 8 Dr. Paras Kumar Jain and injury report Ex.P/5, it is very much clear that PW 4 Santu received 8 injuries, as mentioned above, by sharp edged weapon and out of 8 injuries, only one injury was found grievous and the remaining 7 seven injuries were found simple in nature.

Post mortem of dead body of deceased.

11. The post mortem report of deceased is Ex.P/13 and to prove the same, the prosecution has produced PW 8 Dr. Paras Kumar Jain.

12. PW 8 Dr. Paras Kumar Jain has stated that on 12.2.1999 he conducted the post mortem of the dead body of the deceased and found the following injuries on

his body:-

1. Incised wound 6 x 3-1/2cm x 5cm, black blood deposited. Margin everted, trachea esophagus and neck vein and arteries- jugular & carotid have been found cut.
2. Incised wound 6 x 3 x 3cm deep margins everted dried black blood deposited. There is fracture of Rt. side of mandible (jaw) bone.
3. Incised wound 5 x cm x 3 cm deep margins everted, dried black blood is deposited, on left side scalp lower part.

He has further stated that cause of death of deceased was injuries to neck by sharp cutting weapon. Cutting esophagus trachea & large blood vessels causing bleeding shock & death. He has further stated that the injuries were sufficient in the ordinary course of nature to cause death, he has proved the post mortem report Ex.P/13.

13. Thus, from the statement of PW 8 Dr. Paras Kumar Jain, it is very much clear that the deceased died because of injuries to neck by sharp cutting weapon and cutting esophagus trachea & large blood vessels causing bleeding, shock & death and thus; the death of the deceased may be classified as homicidal one.

14. The question for consideration is whether the above injuries to deceased as well as PW 4 Santu were caused by the accused appellant or not and for that, evidence available on record has to be seen.

15. In this case, there is no dispute on the point that PW 1 Mani is grand-daughter of deceased and PW 4 Santu is daughter-in-law of deceased and the report Ex.P/1 was lodged by PW 1 Mani on the next day i.e. on 12.2.1999.

16. The gist of the report Ex.P/1 may be summarized as follow:-

(i) That incident had taken place in the chowk of PW 5 Devji.

(ii) That occurrence was seen by PW 1 Mani as well as her mother PW 4 Santu from the chowk of their house.

(iii) That accused appellant caused kulari blows to deceased as well as to PW 4 Santu when she intervened.

(iv) That wooden handle of kulari Was broken and the accused appellant ran away with kulari and its handle.

(v) That just after the occurrence, when PW 1 Mani cried, PW. 2 Vijaypal and PW 3 Nathu reached on the spot and whole incident was narrated to them by PW 1 Mani.

17. Since in this case it has been submitted by the learned counsel for the accused appellant that the place where PW 1 Mani and PW 4 Santu were standing, it was not possible to see the occurrence, therefore, the site plan has become material document in this regard and it has to be seen.

18. The site plan is Ex.P/2, which was got prepared by PW 7 Girvar Singh and in that site plan Ex.P/2, the places have been shown and marked and at place-A, the dead body was lying. The place marked-7 belonged to deceased and PW 1 mani and PW 4 Santu. The house where the incident had taken place was on PW 5 Devji and the place marked-3, which is near the place marked-A, is the chowk of PW 5 Devji.

19. Thus, no doubt in the site plan Ex.P/2, distance between the place marked-7 and the place marked-A has not been mentioned, but it appears that the placed marked-A as well as marked-7 were open places and if a person was sitting at place marked-7, he could see the place marked-A as there was no barriers between the two.

20. Since PW 1 Mani and PW 4 Santu are close relatives of deceased being respectively grand-daughter and daughter-in-law of deceased and they hail from village, therefore, something should be said about the position of law with respect to appreciation of evidence of related witness, interested witness, eye witness and rustic witnesses.

On related witness and interested witness.

21. It may be stated here that close relationship with the victim is not a ground for disbelieving a witness. The fact that witness is a relation of the complainant is not ground for rejecting the evidence. But his evidence has to be construed very carefully.

22. In *Brathi v. State of Punjab* (AIR 1991 SC 318), the Hon'ble Supreme Court held that no doubt criminal court has to appreciate evidence given by witnesses who are closely related to the victim and the court must be careful in evaluating their evidence, but mechanical rejection of the evidence on the sole ground that the witness being related to the victim is an interested witness would invariably lead to miscarriage of justice.

23. A close relative, who is a very natural witness in the circumstances of a case, cannot be regarded as an 'interested witness', as held by the Hon'ble Supreme Court in *Dalbir Kaur v. State of Punjab* (AIR 1977 SC 472).

24. The mere fact that the witnesses were relations or interested would not by itself be sufficient to discard their evidence straightway unless it is proved that their evidence suffers from serious infirmities which raises considerable doubt in the mind of the court. For that the decision of the Hon'ble Supreme Court in *State of Gujarat v. Naginbhai Dhulabhai Patel* (AIR 1983 SC 839), may be seen.

25. It is well settled that evidence of interested witnesses cannot be discarded on the sole ground of interestedness, but their evidence should be subjected to a close scrutiny. Interested witnesses are not necessarily false witnesses. Evidence of interested witness cannot be equated with that of a tainted witness. There is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration.

26. 'Related' is not equivalent to 'interested.' A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested.' For that the decision of the Hon'ble Supreme Court in *State of Rajasthan v. Kalki* (AIR 1981 SC 1390), may be seen.

27. Relationship by itself is not a ground to discredit testimony of witness, if it is otherwise found to be consistent and true, as held by the Hon'ble Supreme Court in *Sarwan Singh v. State of Punjab* (AIR 1976 SC 2304).

28. There is no rule of law that a Court cannot act on the evidence of interested witnesses. The only thin is that a court should be careful and cautious in accepting that evidence and if after due scrutiny it is found that their evidence does not suffer from any infirmities, in that case, there is no reason why a convicting should not follow on that evidence also.

On eye witness

29. In assessing the value of the evidence of the eye witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence of in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable 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 improbabilise 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.

30. The necessity of corroboration of the evidence of the eye witnesses depends upon the facts of each case. It is a rule of caution devised to seek assurance and dispel any lingering doubt, but it is not every case which attracts this rule. Broadly speaking, the necessity of such corroboration arises where the evidence of the eye witnesses, though *ex facie* acceptable, is not of such a character upon which implicit reliance can be placed. In such an event prudence dictates that the court should insist upon some kind of corroborative evidence to lend assurance to the ocular testimony. Where, however, the evidence of the eye witnesses is convincing and the story narrated by them natural, and there is nothing to show that an attempt has been made to rope any innocent person alongwith the guilty, the Court would not be justified in insisting upon corroboration qua an accused and in acquitting him in the absence of such corroborative evidence.

31. The testimony of the eye witnesses, who are the natural witnesses of the occurrence and whom one would expect to have seen the occurrence, cannot be doubted only because they happen to be the relatives to the deceased. Simply because an eye witness happens to be the son of the deceased, his evidence cannot be discarded if his testimony is otherwise acceptable.

On rustic witnesses

32. In *Shivaji Sahebra Babade and Anr. v. State of Maharashtra* (AIR 1973 SC 2622), the Hon'ble Supreme Court observed that where the witnesses to a criminal case are rustics, their behavioral pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses the court has to inform itself that variances on the fringes, discrepancies in detail, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony, provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.

In the above case, the Hon'ble Supreme Court further observed that the Court which has been the witnesses depose, has a great advantage over the appellate judge who reads the recorded evidence in cold print and regard must be had to this advantage enjoyed by the trial judge of observing the demeanour and delivery, of reading the straight forwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious untruthfulness, of persons who swear to the facts before him. Nevertheless, where a judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can a fetish be made of the trial judge's psychic insight.

The Hon'ble Supreme Court further observed in the above case that the sluggish chronometric sense of the country-side community in India is notorious since time is hardly of the essence of their slow life; and even urban folk made mistakes

about time when no particular reason to observe and remember the hour of minor event like taking a morning meal existed. Too much play on such slippery facts goes against realism so essential in a testimonial appraisal.

33. In *State of Uttar Pradesh v. Hari Ram and Ors.* (AIR 1983 SC 1081), the Hon'ble Supreme Court observed that it is common knowledge that villagers do not have a mathematical idea of the actual time when midnight begins or ends.

34. Similarly, the statement of the witness with respect to distance cannot be considered as exact or precise. It is always based on general impression and due allowance must be given keeping in view the intelligence, power of observation and retentive memory of the witness.

35. It may be stated here that India is an agricultural country and most of the people live in villages where they are deprived of so many facilities, which are found in several big cities and thus, standard of I-Q though increased with the passage of time, but has not increased to the extent, which may take them at par with the persons living in big cities and keeping that aspect in mind, the Hon'ble Supreme Court in the case of *Shivaji Sahebrao Babade* (supra) has made observations, which have been quoted above and in this background, the statements of PW 1 Mani and PW 4 Santu have to be seen.

36. PW 1 Mani in his statement recorded in Court has stated that accused appellant killed deceased and when her mother PW 4 Santu intervened, she was also beaten with kulari by the accused appellant and when she cried, PW 3 Nathu and PW 2 Vijaypal also reached there and thereafter, she lodged the report Ex.P/1.

In cross-examination, this witness admits the following facts:-

(i) That it is correct to say that at the relevant time, she was standing in the chowk and she was not at the place of occurrence, where murder of deceased had taken place and her mother PW 4 Santu was also sitting in the chowk.

(ii) That accused appellant and deceased both were sitting in the house of PW 5 Devji.

(iii) That distance between her house and the place of occurrence is about 300 feet.

(iv) That when accused appellant was giving beating to deceased, she reached there, but incident was being seen by her with some distance.

(v) That when she reached on the spot, deceased had died.

37. Similar is the statement of PW 4 Santu, mother of PW 1 Mani and daughter-in-law of deceased. She has stated that on the relevant day, she was doing the work in her house and PW 1 Mani was standing in the chowk. She has further stated that house of PW 5 Devji is situated 25 feet away from her house. She has further stated that accused appellant gave beating to deceased with kulari and when deceased cried, she rushed towards the place of occurrence and saw that the accused appellant was beating deceased with kulari and on her intervention, accused appellant also beat her with kulari. Thereafter, accused appellant ran away from the place of occurrence and deceased died on the spot and PW 2 Vijaypal and PW 3 Nathu also reached there.

In cross-examination, this witness admits the following facts:-

(i) That accused appellant and deceased are real brothers and the accused appellant has no issue.

(ii) That it is correct to say that in winter, darkness used to come at 6.00 PM, but on the fateful day, there was no darkness at the time when the alleged incident had taken place.

(iii) That before she reached on the spot, the accused appellant had already caused two kulari blows to the deceased and one kulari blow was given by the accused appellant to deceased in her presence and she has not seen other two kulari blows, which were given by accused appellant to deceased before her arrival.

(iv) That PW 2 Vijaypal and PW 3 Nathu and Puliya reached on the spot after the death of deceased.

(v) That she came as soon as PW 1 Mani had cried and she saw accused appellant causing kulari blows on the head and neck of deceased.

(vi) That there was dispute between the parties over some land.

38. PW 2 Vijaypal and PW 3 Nathu have stated that when they reached on the spot, they were told by PW 1 Mani that accused appellant had murdered deceased.

39. The question for consideration is whether on the above evidence, the findings of the learned trial Judge that PW 1 Mani and PW 4 Santu were eye witnesses of the occurrence, can be sustained or not.

40. The confusion, which has been raised by the learned counsel for the appellant is that from the statement of PW 1 Mani, it is not clear whether deceased was murdered or Narayan was murdered, but that has been set at rest by the evidence of PW 4 Santu, where she has categorically stated that her father-in-law (deceased) was killed by the accused appellant.

41. As already stated above, from rural witnesses, it cannot be expected that they would describe the distance exactly or correctly. Since PW 1 Mani is a rural witness and she was only 15 years of age at the relevant time, therefore, it cannot be expected from her that she would describe the exact and actual distance. No doubt she has stated that her house was 300 feet away from the place of occurrence while PW 4 Santu has stated that it was 25 feet, but whatever the distance might be, presence of PW 1 Mani in the chowk cannot be doubted at all as from her statement, it does not appear that she is telling lie or she intends to implicate the accused appellant falsely and she appears to be a truthful and reliable witness.

42. Furthermore, the statement of PW 1 Mani that she saw the incident from her chowk appears to be reasonable and plausible as whatever may be the distance between her chowk and the place of occurrence, but since both places were open and there was no barrier between the two, therefore, she could see that incident from her chowk initially and when she reached on the spot, incident had already

taken place.

43. Apart from this, the accused appellant is relative of PW 1 Mani and PW 4 witness has given statement against any one of the, if that statement is found reliable and credible and is in consonance with all probabilities, the same could be believed and it should not be rejected merely on the ground of relationship.

44. Therefore, PW 1 Mani was rightly treated as an eye witness by the learned trial Judge and the findings of the learned trial Judge in this respect are liable to be confirmed one.

45. Similarly, if the statement of PW 4 Santu is read as a whole it appears that her statement has the ring of truth as she has clearly stated that she has not witnessed the full incident and she has not seen that accused appellant had given two kulari blows to the deceased, but she has clearly stated that she saw the incident when accused appellant was giving third blow to the deceased. Apart from this her statement has further to be believed because she is an injured witness and presence of injured witness on the scene of occurrence should not be doubted in any manner.

46. Therefore, PW 4 Santu was also rightly treated as an eye witness by the learned trial Judge and the findings of the learned trial Judge in this respect are liable to be confirmed one.

47. As already stated above, when eye witnesses are close relatives of the deceased, their evidence should be scrutinized very carefully and taking this aspect into consideration, if the statements of PW 1 Mani and PW 4 Santu are examined carefully, it clearly appears that their statement are straight forward, reliable and trustworthy and their statements get corroboration from medical evidence as well as from the statements of witnesses PW 2 Vijaypal and PW 3 Nathu, who reached on the spot just after the occurrence and they have clearly stated that when they reached on the spot, they were told by PW 1 Mani that deceased had been murdered by the accused appellant. From the statements of PW 1 Mani and PW 4 Santu, it cannot reasonably be inferred or presumed that they were telling lie or falsely implicating the accused appellant with the

commission of crime.

other corroborative evidence

48. Apart from the above, at the instance of accused appellant, a blood stained kulari was recovered and seized by PW 7 Girvar Singh through fard Ex.P/8 and that recovery of blood stained kulari was proved by PW 7 Girvar Singh and as per FSL report Ex.P/14, human blood was found on that kulari.

49. When a blood stained spear/kulari is discovered, it becomes incriminating not because of its recovery at the instance of the accused but the element of criminality tending to connect the accused appellant with the crime lies in the authorship of concealment, namely, that the appellant who have information leading to its discovery was the person who concealed it.

50. Recovery of blood soaked weapon upon the disclosure statement of the accused can be used to corroborate other prosecution evidence against the accused appellant.

51. Thus, the recovery of human blood stained kulari at the instance of accused appellant also connects the accused appellant with the commission of crime.

52. It may be stated here that since eye witnesses PW 1 mani and PW 4 Santu were close relatives of the deceased, therefore, with a view to satisfy our judicial conscious, we have perused their evidence minutely and carefully, but we do not find any infirmity in their statements and rather it appears that they are truthful and reliable witnesses and they saw with their own eyes that the accused appellant had caused murder of deceased and also caused injuries to PW 4 Santu and their statements are further corroborated by medical evidence as well as by the statements of witnesses PW 2 Vijaypal and PW 3 Nathu and apart from this, recovery of human blood stained kulari at the instance of accused appellant also corroborates their evidence. Therefore, of eye witnesses PW 1 Mani and PW 4 Santu while convicting the accused appellant for the offence under Section 302 and 324 IPC, he has committed on illegality in doing so.

53. The learned counsel for the accused appellant has placed reliance on the following observations made by this Court in para No. 30 of the judgment in Khuda Bux @ Khudia v. Union of India (SB Cr.Appeal No. 55/94), and one another decided on 3rd July, 1995):-

'30. In Criminal Investigation by Dr. Hans Gross, Vth Edition at pare 159, the learned author has opined that presuming the eye sight of a person to be normal and the light good, one is able in broad day light to recognize:-

(a) Persons whom one knows very well, at a distance from 50 to 90 yards, when there are particular and very characteristic signs, 110 yards, in exceptional cases to 165 yards,

(b) persons one does not know very well and has not of then seen from 28 to 33 yards, and

(c) people one has only seen once, 16 yards.

Therefore, even in broad day light a person, who is very well known, can only be identified upto a distance from 50 to 90 yards, when there are very particular and characteristic sings upto 110 yards, and in very exceptional cases upto 165 yards.'

In our considered opinion, the above observations would not come to help the accused appellant as in the present case, as already stated above, the distance pointed out by PW 1 Mani cannot be accepted because distance pointed out by PW 4 Santu is altogether different one and we cannot expect an exact and actual distance from the witnesses just like PW Mani and PW 4 Santu hailing from village. Therefore, the above authority would not be helpful to the accused appellant.

54. Thus, it is held that from the evidence just discussed above, the prosecution has proved its case beyond all reasonable doubts against the accused appellant for the offence under Sections 302 and 324 IPC and the learned trial Judge has rightly convicted the accused appellant for the said offence. The impugned judgment and order of the learned trial Judge do not suffer from any illegality in the approach to the case or we do not see any perversity in the appreciation of

evidence on record by the learned trial Judge.

55. It may be stated here that while appreciating the findings of the trial court, Rule of practice which has almost the force of law is that the appellate court should not reverse a finding of fact rested on a proper appreciation of evidence. Thus, opinion of trial Judge on appreciation of evidence should not be disturbed except for exceptional reasons. In this case, we see no exceptional reasons.

56. For the reasons stated above, all the contentions raised by the learned counsel for the appellant stand rejected and no interference is called for with the findings of conviction recorded by the learned Addl. Sessions Judge, Banswara through impugned judgment and order dated 7.3.2001 and this appeal is liable to be dismissed.

According, this appeal filed by the accused appellant is dismissed, after confirming the judgment and order dated 7.3.2001 passed by the learned Addl. Sessions Judge, Banswara.

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