

Magna Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-11-2003

Reported in : RLW2004(3)Raj1693; 2004(2)WLC185

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

Acts : Indian Penal Code (IPC) - Sections 302 and 320; Evidence Act - Sections 27

Appeal No. : D.B. Criminal Jail Appeal No. 21 of 2001

Appellant : Magna

Respondent : State of Rajasthan

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

Advocate for Pet/Ap. : B.S. Sandhu, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the accused appellant from jail against the judgment and order dated 2.12.2000 passed by the learned Additional Sessions Judge, Nimbahera in Sessions Case No. 30/98 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 RI for one month.

2. By the same judgment and order, the learned Additional Sessions Judge acquitted another accused Hema for the offence under Section 302/34 IPC.

3. It arises in the following circumstances:-

On 24.3.1998 at about 9:30 AM, PW20 Dhanna lodged an oral report (Ex.17) with the Police Station Bhadsoda District Chittorgarh before PW 19 Sumer Singh, SHO of that Police Station stating inter-alia that on 23.3.1998 at about 10:00 PM his brother Dalu S/o Pema, aged about 30 years, resident of Arniya (hereinafter referred to as 'the deceased') left the house and slept on the well in his field. PW20 Dhanna has further stated that the well was joint one, but their fields were separate. It was further stated in the report Ex.P/17 by PW20 Dhanna that on the next day i.e. on 24.3.1998 at about 7.00 AM in the morning he reached on his well and when he was going to ask the deceased to give water in the field, he saw blood on the leaves of trees (patti) and therefore, he reached the place where his brother-deceased was sleeping and he found that the cot was stained with blood and he also found a kulhari lying near the cot and the handle of that kulhari was broken and the same was also stained with blood. It was further stated in the report Ex.P/17 by PW20 Dhanna that after seeing that kulhari, he recognized that it belonged to the accused appellant Magna and he did not find Gudre (Bisters) on the cot nor his brother deceased. It was further stated in the report Ex.P/17 by PW 20 Dhanna that when he was returning following the blood stained leaves (patti), at a distance of one furlong from the place of occurrence, he saw the dead body of the deceased in the field of Rama and he found so many injuries on the dead body of the deceased which were caused by kulhari and the dead body was stained with blood. It was further stated in the report Ex.P/17 by PW20 Dhanna that thereafter, he returned to his village and informed Kalu (PW18), Ghasi (PW4), Mana (PW5) and Hemraj (PW6) and as soon as the accused appellant Magna came to know about this, he ran away and when he was running away, he was seen by PW7 Ratanlal, PW10 Motilal and PW8 Nawalram. Thereafter, PW18 Kalu,

PW4 Ghasi, PW5 Mana and PW 6 Hemraj reached the place where the dead body of the deceased was lying and witnessed the dead body of the deceased. It was further stated in the report Ex.P/17 by PW 20 Dhanna that the accused appellant Magna was having illicit relations with the wife of deceased, namely, Bhaggu (PW9) and because of that, the deceased was murdered by the accused appellant.

On this report, PW19 Sumer Singh registered the case No. 60/98 for the offence under Section 302 IPC and chalked out regular FIR Ex.P/18 and started investigation.

During investigation, PW19 Sumer Singh prepared the site plan (Ex.P/5) and site inspection memo (Ex.P/6) in presence of PW3 Shanker and PW 12 Bherulal. Through fard Ex.P/9, PW 19 Sumer Singh seized the kulhari, the handle of which was broken, in presence of PW 3 Shanker and PW 12 Bherulal. Though fard ex.P/10, the clothes (dhoti and bushirt) of deceased were seized in presence of PW 3 Shanker and PW 12 Bherulal.

The further case of the prosecution is that on 24.3.1998 proceedings of panchayat-name were got conducted and the dead body of the deceased was got identified by PW20 Dhanna and the fard of panchayat-nama of the dead body of the deceased is Ex.P/3.

The further case of the prosecution is that on 24.3.1998 at about 3.20 PM, PW19 Sumer Singh, SHO alongwith two motbirs, namely, PW 3 Shanker and PW 11 Hemraj visited the house of the accused appellant and since the accused appellant had run away, therefore, in his absence, the lock of the house of the accused appellant was got broken by PW 19 Sumer Singh and after that, Bushirt and Pent of the accused appellant, which were stained with blood, were recovered by PW 19 Sumer Singh and the fard of search and seizure is Ex.P/12.

During investigation, the post mortem of the dead body of the deceased was got conducted by PW13 Dr. Asif Khilji on 24.3.1998 and the post mortem report is Ex.P/13 where it was opined that death of the deceased was caused due to shock which was due to excessive bleeding.

The accused appellant was got arrested on 30.3.1998 through arrest memo Ex.P/19 and on 31.3.1998, he gave information (Ex.P/20) to PW 19 Sumer Singh to the effect that the broken handle of kulhari was concealed by him in his field, which he could get recovered and in consequence of that information Ex.P/20, the accused appellant got recovered that broken handle of kulhari on 1.4.1998 from his field in presence of two motbirs, namely, Shankarlal (PW1) and Hazarilal (PW2) and (PW19) Sumer Singh prepared the fard of recovery and seizure and the same is Ex.P/2.

The further case of the prosecution is that on 31.2.1998, the accused appellant gave another information (Ex.P/21) to PW 19 Sumer Singh to the effect that Gudre (Bisters), which were stained with blood, had been concealed by him in his field, which he could get recovered and in consequence of that information Ex.P/21, the accused appellant got recovered Gudre (Bisters) on 1.4.1998 from his field in presence of two motbirs, namely, Shankarlal (PW1) and Hazarilal (PW2) and PW 19 Sumer Singh prepared the fard of recovery and seizure and the same is Ex.P/1.

The blood stained kulhari, clothes of the deceased as well as the clothes of the accused appellant were sent to FSL and the report of the FSL is ex.P/29.

After usual investigation, police submitted challan against the accused appellant Magna and another accused Hema for the offence under Section 302/34 1PC in the Court of Magistrate and from where, the case was committed to the Court of Session.

On 7.1.1999, the learned Addl. Sessions Judge, Nimbahera framed charges for the offence under Section 302/34 IPC against the accused appellant and another accused Hema and the same were read over and explained to them. They pleaded not guilty and claimed trial.

In support of its case, the prosecution got examined as many as 20 witness and got exhibited nearabout 34 documents. Therefore, statements of accused appellant and another accused Hema under Section 313 Cr.P.C. were recorded. They did not lead any evidence in defence.

After recording evidence and conclusion of trial, the learned Additional Sessions Judge, Nimbahera through his judgment and order dated 2.12.2000 acquitted accused Hema of the charge for the offence under Section 302/34 IPC, but after placing reliance on seven circumstantial evidence, convicted the accused appellant Magna for the offence under Section 302 IPC and sentenced in the manner as indicated above.

Aggrieved from the said judgment and order dated 2.12.2000 passed by the learned Additional Sessions Judge, Nimbahera, the present appeal has been filed by the accused appellant from jail.

Since this appeal was filed by the accused appellant from jail, therefore, this Court vide order dated 24.9.2001 appointed Mr. B.S. Sandhu, Advocate as Amicus Curiae.

4. In this appeal, Mr. B.S. Sandhi, Amicus Curiae has assailed the judgment of the learned trial Judge on various grounds and the main grounds are as follows:-

(i) That the chain of circumstantial evidence connecting the accused appellant with the commission of crime is not complete and therefore, the accused appellant is entitled to acquittal on ground of benefit of doubt.

(ii) That the witnesses of the recovery are interested one and furthermore, one of the witnesses pertaining to recovery of blood stained Gudre (Bisters) and handle of Kulhari, namely, PW2 Hazarilal has been declared hostile and he has not supported the case of the prosecution and therefore, the so-called recovery is also doubtful.

(iii) That the evidence of last seen and the evidence of seeing the accused appellant running away, upon which reliance has been placed by the learned trial Judge is also doubtful and similarly, the recovery at the instance of the accused appellant is also under suspicion and therefore, recovery should be discarded.

(iv) That some contradictions were found in the statements of the prosecution witnesses and, therefore, their evidence should not have been believed by the learned trial Judge.

5. On the other hand, the learned Public Prosecutor has supported the impugned judgment and order passed by the learned Additional Sessions Judge, Nimbahera.

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

7. Before proceeding further, we would like to first see the medical evidence of this case, which is found in the statement of PW 13 Dr. Asif Khilji.

8. PW 13 Dr. Asif Khilji in his statement recorded in Court states that on 24.3.1998, he was Medical Officer in the Primary Health Centre, Mangalwad and on that day, he conducted the post mortem of the dead body of the deceased and found the following injuries on the dead body of the deceased:-

1. Incised wound on forehead Rt. side with # skull.
2. Incised wound on Lt. eye size 4'x1'.
3. Incised wound on Lt cheek in front of Lt. ear size 3'x1' # fracture skull.
- 4; Incised wound on Lt. ear size 4'x1'.
5. Incised wound on Rt. cheek including # Rt Joint size 1'x1/2'.
6. Lacerated wound with fracture on tip of index finger size 1/2'x1/2'.
7. Incised wound size 1'x1/2' below Rt. eye.
8. Incised wound with # at Lt. wrist joint size 4'x1-1/2'.
9. Abrasion-multiple abrasion on back Lt. hip joint to Lt. knee joint etc.'

He has further stated that the cause of death of the deceased was shock which was due to excessive bleeding. He has proved the post mortem report Ex.P/13.

9. Thus, from the statement of PW13 Dr. Asif Khilji, the fact that the deceases received nine injuries and that the deceased died because of shock due to excessive bleeding stands proved and thus, it can be said that death of the

deceased was homicidal one.

10. The next point which is to be considered is whether deceased has been murdered by the accused appellant or not.

11. In the present case, there is no direct evidence to prove the case and the learned trial Judge has placed reliance on the following circumstantial evidence for convicting the accused appellant for the offence under Section 302 1PC:-

(i) That the accused appellant was having illicit relations with the wife of the deceased, namely, PW 9 Bhaggu and for that, there was also motive for the accused appellant to cause the murder of the deceased as deceased had earlier objected to these illicit relations.

(ii) That on the date of occurrence, the deceased was sleeping on his well and he was murdered on the same night.

(iii) That from the place of occurrence, blood stained broken kulhari was recovered by the police and the same belonged to the accused appellant.

(iv) That on the date of occurrence, the accused appellant was in the village and after alleged occurrence, the accused appellant ran away from the village.

(v) That blood stained clothes (pent and bushirt) of the accused appellant were recovered from his house.

(vi) That the blood group, which was found on the clothes of the accused appellant, was the same which was found on the clothes of the deceased. Furthermore, the blood group which was found on the kulhari and on the clothes of the deceased was also the same.

(vii) That on the information of the accused appellant, Gudre (Bisters) belonging to the deceased and broken handle of kulhari were got recovered from his field.

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

13. 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.

14. 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 should be inconsistent with his innocence.'

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

16. 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.

17. 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.

Evidence of illicit relations and motive in that respect

18. In the report Ex.P/17 lodged by PW20 Dhanna, there is a mention of the fact that the accused appellant was having illicit relations with the wife of the deceased, namely, Bhaggu (PW9). Apart from this, that fact is also found in various statements of the prosecutions witnesses.

19. PW 4 Ghasi in his statement recorded in Court has stated that the accused appellant was having illicit relations with the wife of the deceased, namely, PW 9 Bhaggu and because of that, the accused appellant and deceased used to quarrel.

20. PW5 Mana has also stated that the accused appellant was bachelor one.

21. PW 6 Hemraj has further stated that the accused appellant was having illicit relations with PW 9 Bhaggu, wife of the deceased and for that, altercations took place between deceased and the accused appellant and he has further stated that the accused appellant was bachelor and his sagai was broken because of his illicit relations with PW 9 Bhaggu, wife of the deceased.

22. PW8 Nawalram, PW10 Motilal and PW 18 Kalu apart from PW20 Dhanna have also stated that the accused appellant was having illicit relations with the wife of the deceased, namely, PW9 Bhaggu.

23. PW 9 Bhaggu, wife of the deceased, has clearly admitted in her statement recorded in Court that the accused appellant used to have sex with her and she told about that affairs to her husband deceased and for that, her husband deceased quarreled with the accused appellant and that incident had taken place 5-6 days before the fateful incident. She has further stated that the accused appellant threatened her that in case she would tell about the incident to anybody,

he would kill her.

24. Thus, from the above evidence, the following facts stand proved:-

(i) That the accused appellant was having illicit relations with the wife of the deceased, namely, Bhaggu (PW9).

(ii) That because of above illicit relations, relations between the accused appellant and the deceased were not cordial one.

(iii) That the accused appellant gave threat to PW9 Bhaggu, wife of the deceased.

On Motive

25. Sometimes motive plays an important role and become as compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the Court that the accused was guilty of the offence charged with. But, it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often 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. For that, the decision of the Hon'ble Supreme Court in Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420 may be referred to.

26. The motive is that which moves a man to do a particular act. There can be no action without a motive, which must exist for every voluntary act. Motive plays an important role and becomes a compelling force to do a crime. Therefore, motive behind the crime is relevant factor for which evidence may be adduced. The evidence of motive is material in criminal cases. To say that motive is an important factor only in circumstantial evidence is a wrong conception. The Hon'ble Supreme Court in State of UP v. Baguram, 2000(4) SCC 5151 has held that motive is

equally relevant where case is based on direct evidence and where the case is based on circumstantial evidence.

27. In a case based solely on circumstantial evidence, motive for crime assumes much importance. Where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. For that, the decision of the Hon'ble Supreme Court in *Tarseem Kumar v. Delhi Administration*, AIR 1994 SC 2585 may be referred to.

28. Since the present case is based on circumstantial evidence, therefore, motive assumes much importance and the motive on the part of the accused appellant to commit crime is very much apparent and thus, two circumstances i.e. illicit relations as well as motive, which have been proved by the prosecution, clearly 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.

Circumstance of seeing the accused appellant in the village on the date of occurrence and circumstance of running away of the accused appellant from the village on the next day in the morning.

29. In this respect, we have gone through the statements of PW5 Mana, PW7 Ratanlal, PW8 Nawalram, PW9 Bhaggu and W10 Motilal.

30. From perusing the statements of PW 5 Mana and PW9 Bhaggu where she has stated that on the night of alleged occurrence, the accused appellant came to her

house, the fact that the accused appellant was seen in the village on the date of occurrence is very well established.

31. The fact that after alleged occurrence, the accused appellant ran away from the village is also very well established from the statements of PW5 Mana, PW7 Ratanlal, PW8 Nawalram and PW10 Motilal.

Circumstance of seizure of blood stained broken kulhari belonging to the accused appellant from the place of occurrence.

32. In the report ex.P/17 lodged by PW20 Dhanna, he has clearly stated tat near the cot he saw kulhari, handle of which was broken. He has further stated that the said kulhari belonged to the accused appellant Magna.

33. In the site plan Ex.P/5 prepared by PW 19 Sumer Singh, it has been stated that a kulhari was lying near the cot and in his statement recorded in Court, PW19 Sumer Singh has further stated that on the place of occurrence, near the cot, he found a kulhari, the handle of which was broken and the same was stained with blood and he seized that kulhari through fard Ex.P/9 in presence of PW 3 Shankar and PW 12 Bherulal. He has proved the fard Ex.P/9,

34. PW3 Shanker has corroborated the statement of PW 19 Sumer Singh on the above seizure.

35. Therefore, the fact that from the place of occurrence, a broken kulhari stained with blood was recovered by the police is very well established.

36. Not only this, PW20 Dhanna has further stated that the said kulhari belonged to the accused appellant and there is no reason to disbelieve this aspect of his statement. Hence, from the statement of PW20 Dhanna, it is also established that the said kulhari recovered from the place of occurrence belonged to the accused appellant.

37. Thus, the learned trial Judge has rightly placed reliance on the circumstance that from the place of occurrence, a blood stained broken kulhari belonging to the accused appellant was recovered, while convicting the accused appellant for the

offence under Section 302 IPC.

Recovery of blood stained clothes (Pent and Bushirt) from the house of the accused appellant.

38. There is a clear cut evidence in the present case that after the alleged occurrence, the accused appellant had run away from the village and therefore, PW19 Sumer Singh, in presence of motbirs PW 3 Shanker and PW 11 Hemraj conducted the search of the house of the accused appellant in his absence. PW19 Sumer Singh has further stated in his statement recorded in Court that after braking the lock, he entered the house of the accused appellant and found blood stained pent and bushirt of the accused appellant and these two articles were seized by him through fard Ex. P/12.

39. The above aspect of the statement of PW19 Sumer Singh gets corroboration from the independent witnesses, namely, PW3 Shanker and PW 11 Hemraj. Both the witnesses in clear terms corroborated the statement of PW19 Sumer Singh. PW 11 Hemraj has further stated that he informed PW19 Sumer Singh that the said house belonged to the accused appellant and therefore, these clothes also belonged to him.

40. Thus, the fact that these two clothes (pent and bushirt) stained with blood were recovered from the house of the accused appellant is very well established and the learned trial Judge has rightly placed reliance on this circumstance, while convicting the accused appellant for the offence under Section 302 IPC.

Recovery of handle of kulhari at the instance of accused appellant

41. 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.

42. 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.

43. 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.

44. 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.

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

46. In the present case, the accused appellant was got arrested on 30.3.1998 through arrest memo Ex.P/19 and on 31.3.1998, he gave information to PW19 Sumer Singh to the effect that the broken handle of kulhari was concealed by him in his field, which he could get recovered. That information was reduced into writing by PW 19 Sumer Singh in Ex.P/20 and the same has been proved by him.

In pursuance of that information Ex.P/20 through fard Ex.P/2, PW 19 Sumer Singh got recovered the broken handle of kulhari from the field in presence of two motbirs, namely, Shankarlal (PW1) and Hazarilal (PW2) and PW 19 Sumer Singh has proved the fard of recovery and seizure Ex.P/12.

47. PW 1 Shankarlal has corroborated the statement of PW 19 Sumer Singh on point of recovery of broken handle of kulhari through fard Ex.P/2.

48. Thus, from the statement of PW 19 Sumer Singh and PW 1 Shankarlal, the fact that broken handle of kulhari was recovered at the instance of the accused appellant through fard Ex.P/2 is well established.

49. So far as the argument that since one of the motbir witnesses, namely, PW 2 Hazarilal has been declared hostile, therefore, this recovery should have not been treated as proved is concerned, no doubt PW2 Hazarilal has been declared hostile, but he has admitted his signature on the fard Ex.P/2. Therefore, merely because PW 2 hazarilal has been declared hostile, it would not affect the testimony of PW 1 Shankarlal and PW19 Sumer Singh on the point of recovery of handle of broken kulhari at the instance of the accused appellant.

50. Thus, the recovery of handle of broken kulhari at the instance of accused appellant through fard Ex.P/2 stands proved and this recovery connects the accused appellant with the commission of crime and the learned trial Judge was right in placing reliance on it, while convicting the accused appellant for the offence under Section 302 IPC.

Recovery of Gudre (Bisters) at the instance of accused appellant

51. In this case, the accused appellant gave information to PW19 Sumer Singh to the effect that blood stained Gudre (Bisters) were concealed by him in his fields which he could get recovered. That information was reduced into writing by PW 19 Sumer Singh in Ex.P/21 and the same has been proved by him.

In pursuance of that information Ex.P/21, through fard Ex.P/1, PW 19 Sumer Singh got recovered Gudre (Bisters) from the field in presence of two motbirs, namely, Shankarlal (PW1) and Hazarilal (PW2) and PW 19 Sumer Singh has proved the fard of recovery and seizure Ex.P/1.

52. In this respect, it has been submitted by the learned Amicus Curiae for the accused appellant that this recovery is doubtful because of the reasons that in his statement recorded in Court, PW 19 Sumer Singh at one place in the beginning has stated that these articles were recovered from the place of occurrence and not from the field and thus, if he had stated that he got recovered these articles from

the field, therefore, this recovery is doubtful.

53. No doubt PW 19 Sumer Singh at one place has stated that Gudre (Bisters) were got recovered from the place of occurrence and while explaining the recovery at the instance of the accused appellant, he has clearly stated that these Gudre (Bisters) were got recovered by him from the field of wheat. In our considered opinion, there is no inconsistency between the two and the fact is that two Gudre (Bisters) stained with blood were recovered and the learned trial Judge has rightly placed reliance on this circumstances, while convicting the accused appellant for the offence under Section 302 IPC.

Blood group of the clothes (pent and bushirt) of the accused appellant and the deceased

54. In this case, the FSL report is Ex.P/29 and after going through the FSL report Ex./P29, the learned trial Judge observed that the blood group found on the clothes (Pent and bushirt) of the accused appellant and the blood group of the deceased was the same. Similarly, the blood group which was found on the kulhari was similar to the blood group which was found on the clothes of the deceased. Therefore, the learned trial Judge has come to the conclusion that this circumstance clearly connects the accused appellant with the commission of crime.

55. In our considered opinion, this is a very strong circumstance in this case which connects the accused appellant with the commission of crime and the learned trial Judge was right in placing reliance on it while holding the accused appellant guilty for the offence under Section 302 IPC.

56. So far as the argument that the witness were relatives or interested is concerned, no doubt some of the witnesses were relatives or interested, but the mere fact that the witness were relatives or interested would not by itself is 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. In the present case, the evidence of the witnesses does not suffer from serious infirmities. Interested witnesses are not necessarily false

witnesses.

57. So far as the argument that there were some contradictions in the statements of the witnesses and, therefore, their statements should not have been believed by the learned trial Judge is concerned, no doubt some contradictions were found in the statements of the witnesses, but they are of minor nature and the same cannot be regarded as material one. Minor discrepancies in the evidence do not hurt the prosecution case. Minor discrepancies guarantee that the witnesses are not tutored. Hence, minor contradicters found in the statements of the witnesses would not affect their testimony.

58. 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 broken blood stained kulhari from the place of occurrence; recovery of blood stained pent and bushirt of the accused appellant from his house and the recovery of handle of kulhari and Gudre (Bisters) at the instance of the accused appellant and the evidence that the blood group, which was found on the kulhari, was the same which was found on the clothes of the deceased and further, the blood group, which was found on the pent and bisters of the accused appellant was also the same, which was the blood group of the deceased and the fact that the accused appellant was having illicit relations with the wife of the deceased, namely, PW9 Bhaggu and for that motive to cause murder of deceased, 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.

59. For the reasons stated above, the learned Additional Sessions Judge was right in convicting the accused appellant for the offence under Sections 302 IPC, on the basis of the above circumstantial evidence. The findings of conviction recorded by the learned Additional Sessions Judge are based on correct and proper

appreciation of evidence on record. We see no illegality, infirmity or perversity in the finding of conviction recorded by the learned Addl. Sessions Judge. Hence, no interference is called for with the same and this appeal is liable to be dismissed.

60. 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. This, opinion of trial Judge on appreciation of evidence should not be disturbed except for exceptional reasons. In this case, we see no exceptional reasons.

61. 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 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 doubt.

Accordingly, this appeal filed by the accused appellant Magna from jail is dismissed, after confirming the judgment and order dated 2.12.2000 passed by the learned Addl. Sessions Judge, Nimbahera.