

Mahaveer Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/764670

Court : Rajasthan

Decided On : Aug-11-2004

Reported in : RLW2005(1)Raj312; 2004(4)WLC663

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

Acts : Indian Penal Code (IPC) - Sections 302, 307, 394 and 460

Appeal No. : D.B. Criminal Jail Appeal No. 383 of 2003

Appellant : Mahaveer

Respondent : State of Rajasthan

Advocate for Pet/Ap. : R.S. Gehlot, Amicus Curiae; V.R. Mehta, Public Prosecutor

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 28.2.2003 passed by the learned Addl. Sessions Judge No. 2, Chittorgarh in Sessions Case No. 112/2001 by which he convicted the accused appellant for the offence under Sections 302, 307, 394 and 460 IPC and

sentenced him in the following manner:-

Sentenced	Name of appellant	Convicted	awarded	Under
Section-----	Mahaveer	302	IPC	
Imprisonment for life and to	Pay fine of Rs. 10000/-,	in default of payment of fine,		
to further undergo 2 months SI.307 IPC	Five years RI and to pay Fine of Rs. 5000/-,	in default of payment of fine, to further	Undergo two months SI.394 IPC	Three years
RI and to pay Fine of Rs. 5000/-,	in default of payment of fine, to further	Undergo two months SI.460 IPC	Five years RI and to pay Fine of Rs. 10000/-,	in default of payment of fine, to further
Undergo two months SI.-----	All	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 25.5.2004 appointed Shri R. s. Gehlot 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 3.8.2001 at about 6.15 AM, PW15 Deepa gave a Parcha Bayan Ex.P/27 to PW16 Abhay Singh, who was at that time SHO, Police Station Begu stating inter-alia that the accused appellant is son of her elder father and thus, in relation he is her brother and on 2.8.2001 in the night at about 9.00 PM, he came to her house. It was further stated by PW15 Deepa that her father had already died and she had no real brother and therefore, accused appellant used to make frequent visit to her house. It was further stated by PW15 Deepa that on 2.8.2001 at about 11.00 PM, after eating food, she, her mother Nandu (hereinafter referred to as the deceased) and accused appellant all slept and she was sleeping alongwith her mother (deceased). It was further stated by PW15 Deepa that in the night he heard the cries of her mother (deceased) and when she switched on the bulb, she found that the accused appellant was armed with knife and he was giving knife blows to her mother (deceased) and he was also saying 'where the ornaments and money were lying' and when she intervened, she was also giving knife blows by the accused

appellant. It was further stated by PW15 Deepa that thereafter, she went near the window and after opening window, she cried for help and some persons, who were repairing tractor, heard the cries and they also cried and upon this, accused appellant reached on the roof and when she took care of her mother (deceased), she found that deceased had already died and this incident had taken place near about 3.30 AM on 3.8.2001 and thereafter, the persons, who were repairing tractor, and police came there and they took her to the hospital. It was further stated by PW15 Deepa that accused appellant had come with the intention to commit murder of deceased and to take money and ornaments and further, he also intended to take over the property of the deceased.

On this Parcha Bayan Ex.P/27, police registered the case and chalked out regular FIR Ex.P/28 and investigation was conducted by PW16 Abhay Singh.

During investigation, site plan Ex.P/6 was got prepared by PW16 Abhay Singh and the fard of panchayatnama of dead body of deceased was also got prepared and the same is Ex.P/7. Through fard Ex. P/8, clothes of deceased i.e. orni (Article 11) stained with blood was seized by PW16 Abhay Singh.

From the place of occurrence, blood sample on cotton (Article 12) was also taken by PW16 Abhay Singh and the same was seized through fard Ex.P/29 in presence of PW14 Bhanwarlal and PW10 Mohanlal. Through fard Ex.P/31, blood stained salwar (Article 9) and kurta (Article 10) belonging to PW15 Deepa were seized by PW16 Abhay Singh in presence of PW14 Bhanwarlal and PW10 Mohanlal.

The post mortem of the dead body of the deceased was got conducted by PW6 Dr. Goru Ram and the post mortem report is Ex.P/23 where it was opined that cause of death of deceased was multiple injuries to liver and excessive blood resulted in death.

PW 15 Deepa was also got medically examined by PW6 Dr. Goru Ram and her injury report is Ex.P/24. which shows that she received as many as 33 injuries by sharp edged weapon.

The accused appellant was got arrested on 3.8.2001 through arrest memo Ex.P/5 and in the arrest memo Ex.P/5, there is a mention of the fact that he was having so many injuries on his person. The accused appellant was also got medically examined by PW6 Dr. Goru Ram and his injury report is Ex.P/25, which shows that he was having 13 injuries on his person.

Through fard Ex.P/4, blood stained pent (Article 7) and bushirt (Article 8) of the accused appellant were seized by PW16 Abhay Singh in presence of PW1 Bharat and Sangram and through fard Ex.P/1, on the information of accused appellant, blood stained knife (Article 1) was seized by PW16 Abhay Singh in presence of PW1 Bharat and Sangram.

When the accused appellant was in police custody, through fard Ex.P/3 ear ring (Article 13) belonging to PW15 Deepa was also got recovered and seized by PW16 Abhay Singh and that ear ring (Article 13) was got identified before Tehsildar through fard Ex.P/21 in identification parade by PW15 Deepa.

The recovered and seized articles were sent to FSL for chemical examination and the FSL report is Ex.P/36.

After usual investigation, police submitted challan for the offence under Sections 302, 307, 394 and 460 IPC against the accused appellant in the Court of Magistrate and from where the case was committed to the Court of Session.

On 3.12.2001, the learned Addl. Sessions Judge No. 2, Chittorgarh framed the charges for the offence under Sections 302, 307, 394 and 460 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 17 witnesses and exhibited several documents. Thereafter, statement of the accused appellant under Section 313 Cr.P.C. was recorded. In defence, one witness DW1 Meena Kumari, who is wife of accused appellant, was produced.

After conclusion of trial, the learned Addl. Sessions Judge No. 2, Chittorgarh through impugned judgment and order dated 28.2.2003 convicted the accused

appellant for the offence under Sections 302, 307, 394 and 460 IPC and sentenced him in the manner as indicated above holding inter-alia:-

(i) That on the intervening night of 2nd and 3rd August, 2001, the accused appellant had murdered deceased and he had also attempted to murder PW15 Deepa and his intention was also to commit robbery from the house of the deceased and thus, he committed lurking house-trespass by night and caused murder of deceased and also made an attempt to murder PW15 Deepa.

(ii) That learned trial Judge has placed reliance on the statement of injured witness PW15 Deepa and her statement was corroborated by independent witnesses PW3 Harlal, PW11 Narayan, PW13 Faij Mohd. and PW 17 Devilal.

(iii) That learned trial Judge has also placed reliance on the evidence that clothes of the accused appellant were stained with human blood.

(iv) That learned trial Judge has also placed reliance on the evidence of recovery of blood stained knife (Article 1) at the instance of accused appellant.

(v) That learned trial Judge has come to the conclusion that there was ample evidence on record to connect the accused appellant with the commission of crime and the prosecution has proved its case beyond all reasonable doubts against the accused appellant and thus, he convicted and sentenced the accused appellant in the manner as indicated above.

Aggrieved from the said judgment and order dated 28.2.2003 passed by the learned Addl. Sessions Judge, Chittorgarh, 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 since PW15 Deepa was daughter of the deceased, therefore, she was relative and interested witness and thus, no reliance should have been placed on her statement by the learned trial Judge.

(ii) That prosecution has not explained the injuries of the accused appellant, which are found in his injury report Ex.P/25 and thus, benefit of doubt should be given to the accused appellant.

(iii) That had the accused appellant was having any intention of committing robbery in the house of the deceased, he would have done so, but since in this case, there is no evidence that he looted the ornaments, but only ear ring of PW15 Deepa was found when the accused appellant was in police custody. Thus, motive is absent in this case and from that point of view also, benefit of doubt should be given to the accused appellant.

5. On the other hand, the learned Public Prosecutor supported the impugned judgment and order dated 28.2.2003 passed by the learned Addl. Sessions Judge, No. 2, Chittorgarh.

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 and post mortem report of deceased

8. The post mortem report of deceased is Ex.P/23 and to prove the same, the prosecution has produced PW6 Dr. Goru Ram.

9. PW6 Dr. Goru Ram in his statement recorded in Court has stated that on 3.8.2001, he was Medical Officer in C.H.C. Begu and on that day he conducted the post mortem of the dead body of the deceased and found the following injuries on her body:-

1. Incised wounds two in number 1cm x 1/4cm x muscle deep each on left cheek.
2. Incised wound 1-1/2cm x 1/4cm x muscle deep on left mandibular area.
3. Stab wound 1cm x 1/2cm x 1-1/2cm on left shoulder anteriorly.
4. Stab wound 1-1/4cm x 1/2cm x 1-1/2cm on left shoulder laterally.

5. Incised wounds four in number $\frac{3}{4}$ cm x $\frac{1}{4}$ cm each muscle deep on superior surface of left shoulder.
6. Stab wound 1cm x $\frac{1}{2}$ cm x 1- $\frac{1}{2}$ cm on back of left shoulder.
7. Stab wound $\frac{1}{2}$ cm x $\frac{1}{4}$ cm x 1 cm on left mammary area (parasternal)
8. Incised wound 1 cm x $\frac{1}{8}$ cm x muscle deep on right mammary area (parasternal).
9. Incised wound 1cm x $\frac{1}{4}$ cm x muscle deep on right maxillary area (right cheek).
10. Incised wound 1cm x $\frac{1}{8}$ cm x muscle deep on right $\frac{1}{2}$ of upper lip (near angle of mouth).
11. Incised wound 3cm x $\frac{1}{3}$ cm x muscle deep on lower left of right cheek.
12. Incised wounds three in number 1cm x $\frac{1}{2}$ x muscle deep each on preauricular area of right cheek.
13. Stab wound $\frac{3}{4}$ cm x $\frac{1}{2}$ cm x 1cm on right submandibular area.
14. Incised wounds four in number 1- $\frac{1}{2}$ cm x $\frac{1}{3}$ cm x 1- $\frac{1}{2}$ cm each on right lateral surface of neck.
15. Incised wound 1 cm x $\frac{1}{4}$ cm x muscle deep on right postero lateral surface of neck.
16. Bruise with abrasion 1cm x 1cm on right temple.
17. Stab wound 1- $\frac{1}{2}$ cm x $\frac{1}{2}$ cm x 1- $\frac{3}{4}$ cm on antero lateral surface of right $\frac{1}{2}$ of neck.
18. Stab wound 1- $\frac{1}{2}$ cm x $\frac{1}{2}$ cm 1- $\frac{3}{4}$ cm on proximal half of anterolateral surface of right forearm.
19. Incised wound 2cm x $\frac{1}{2}$ cm x muscle deep on proximal posterior surface of right forearm.

20. Incised wounds five in number 1-1/2cm x 1/4cm x muscle deep each on back of right shoulder.

21. Incised wound 1cm x 1/4cm x muscle deep on back of left shoulder.

22. Incised wound 1cm size linear mucosa deep on surface of upper lip.

23. Bruise 1cm x 1/4cm on mucosal surface of lower lip.

24. Stab wounds total four in number each measures 2cm x 1/2cm x cutting through skin. Subcutaneous tissues, muscles, peritoneum and (interior surface), liver- Present over right lateral abdominal wall below costal margins. Each wound penetrated 3cm deep in liver (inferior surface). Clotted blood present at and around wounds. Abdominal cavity contain 700 ml of clotted & fluid blood. Injuries present over right robe of liver only.

He has further stated that deceased died because of multiple injuries to liver (injury No. 24) which resulted in excessive blood. He has further stated that injury No. 24 was dangerous and sufficient in the ordinary course of nature to cause death. He has proved the post mortem report Ex.P/23.

10. Thus, from the statement of PW6 Dr. Goru Ram, it is very much clear that the deceased died because of injuries to liver, which resulted in excessive blood and the injury No. 24 was found dangerous and sufficient in the ordinary course of nature to cause death and thus, the death of the deceased may be classified as homicidal one.

Injuries of PW15 Deepa

11. The injury report of PW 15 Deepa is Ex.P/24 and to prove the same, the prosecution has produced PW6 Dr. Goru Ram.

12. PW6 Dr. Goru Ram has stated that on 3.8.2001 he medically examined PW15 Deepa and found as many as 33 injuries on her person and the same were caused by sharp edged weapon. He has further stated that injury No. 33 of PW15 Deepa, which was stab wound, was grievous one and if medical treatment would have not been given to her, she would have certainly died. He has proved the

injury report Ex.P/24.

13. Thus, from the statement of PW6 Dr. Goru Ram, it is very much clear that PW15 Deepa received as many as 33 injuries, as mentioned in her injury report Ex.P/24 and the same were caused by sharp edged weapon and injury No. 33, which was stab wound, was found grievous one and in case, timely medical treatment would have not been given to her, she would have certainly died.

Injuries of accused appellant

14. The accused appellant was arrested through arrest memo Ex.P/5 and in that arrest memo Ex.P/5, there is a mention of the fact that he was having injuries on his person and he was got medically examined and his injury report is Ex.P/25, which shows that he received as many as 13 injuries by sharp edged weapon as well as by blunt weapon. The injury report Ex.P/25 was proved by PW6 Dr. Goru Ram.

15. What would be the effect of injuries found on the person of accused appellant, it would be discussed later on.

16. In this case, the prosecution has produced direct evidence as Well as indirect and circumstantial evidence.

17. Direct evidence is evidence which, if believed, establishes a fact in issue.

18. Indirect evidence, which is otherwise known as circumstantial evidence, is evidence that gives rise to a logical inference that such a fact does exist.

Direct evidence

19. The direct evidence is found in the statements of PW15 Deepa, PW3 Harlal, PW11 Narayan, PW13 Faij Mohd. and PW17 Devilal.

Statement of PW15 Deepa

20. PW15 Deepa is an injured witness and therefore, her presence on the scene cannot be doubt in any manner.

21. Since it has been submitted by the learned counsel for the accused appellant that no reliance should have been placed on the statement of PW15 Deepa as she is daughter of the deceased and thus, interested witness, therefore, something should be said about the position of law with respect of appreciation of evidence of related witness and interested witness.

On related witness and interested witness

22. 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 no ground for rejecting the evidence. But his evidence has to be construed very carefully.

23. 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.

24. 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.

25. 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 Gujrat v. Naginbhai Dhulabhai Patel*, AIR 1983 SC 839, may be seen.

26. 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.

27. '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.

28. 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.

29. There is no rule of law that a Court cannot act on the evidence of interested witnesses. The only thing 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 conviction should not follow on that evidence also.

30. In the present case, no doubt PW15 Deepa is daughter of deceased, but in our considered opinion, she appears to be a natural witness and her presence on the scene cannot be doubted because she was daughter of deceased and the house in which the alleged incident had taken place belonged to her and apart from this, she is an injured witness.

31. Hence, the evidence of PW15 Deepa cannot be rejected merely on the ground that she is a close relative being daughter of deceased. However, her statement should be subjected to close scrutiny and should be believed, if otherwise found reliable and corroborated from other evidence.

32. PW15 Deepa in her statement recorded in Court has clearly supported the version given by her in parcha payan Ex.P/27 and she has categorically stated that accused appellant gave so many blows with knife to the deceased and on her intervention, she was also given knife blows by the accused appellant. She has further stated that when she cried from the widow, she saw some persons

repairing tractor. She has further stated that her ear ring was snatched by the accused appellant and the same was recognized by her before Tehsildar.

In cross-examination, she has admitted that from the roof of the house, the accused appellant had made a jump and thereafter, he was caught by Gurjars as well as by police.

33. In our considered opinion, the statement of PW15 Deepa is straight-forward and appears to have a ring of truth. Her statement that the accused appellant caused knife blows to the deceased as well as to her gets corroboration from the medical evidence, which is found in the statement of PW6 Dr. Goru Ran and post mortem report Ex.P/23 and injury report Ex.P/24. She was cross-examined, but nothing has come out, which affects her testimony. It does not appear that she was telling lie or falsely implicating the accused appellant with the commission of crime.

Can PW15 Deepa be treated as natural witness

34. A witness, who is living in the house alongwith the deceased can be said to be a natural witness of that house.

35. In the present case, since PW15 Deepa is daughter of deceased and her presence alongwith deceased is natural one and as per her statement she was also sleeping on the cot on which deceased was sleeping, therefore, she can be adjudged as a natural witness and thus, her statement has been believed for the reasons stated above, because she appeared to be a truthful witness and the account furnished by her is in consonance with probabilities of the incident.

Statements of PW3 Harlal, PW11 Narayan, PW13 Faij Mohd. and PW17 Devilal

36. PW3 Harlal is that witness, whose house is situated just opposite the house of deceased and he has stated that as soon as he heard the cries of a girl, he came out side and found PW15 Deepa stained with blood and he also saw a person jumping from the roof and he recognized that person, who is accused appellant.

37. PW11 Narayan states that on the fateful day, he came to Begu for getting the engine repaired and at that time in the night at about 3.00 AM, he heard the cries of a girl and upon this, police was called and he saw a person jumping towards nala and thereafter, that person was caught and handed over to police and that person was accused appellant.

38. Similar is the statements of PW13 Fail Mohd. and PW17 Devilal.

39. From the statements of PW3 Harlal, PW11 Narayan, PW13 Faij Mohd. and PW17 Devilal, it is evident that the accused appellant was in the house where the murder of deceased had taken place and where PW15 Deepa received injuries and further, when PW15 Deepa cried for help, they saw accused appellant jumping from the roof towards nala and he was caught and handed over to the police. Since they are independent witnesses, therefore, it cannot be said that they are telling lie or falsely implicating the accused appellant with the commission of crime.

40. Therefore, the statement of PW15 Deepa that accused appellant made a jump from the roof towards nala and thereafter, he was caught and handed over to police gets corroborated from the statements of independent witnesses PW3 Harlal, PW11 Narayan, PW13 Faij Mohd. and PW17 Devilal.

Indirect or circumstantial evidence

41. The indirect or circumstantial evidence is found in so many aspects and the same may be summarized in the following manner:-

(i) That from the statements of PW16 Abhay Singh and PW1 Bharat Kumar, the fact that at the instance of accused appellant, a blood stained knife (Article-1) was recovered and seized through fard Ex.P/1 stands well proved and as per FSL report Ex.P/36, human blood was found on that Article-1 knife.

(ii) That from the statements of PW16 Abhay Singh and PW1 Bharat Singh, the fact that ear ring (Article-3) belonging to PW15 Deepa was seized through fard Ex.P/3 during arrest of the accused appellant, is also well proved and the same was identified by PW15 Deepa through fard Ex.P/21 during identification parade

conducted by Tehsildar, who was not produced because he had died, but his signatures were identified by PW5 Laxman Singh.

(iii) That another circumstance, which goes against the accused appellant, is that his clothes i.e. pent (Article 7) and bushirt (Article 8) were found stained with blood and as per FSL report P/36, human blood was found on them.

(iv) That on Article-11 Odni belonging to deceased, Article-2 cotton on which blood was taken from the site, Article- 9 Salwar & Article-10 Kurta belonging to PW15 Deepa, Article 7 pent and Article 8 bushirt belonging to deceased, human blood was found.

(v) That most important circumstance which goes against the accused appellant is that as per FSL report Ex.P/36, on Article-11 Odni belonging to the deceased and on Article-7 pent belonging to the accused appellant, same blood group 'A' was found and this piece of evidence clearly connects the accused appellant with the commission of crime.

42. When a blood stained spear/kulhari/knife 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.

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

44. Therefore, the aforesaid indirect or circumstantial evidence especially the fact that on odni (Article 11) belonging to deceased and pent (Article 7) belonging to accused appellant, same blood group 'A' was found, clearly connects the accused appellant with the commission of crime.

45. So far as the conviction of accused appellant for the offence under Section 302 IPC is concerned, looking to the entire facts and circumstances just discussed above and looking to the post mortem report of deceased Ex.P/23 and the

statement of PW6 Dr. Goru Ram which shows that deceased received 24 injuries including many stab wounds and injuries were dangerous to life and were sufficient in the ordinary course of nature to cause death, it can reasonably be presumed or inferred that the accused appellant was having only one intention that was to murder deceased and thus, the learned trial Judge has rightly convicted the accused appellant for the offence under Section 302 IPC for committing the murder of deceased as the act of the accused appellant amounts to culpable homicide amounting to murder punishable under Section 302 IPC.

46. So far as the conviction of the accused appellant for the offence under Section 307 IPC for causing injuries to PW15 Deepa is concerned, looking to the entire facts and circumstances of the case and looking to the injury report Ex.P/24 of PW15 Deepa and looking to the statement of PW6 Dr. Goru Ram where he has stated that injury No. 33 of PW15 Deepa was grievous one and in case medical treatment would have not been given timely, she would have certainly died, it can easily be concluded that the accused appellant was having intention to murder PW15 Deepa and thus, the learned trial Judge has rightly convicted the accused appellant for the offence under Section 307'1PC for causing injuries to PW15 Deepa.

47. Similarly, looking to the entire facts and circumstances of the case, the learned trial Judge has rightly convicted the accused appellant for the offence under Sections 394 and 460 IPC.

48. So far as the injuries of accused appellant as found in his injury report Ex.P/25 are concerned, it may be stated here that they have been explained by the prosecution in the manner that in arrest memo Ex.P/5, there is a mention of that fact and apart from this, when accused appellant jumped from the roof toward nala and by doing so, he must have certainly received injuries. Furthermore, the possibility that when he was caught by independent witnesses, namely, PW3 Harlal, PW11 Narayan, PW13 Faij Mohd. and PW17 Devilal, he might have been beaten by them, cannot be ruled out, but for that the prosecution case is not affected at all. Hence, the argument that prosecution has failed to explain the injuries of the accused appellant stands rejected.

49. So far as motive is concerned, it may be stated here that it is well settled that the motive is not a *sine qua non* for the success of prosecution case so long other evidence remains convincing and was not open to reasonable doubt.

50. In the present case, motive loses its importance because prosecution has proved its case by reliable and cogent evidence. Apart from this, It is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. Thus, absence of motive would not affect the prosecution case at all. But, apart from this, if the statement of PW15 Deep is read, element of motive is also found in her statement.

51. The learned counsel for the appellant has placed reliance on the decision of this Court in *Chanan Alia Chanu v. State of Rajasthan*, (2002(1) R.Cr.D. 207 (Raj.)). In that case, conviction of the accused appellant, which was based on sole eye witness, who was wife of deceased, was set aside as there was no corroboration to her statement. In the present case, the position is otherwise as the statement of PW15 Deepa gets corroboration not only from independent witnesses, but also from indirect or circumstantial evidence and also from medical evidence. Hence, the above ruling would not be helpful to the accused appellant.

52. Thus, it is held that from the evidence just discussed above direct as well as indirect or circumstantial, the prosecution has proved its case beyond all reasonable doubts against the accused appellant for the offence under Sections 302, 307, 394 and 460 IPC and the learned trial Judge has rightly convicted the accused appellant for the said offences. 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 prosecution of evidence on record by the learned trial Judge.

53. 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 reserve 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.

54. 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 No. 2, Chittorgarh through impugned judgment and order dated 28.2.2003 and this appeal is liable to be dismissed.

Accordingly, this appeal filed by the accused appellant is dismissed, after confirming the judgment and order dated 28.2.2003 passed by the learned Addl. Sessions Judge No. 2, Chittorgarh.

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