

Prithviraj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-19-2003

Reported in : 2004CriLJ2190; RLW2004(4)Raj2224; 2004(2)WLC601

Judge : N.N. Mathur and; Sunil Kumar Garg, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Crl. A. No. 168 of 2001

Appellant : Prithviraj

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : M.L. Bishnoi, Adv.

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the accused-appellant against the judgment and order dated 17-1-2001 passed by the learned Special Addl. Sessions Judge (Woman Atrocities), Sri Ganganagar in Sessions Case No. 93/98 by which he

convicted the accused-appellant for the offence under Section 302, IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1000/-, in default of payment of fine, to further undergo SI for two months.

2. It arises in the following circumstances:--

On 8-10-1998 at about 10.30 a.m., PW-5 Premraj gave a parcha bayan Ex. P/5 before PW-14 Khinv Singh Bhati, SHO, Police Station, Sadulsahar, District Sri Ganganagar stating inter alia that his sister Radha Devi aged about 30 years (hereinafter referred to as deceased No. 1) was married with the accused-appellant about 12-13 years back and because of that wedlock, deceased No. 1 had three children; one boy Naresh, aged about 11 years, another boy Vinod aged about 6 years and daughter Mamta aged about 9 years (hereinafter referred to as the deceased No. 2). It was further stated in the parcha bayan Ex. P/5 by PW-5 Premraj that his sister deceased No. 1 and the accused-appellant used to live with parents PW-1 Balram and PW-2 Kalawati, who are respectively father and mother of the accused-appellant and with PW-3 Daluram, brother of the accused-appellant. It was further stated in the parcha bayan Ex. P/5 by PW-5 Premraj that the accused-appellant wanted to separate from his parents, but the deceased No. 1 pressed upon the accused-appellant to live with them and therefore, because of that, relations were not cordial between them. It was further stated in the parcha bayan Ex. P/5 by PW-5 Premraj that on last Thursday. PW-3 Daluram, brother of the accused-appellant, came to him and asked him that he had been called by PW-1 Balram, father of the accused-appellant and upon this, he went to the house of in-laws' of his sister deceased No. 1 on Friday and he asked his sister deceased No. 1 why he had been called and upon this, his sister deceased No. 1 told him that family members would tell him and then he asked from PW-1 Balram, father of the accused-appellant and PW-1 Balram told him that the accused-appellant wanted to live separately and upon this, he asked PW-1 Balram what was the intention of the deceased No. 1 and PW-1 Balram told him that initially deceased No. 1 did not want separation, now, she had another thought in her mind and when talks were going on between him and PW-1 Balram, the accused-appellant came there and the accused-appellant talked with his father PW-1 Balram and thereafter, PW-1 Balram told him that the accused-appellant had agreed not to

separate. Thereafter, he talked with PW-3 Daluram and stayed there for that night and on the next day in the morning, he came back to his village. It was further stated in the parcha bayan Ex. P/5 by PW-5 Premraj that today (8-10-1998) at about 5.00 a.m. in the morning, Dharmaram, uncle of the accused-appellant and Manphool (PW-13) came to him and told him that his sister deceased No. 1 and niece deceased No. 2 had been murdered by the accused-appellant and upon this, he along with Hariram, Munshiram and Fataram (PW-12) went to the village where his sister deceased No. 1 was living and reached there at about 8-8.30 a.m. and he found the dead body of his sister deceased No. 1 lying on cot and she was having so many injuries on her neck, face, head etc. and on another cot, dead body of his niece deceased No. 2 was lying and there were injuries on her neck. It was further stated in the parcha bayan Ex. P/5 that both the deceased was murdered by the accused-appellant.

On this parcha bayan Ex. P/5, PW-14 Khinv Singh Bhati, SHO registered the case No. 273/98 for the offence under Section 302, IPC and chalked out regular FIR Ex. P/6 and started investigation.

During investigation, PW-14 Khinv Singh Bhati, SHO prepared the site plan Ex. P/7 and site description memo Ex. P/7A. The panchanama of both deceased No. 1 and No. 2 were got prepared and they are respectively Ex. P/9 and Ex. P/11. From the site, simple soil as well as blood smeared soil were also seized through fard Ex. P/12 and Ex. P/13 respectively in respect of deceased No. 1. From the site, simple soil as well as blood smeared soil were also seized pertaining to deceased No. 2 through fard Ex. P/14 and Ex. P/15 respectively. The bushirt (Article 5), which was being worn by the deceased No. 2 was seized through fard Ex. P/16 and similarly, the jampher (Article 4), which was being worn by the deceased No. 1 was seized through fard Ex. P/17 and both the clothes i.e. bushirt (Article 5) and jampher (Article 4) were stained with blood.

The further case of the prosecution is that on 8-10-1998 at about 6.45 p.m., PW-14 Khinv Singh Bhati arrested the accused-appellant through arrest memo Ex. P/22 in presence of PW-8 Pradu Singh and PW-7 Sarjeet Singh and at that time, the accused-appellant was wearing Kamij and pajama and they were stained with

blood and both the clothes Kamij (Article 2) and pajama (Article 3) were seized by PW-14 Khinv Singh Bhati through fard Ex. P/23 in presence of PW-7 Sarjeet Singh and PW-8 Pradu Singh.

The further case of the prosecution is that on the same day i.e. on 8-10-1998 postmortem of the dead body of both the deceased was got conducted through PW-10 Dr. Deepak Moga and the post-mortem report of deceased No. 1 is Ex. P/26 and the post-mortem report of deceased No. 2 is Ex. P/27.

The further case of the prosecution is that on 12-10-1998, the accused-appellant gave information to PW-14 Khinv Singh Bhati to the effect that he could get recovered kassi and that information was reduced into writing by PW-14 Khinv Singh Bhati in Ex. P/30 and in pursuance of that information Ex. P/30, the accused-appellant got recovered kassi (Article 1), in presence of two motbirs, namely, PW-12 Fattaram and PW-6 Noranglal and PW-14 Khinv Singh Bhati prepared the fard of recovery and seizure of kassi (Article 1) and the same is Ex. P/20. The said kassi (Article 1) was found stained with blood.

The further case of the prosecution is that all the seized articles including bushirt (Article 5) of deceased No. 2, jampher (Article 4) of deceased No. 1, kamij (Article 2) and pajama (Article 3) belonging to the accused-appellant and kassi (Article 1) recovered at the instance of the accused-appellant were sent to FSL and the FSL report is Ex. P/32, which shows that human blood was found on all these articles.

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

On 18-2-1999, the learned Special Addl. Sessions Judge (Women Atrocities), Sri Ganganagar framed charge for the offence under Section 302, IPC against the accused-appellant and the same was read over and explained to him. He pleaded not guilty and claimed trial.

In support of its case, the prosecution got examined as many as 14 witnesses and got exhibited several documents. Thereafter, statement of accused-appellant

under Section 313, Cr. P.C. was recorded in which he has stated that he received blood on his clothes at the time when he was embracing his wife deceased No. 1 and daughter deceased No. 2. In defence, no evidence was led by the accused-appellant.

After recording evidence and conclusion of trial, the learned Special Addl. Sessions Judge (Woman Atrocities), Sri Ganganagar through his judgment and order dated 17-1-2001 convicted the accused-appellant for the offence under Section 302, IPC and sentenced him in the manner as indicated above holding inter alia :--

(1) That the learned trial Judge placed reliance on the following circumstantial evidence :--

(i) That blood-stained kassi (article No. 1) was recovered at the instance of the accused-appellant and the blood group found on the kassi (Article 1) was the same, which was found on the clothes of both the deceased.

(ii) That similarly, blood-stained kamij (Article 2) and pajama (Article 3) of the accused-appellant were seized and the blood group found on these two articles 2 and 3 was the same, which was found on the clothes of the deceased.

(2) That the recovery of kassi (Article 1) at the instance of the accused-appellant directly connects the accused-appellant with the commission of crime.

(3) That no doubt PW-1 Balram, father of the accused-appellant, PW-2 Kalawatt, mother of the accused-appellant and PW-3 Daluram, brother of the accused-appellant have been declared hostile, but their declaring hostile would not affect the case of the prosecution as they were close relatives of the accused-appellant.

(4) That in case both the deceased would have not been murdered by the accused-appellant, a report about their murder would have been lodged either by the accused-appellant or other members of his family and from this fact, adverse inference was drawn by the learned trial Judge against the accused-appellant and other members of his family and they tried to hide the incident and these facts also lead to the conclusion that the accused-appellant was the murderer of both the

deceased.

(5) That since on the date of occurrence the appellant was in the village and both deceased were murdered in the house of the accused-appellant, therefore, the question of independent witnesses would have not arisen.

(6) That so far as PW-4 Dilip Kumar is concerned, though he is not a very close relative, but he is also a relative and therefore, his declaring hostile would not affect the case of the prosecution.

(7) That the plea of the accused-appellant that he received blood on his clothes at the time when he was embracing his wife deceased No. 1 and daughter deceased No. 2 was not accepted by the learned trial Judge.

Thus, placing reliance on the above circumstantial evidence, the learned trial Judge has come to the conclusion that the prosecution has proved its case beyond all reasonable doubts against the accused-appellant for the offence under Section 302, IPC.

Aggrieved from the said judgment and order dated 17-1-2001 passed by the learned Special Addl. Sessions Judge (Woman Atrocities), Sri Ganganagar, the accused-appellant has preferred this appeal.

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

(i) That since there was no eye-witness of the occurrence, therefore, the conviction was based by the learned trial Judge on circumstantial evidence, but the chain of circumstantial evidence is not complete and therefore, the accused-appellant is entitled to acquittal on ground of benefit of doubt.

(ii) That the recovery of kassi (Article 1) at the instance of the accused-appellant is very much doubtful as the accused-appellant was arrested on 8-10-1998, but the information was received by PW-14 Khinv Singh Bhati on 12-10-1998 and therefore, that information is itself under the cloud of doubt and apart from this, the witnesses of the recovery of kassi (Article 1), namely, PW-12 Fattaram and PW-6

Noranglal are interested witnesses and from this point of view also, no reliance can be placed on that recovery.

(iii) That blood-stained clothes of the accused-appellant could not be the basis of conviction for the offence under Section 302, IPC as how the kamij (Article 2) and pajama (Article 3) got blood of both deceased has been explained by the accused-appellant in his statement recorded under Section 313, Cr. P.C. and the learned trial Judge has wrongly rejected that plea of the accused-appellant.

(iv) That since it is a case of circumstantial evidence and there is no apparent motive on the part of the accused-appellant to murder both deceased, therefore, in absence of motive, the chain of circumstantial evidence should be treated as incomplete.

4. On the other hand, the learned Public Prosecutor has supported the impugned judgment and order passed by the learned Special Additional Sessions Judge (Woman Atrocities), Sri Ganganagar.

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

6. Before processing further, we would like to first see the medical evidence of this case, which is found in the statement of PW-10 Dr. Deepak Moga.

7. PW-10 Dr. Deepak Moga in his statement recorded in Court states that on 8-10-1998, he was Medical Officer in the Primary Health Centre, Sadulsahar and on that day, he conducted the post-mortem of the dead body of the deceased No. 1 Radha Devi and found the following injuries on her dead body:--

1. Incised wound 8 x 4 x whole thickness front bone of little finger upto wrist, obliquely and downward.

2. Incised wound 6 x 3 x bone deep below the knuckle of Rt. ring, middle index finger cutting the bones.

3. Incised wound 4 x 2x 1 cm below injury No. 2.

4. Incised wound 18 x 6 x 6 cm on Rt. side of neck, extending from mid-line, upward and laterally along the line of mandible cutting mandible upto Rt. ear.
5. Incised wound 18 x 4 x 6 cm along the injury No. 4 leaving a skin flap in between injury Nos. 4 and 5 cutting all major structures on Rt. side of neck.
6. Abraded bruises 6 x 2 cm, 5 x 2 cm, 4 x 2 cm, 4 x 2 cm on Rt. shoulder.

He has further stated that the cause of death of the deceased No. 1 Radha Devi was shock due to sharp injuries on Rt. side of neck (injuries Nos. 4 and 5) cutting all major structures. He has proved the postmortem report Ex. P/26.

8. Thus, from the statement of PW-10 Dr. Deepak Moga, the fact that the deceased No. 1 Radha Devi received six injuries and that the deceased No. 1 died because of shock due to sharp injuries on Rt. side of neck cutting all major structures stands proved and thus, it can be said that death of the deceased No. 1 Radha Devi was homicidal one.

9. PW-10 Dr. Deepak Moga has further stated that on the same day i.e. on 8-10-1998 he also conducted the post-mortem of the dead body of the deceased No. 2 Mamta and found the following injury on her body:--

Incised wound 18 x 6 x 6 cms on Lt. side of neck, extending from below chin directed obliquely upward and laterally upto mastoid process of temporal bone behind ear, cutting all major structures lying in that area (skin, tissue, vessels, nerves fascia etc.).

He has further stated that the cause of death of the deceased No. 2 Mamta was shock due to sharp injury on Lt. side of neck cutting all major structures on that side. He has proved the post-mortem report Ex. P/27.

10. Thus, from the statement of PW-10 Dr. Deepak Moga, the fact that the deceased No. 2 Mamta received the above injury and that the deceased No. 2 died because of shock due to sharp injury on Lt. side of neck cutting all major structures on that side stands proved and thus, it can be said that death of the deceased No. 2 Mamta was homicidal one.

11. In this case, the report was lodged by PW-5 Premraj, brother of the deceased No. 1.
12. There is no dispute on the point that on the date of occurrence, both deceased No. 1 and deceased No. 2 were in the house of the accused-appellant, where PW-1 Balram, father of the accused-appellant, PW-2 Kalawati, mother of the accused-appellant and PW-3 Daturam, brother of the accused-appellant were also living.
13. There is also no dispute on the point that PW-1 Balram, father of the accused-appellant, PW-2 Kalawati, mother of the accused-appellant and PW-3 Daluram, brother of the accused-appellant have been declared hostile.
14. There is also no dispute on the point that on the intervening night of 7/8-10-1998, both the deceased No. 1 and deceased No. 2 were murdered and they received sharp edged injuries as is evident from their post mortem reports Ex. P/26 and Ex. P/ 27 respectively.
15. There is also no dispute on the point that no report of the alleged occurrence was lodged by the accused-appellant or any other member of his family.
16. So far as PW 4 Dilip Kumar is concerned, he has also admitted his relations with PW 3 Daluram and on the date of occurrence he was also in the house of the accused-appellant and therefore, he was also relative of the family of the accused-appellant and thus, he cannot be termed as an independent witness.
- The learned counsel for the accused-appellant has submitted that since PW 4 Dilip Kumar, an independent witness has been declared hostile, therefore, adverse inference should have not been drawn against the accused-appellant, cannot be accepted as PW 4 Dilip Kumar cannot be termed as independent witness, but he is a relative of the family members of the accused-appellant. In view of this, if he has been declared hostile, it would not affect the case of the, prosecution as he was interested witness for the accused appellant.
17. In the present case, there is no direct evidence to prove the case and the learned trial Judge after placing reliance on the following circumstantial evidence convicted the accused-appellant for the offence under Section 302 IPC :--

(i) That blood-stained kassi (Article No. 1) was recovered at the instance of the accused-appellant and the blood group found on the kassi (Article 1) was the same, which was found on the clothes of both the deceased.

(ii) That similarly, blood-stained kamij (Article 2) and pajama (Article 3) of the accused-appellant were seized and the blood group found on these two articles 2 and 3 was the same, which was found on the clothes of the deceased.

18. Before proceeding further, we must see what is circumstantial evidence and what is its evidentiary value in criminal jurisprudence.

19. Indirect evidence otherwise known as circumstantial evidence is evidence that gives rise to a logical inference that such a fact does exist. Circumstantial evidence may be either conclusive or presumptive. It is conclusive when there is a connection between the principal fact and the evidentiary fact. It is presumptive where the fact rests on a greater or a less degree of probability. The effect of circumstantial evidence on consideration must be such as not to admit more than one solution, and must be inconsistent with any explanation that the fact is not true.

20. Circumstantial evidence consists of evidence of circumstances, none of which speak directly to the facts in issue but from which those facts may be inferred. Feelings of animosity towards the victim, presence in the area of the attack, the victim's blood on the accused clothing -- all these build up into a strong but inferential case.

21. Circumstantial evidence may be defined as any fact (sometimes called an 'evidentiary fact', 'factum probans' or 'fact relevant to the issue') from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a 'principal fact' or 'factum probandum').'

22. Circumstantial evidence is that which relates to a service of other facts than the fact in issue; but which by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion. It is one of the established principles of law that a witness may lie but not the

circumstances. However, the Court must adopt a cautious approach while basing its conviction purely on circumstantial evidence. As evidence there is no difference between direct and circumstantial evidence. The only difference is in that as proof, the former directly establishes the commission of the offence whereas the latter does so by placing circumstances which lead to irresistible inference of guilt.

23. In reference to cases where there is no direct evidence and the decision has to rest on circumstantial evidence, the Hon'ble Supreme Court in a line of decisions has consistently held that such evidence must satisfy the following tests :--

1. the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.
2. those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but it should be inconsistent with his innocence.'

24. In this connection, the decisions of the Hon'ble Supreme Court in Ashok Kumar v. State of M.P., (AIR 1989 SC 1890) : (1989 Cri LJ 2124), Padala Veera v. State of A.P., (AIR 1990 SC 79) : (1990 Cri LJ 605), Josheph v. State of Kerala, (2000) 5 SCC 197 : (2000 Cri LJ 2467) and Kuldeep v. State of Rajasthan, (2000) 5 SCC 7 : (2001 Cri LJ 479) may be seen.

25. It is also well-settled that the prosecution has to establish each circumstance by independent evidence and the circumstances so established should form a complete chain without giving room to any other hypothesis and should be consistent with his guilt and are inconsistent with his innocence.

26. It may be stated here that while appreciating the circumstantial evidence in criminal cases, strict scrutiny of each of the facts placed by circumstantial evidence and their cumulative effect has to be taken into consideration and if they are of such nature as to be incompatible with the innocence of the accused, then only conviction can follow.

27. Keeping the above principles in mind, the findings of the learned trial Judge by which he convicted the accused-appellant on the basis of above circumstantial evidence are being analytically and critically examined.

Seizure of blood-stained clothes of both deceased

28. So far as the fact of seizure of bloodstained bushirt (Article 5) belonging to deceased No. 2 Mamta through fard Ex. P/16 and jumpher (Article 4) belonging to deceased No. 1 Radha Devi through fard Ex. P/17 is concerned, the same stands well proved from the statement of PW 14 Khinv Singh Bhati, who has categorically stated in his statement recorded in Court that he seized the blood-stained bushirt (Article 5) from the dead body of deceased No. 2 through fard Ex. P/16 and jumpher (Article 4) from the dead body of deceased No. 1 Radha Devi through fard Ex. P/17. He has proved both the fards Ex. P/16 and Ex. P/17.

29. Thereafter, blood-stained clothes bushirt (Article 5) seized from the dead body of the deceased No. 2 Mamta and jumpher (Article 4) seized from the dead body of the deceased No. 1 Radha Devi were sent to FSL and the FSL report is Ex. P/32, where it was mentioned that both Article 4 jumpher and Article 5 bushirt stained with human blood and on jumpher (Article 4), human blood of 'B' group was found.

Seizure of blood-stained clothes kamij (Article 2) and Pajama (Article 3) of accused appellant

30. PW 14 Khinv Singh Bhati, who conducted the investigation in the present case, has stated in his statement recorded in Court that he arrested the accused appellant on 8-10-1998 through fard Ex. P/22 and at the time of arrest, the accused-appellant was wearing blood-stained Kamij (Article 2) and Pajama (Article

3) and he seized both the clothes Kamij (Article 2) and Pajama (Article 3) of the accused-appellant in presence of PW 7 Sarjeet Singh and PW 8 Pradu Singh through fard Ex. P/22. He has proved the fard Ex. P.22. That part of his statement gets corroboration from the statements of PW 7 Sarjeet Singh and PW 8 Pradu Singh.

31. Thereafter, blood-stained Kamij (Article 2) and Pajama (Article 3) of the accused-appellant were sent to FSL report and the FSL report is Ex. P/32, where it was stated that both the clothes Kamij (Article 2) and Pajama (Article 3) stained with human blood and on Kamij (Article 2), human blood of 'B' group was found.

32. Thus, from the above, it is clear that on the clothes bushirt (Article 5) seized from the dead body of the deceased No. 2 Mamta, Jampher (Article 4) seized from the dead body of the deceased No. 1 Radha Devi and Kamij (Article 2) and Pajama (Article 3) belonging to the accused-appellant, human blood was found and the blood group found on the Kamij (Article 2) of the accused appellant was 'B' and the blood group found on the Jampher (Article 4) of deceased No. 1 Radha Devi was also 'B'.

33. Therefore, the fact that the blood group found on the clothes of the accused-appellant was the same which was found on the clothes of the deceased stands well proved by the prosecution and this fact clearly connects the accused-appellant with the commission of crime and the learned trial Judge was right in placing reliance on that circumstance while convicting the accused-appellant for the offence under Section 302 IPC.

Recovery of blood-stained kassi (Article 1) at the instance of the accused-appellant.

34. Before proceeding further, legal aspect of the recovery and information given by the accused-appellant under Section 27 of the Indian Evidence Act may also be discussed here.

35. For applicability of Section 27, two conditions are pre-requisite; (i) information must be such as caused discovery of the fact; (ii) the information must relate

distinctly to the fact discovered so much of such information, whether it amounts to a confession or relate distinctly thereby discovery may be proved.

36. Section 27 of the Indian Evidence Act is an exception to the general rule that a statement made before police is not admissible in evidence.

37. The following are the requirements or conditions for application of Section 27 of the Indian Evidence Act :--

1. The fact must have been discovered in consequence of the information received from the accused.

2. The person giving the information must be accused of an offence.

3. He must be in custody of a police officer.

4. Only that portion of the information which relates strictly to discovery can be proved. The rest is irrelevant.

5. The discovery of fact must relate to the commission of some crime.

6. Before the statement is proved somebody must depose that some article was discovered in consequence of the information received from the accused.

38. Keeping the above principles in mind, the recovery in the present case is being discussed.

39. PW 14 Khinv Singh Bhati, who conducted investigation in the present case, has stated that he arrested the accused appellant on 8-10-1998 through fard Ex. P/22, but the accused-appellant gave information under Section 27 of the Evidence Act to him on 12-10-1998 at about 7.00 a.m. to the effect that he has concealed a blood-stained kassi in his field, which he could get recovered and that information was reduced into writing by him in the fard Ex. P/30. He has further stated that in pursuance of that information Ex. P/30, the accused-appellant got recovered a Kassi (Article 1) from his field (Murabba No. 22, Killa No. 13) and that kassi (Article 1) was stained with blood and he seized that blood-stained kassi (Article 1) in presence of PW 12 Fattaram and PW 6 Noranglal through fard Ex.

P/20. He has further stated that he also prepared site plan of the place from where blood stained kassi (Article 1) was recovered and he also got the signatures of PW 12 Fattarm and PW 6 Noranglal on both fards Ex. P/20 and Ex. P/21. He has further stated that separate fard of specimen seals, which were affixed on fard Ex. P.20, was also got prepared by him and the same is Ex. P/31. He has further stated that sealed packet containing kassi (Article 1) was open in the Court while his statement was recorded and he identified that it was the same kassi (Article 1), which the accused-appellant got recovered by him.

This witness was cross-examined and from his cross-examination, it does not appear that any thing has come out which affects his testimony.

40. The statement of PW 14 Khinv Singh is corroborated from the statement of PW 6 Noranglal where he has clearly stated at the instance of the accused-appellant, one kassi (Article 1) was recovered by police and he put his signatures on the fard of that recovery Ex. P/20.

41. PW 12 Fattarm, who is another witness of fard of recovery of kassi (Article 1) states that at the instance of the accused appellant, one kassi (Article 1) was recovered by police and he put his thumb impressions on the fard of that recovery Ex. P/20. In cross-examination, he has admitted that he is relative of PW 5 Premraj, brother of the deceased No. 1.

42. In this respect, it has been submitted by the learned counsel for the accused-appellant that since PW 12 Fattaram is a relative of PW 5 Premraj, brother of the deceased No. 1, therefore, his statement does not corroborate the fact of recovery of kassi (Article 1) made by PW 14 Khinv Singh Bhati.

43. In our considered opinion, since the statement of PW 14 Khinv Singh Bhati itself is a straight forward statement and gets corroboration from another witness PW 6 Noranglal, therefore, if PW 12 Fattaram happens to be a relative of Premraj PW 5, brother of deceased No. 1, it would not affect the case of the prosecution in respect of recovery of kassi (Article 1) at the instance of the accused-appellant.

44. Therefore, the fact that at the instance of accused-appellant, one bloodstained kassi (Article 1) was recovered from his field is well established by the prosecution.

45. The said kassi (Article 1) was sent to FSL and as per FSL report Ex. P/32, that kassi (Article 1) was found to be stained with human blood of 'B' group, which was the same blood group found on the clothes of the deceased.

46. Thus, the recovery of blood-stained kassi (Article 1) at the instance of the accused-appellant and the fact that the said kassi (Article 1) stained with the same blood group, which was the blood group of the deceased directly connect the accused appellant with the commission of crime and the learned trial Judge was right in placing reliance on these two circumstances, while convicting the accused-appellant for the offence under Section 302 IPC.

47. So far as motive is concerned, no doubt motive plays an important role in both cases based on direct as well as on circumstantial evidence and in a case based on circumstantial evidence, motive assumes much importance.

If the prosecution starts its case basing on some motive and for some reason or otherwise, the prosecution fails to prove that motive fully, it would not be fatal to the prosecution and for that, decision of the Hon'ble Supreme Court in State of U.P. v. Babu Ram, ((2000) 4 SCC 515 : (2000 Cri LJ 2457) may be referred to.

48. In the present case, no doubt, a motive was indicated in the parcha-bayan/ report Ex. P/5 lodged by PW 5 Premraj, but in that report/parcha bayan, it was also stated that the matter of dispute was settled, but it does not mean that it could not be developed after the departure of PW 5 Premraj from the house of in-laws' of his sister deceased No. 1 Radha Devi. Therefore, there was a motive of dispute between deceased No. 1 and the accused-appellant on the point that deceased No. 1 wanted to live in the house of PW 1 Balram and PW 2 Kalawati, father and mother of the accused-appellant, while the accused-appellant wanted to live separately and therefore, forthat, if some altercations might have takenplace between the deceased No. 1 and theaccused-appellant in night and that couldnot be made available. Hence, it cannot besaid in clear terms that there was no

motive.

49. Thus, in this case, existence of motive is apparent and therefore, this also leads to the conclusion that for that motive, the accused-appellant committed the murder of his wife deceased No. 1 and daughter deceased No. 2.

Medical Evidence

50. Apart from this, the recovery of bloodstained kassi (Article 1) also connects the accused-appellant with the commission of crime not only from the point of recovery itself, but also from the point when the injuries of both deceased are observed. By the kassi, sharp injuries can be caused and both the deceased received sharp injuries and therefore, the case of the prosecution that the accused-appellant caused sharp injuries on the body of both the deceased, by that kassi (Article 1) can be accepted. This fact gets corroboration from the evidence that on kassi (Article 1), same blood group 'B', which was found on the clothes of the deceased, was found. Therefore, medical evidence also plays an important role in this case in connecting the accused-appellant with the commission of crime.

51. Thus, it is held that the abovementioned circumstances, which have been firmly and cogently proved by the prosecution, form a complete chain without giving room to any hypothesis and are consistent with the guilt of the accused-appellant and are inconsistent with his innocence. The recovery of blood-stained kassi (Article 1) at the instance of accused-appellant; seizure of blood-stained Kamij (Article 2) and Pajama (Article 3) of accused-appellant; evidence that the blood group, which was found on the clothes of the accused-appellant and on kassi (Article 1) recovered at the instance of the accused-appellant was the same which was found on the clothes of the deceased; medical evidence and existence of motive, as stated above, are sufficient evidence to connect the accused-appellant with the commission of crime and the above circumstances form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused-appellant and none else. The circumstances are of definite tendency unerringly pointing towards the guilt of the accused-appellant.

52. Therefore, the learned Special Additional Sessions Judge has rightly convicted the accused-appellant for the offence under Sections 302 IPC, placing reliance on the abovementioned circumstantial evidence. The findings of conviction recorded by the learned Special Additional Sessions Judge are based on correct and proper appreciation of evidence on record. We see no illegality, infirmity or perversity in the findings of conviction recorded by the learned Special Addl. Sessions Judge.

53. Apart from this, the learned trial Judge has also considered the plea taken by the accused-appellant in his statement recorded in Court under Section 313 Cr. P.C. that his clothes were stained with blood of the deceased when he was embracing them and further, he has not committed the murder of both deceased and after giving cogent reasons, the learned trial Judge rejected that plea of the accused-appellant. In our considered opinion, the learned trial Judge has rightly rejected the above plea of the accused-appellant, in view of the discussion just made above. There are sufficient evidence on record to connect the accused-appellant with the commission of crime.

54. 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 oral 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.

55. It may further be stated here that this Court is aware that in criminal cases, the prosecution is under an obligation to prove the case beyond all reasonable doubt and if there is any doubt, the benefit must go to the accused. In the present case, the evidence, which has been produced by the prosecution, proves the case beyond all reasonable doubt and thus, it is not a case where benefit of doubt should be given to the accused-appellant as there is a complete chain of evidence to prove the guilt of the accused beyond all reasonable doubts.

56. For the reasons stated above, all the submissions raised by the learned counsel for the accused-appellant stand rejected and this appeal deserves to be dismissed.

57. So far as the ruling relied upon by the learned counsel for the accused-appellant in *Deva v. State of Rajasthan*, AIR 1999 SC 214 : (1999 Cri LJ 265) is concerned, the fact of that case stands distinguished from the facts of the present case, as in that case, only recovery of knife was there, but in the present case, apart from the recovery of kassi, evidence of blood-stained clothes of accused-appellant of the same group which was found on the clothes of deceased is also there, apart from motive. Thus, the above ruling would not be helpful to the accused-appellant.

Accordingly, this appeal filed by the accused-appellant Prithvi Raj is dismissed, after confirming the judgment and order dated 17-1-2001 passed by the learned Special Additional Sessions Judge (Woman Atrocities), Sri Ganganagar.

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