

Anwar Ali Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-30-2002

Reported in : RLW2004(2)Raj1040; 2002(4)WLC356

Judge : S.K. Keshote and; F.C. Bansal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311

Appeal No. : D.B. Criminal Appeal No. 829 of 1998

Appellant : Anwar Ali

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : P.R.S. Rajawat, Adv.

Disposition : Appeal dismissed

Judgement :

Keshote, J.

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 is directed by Anwar AH son of Ramjani, residence of Gardana, Tesil, Sangod, Police Station, Kanwas, District Kota, at present in Central Jail, Kota against the judgment of conviction and the order of sentence dated 05th of November, 1998 of

the Additional Sessions Judge, Ramganj Mandi, in Session Case No. 143/1998. The Additional Session Judge, Ramganj Mandi under the judgment of conviction and sentence convicted the accused appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment with a fine of Rs. 1,000/-, in default of payment of fine the accused appellant has to undergo further six months simple imprisonment. The accused appellant has also been convicted for the offence punishable under Section 3/25 of the Arms Act and was sentenced to undergo one years' rigorous imprisonment with a fine of Rs. 500/-, in default of payment of fine, he has to undergo further one month simple imprisonment.

2. The learned Additional Sessions Judge, Ramganj mandi has ordered to run the sentences concurrently.

3. The facts of the prosecution case in nut shell, is that on 22.6.1995 Mst, Firoz Bano, (PW.4) lodged a written report at Police Station, Kanwas stating therein that her husband Talib Hussain and Anwar Hussain are real brothers. Both the brothers are having ten bighas of land in Village, Gardana. The land of the Village, Gardana is with Anwar and mother in-law of the complainant namely, Smt. Jenab. Her husband is having there bighas of the land in the Village, Islam Nagar and 1 & 1/2 bighas in the Village Kandafal, which are on mortgaged. Her husband is working in 'Ravtha Khan'. The complainant and her husband are leaving separately form them. Her mother in-law and Anwar (thewar) are residing together separately from them though in the same house having separate rooms in their possession.

4. About 4-5 days, before the date of incidence, her mother in-law told to Anwar that he is not doing any work and she will, not give him meals. On this point, Anwar has told to her that she has been poisoned against him by the elder brother i.e. the husband of the complaint. The mother in-law told to him that his elder brother, the husband of complaint has not poisoned her against him. She (complainant) was sleeping on the cot. Anwar has abused her and inflicted injury on her hand by 'Purania'. She has come out from the house. Anwar has inflicted injury on the thigh of the left leg by 'Purania'. Asraf AH, Pegmber Sahib had

intervened in the matter and save her from attack of Anwar. Her husband has come to house at 2.00 p.m. on 21.6.1995. She had narrated the story of her beating by Talib Hussain to husband. Talib Hussain told that is the matter of relations of her with brother-in-law. The husband of complainant told to Anwar he has not done good to beat his wife. He asked him to come at home, but he (accused) has not come to home. Anwar has gone to Anuddin, who is real uncle of complainant to complaint against her husband. Anuddin talk to her husband and told that he will not fight with him. He may come and live peacefully in house. Anwar has not returned to home in night. In the morning on 22.6.1995, he had come at about 6.00 AM, when she was preparing 'Khir'.

5. Part of the original of this document is torn. From readable part of this document, we find that there was talking between the brothers for some money. Anwar has gone out telling to his brother that he may remain in the house. Thereafter at about 7.00 am, he came with Gun and fired on her husband, who was sitting on the cot i.e. fire hit to her husband at his abdomen, chest and head. After some time her husband is died. Anwar has ran away with the Gun from the scene of incidence. At the time of this incidence at her house nobody was present except herself and her mother-in-law.

6. Having gone through the file of the court below we find that top of the document Ex.P.8 and left part of the top thereof is torn. That document is not readable to that extent. Not only this, two other documents filed in the trial court are also torn.

The documents are not properly placed and tagged. The maintenance of the file of the trial court is wholly unsatisfactory and that has resulted in torn of many pages. It is unfortunate that because of heavy pendency in the courts, matters take long time in disposal. Keeping in view this aspect, we have to find out solution of this problem and ensure proper maintenance, safety and preservation of the record of the case. In a criminal case were the original documents are torn and as a result of which they are not readable, the possibility of acquittal of the accused increase as benefits of doubt is to be extended to the accused. That way, though the accused would have committed offence because of non-maintenance of filed properly, he may get the benefit of doubt in the given case.

7. On this written report submitted at Police Station Kunwas, District-Kota, first information report No. 1 11/95 (Ex.P-25) was registered under Section 302 1PC against the accused appellant. Investigation of the case had been commenced by Shri Mohan Lal Yogi, S.H.O. Police Station Kunwas (PW-17).

8. During the course of investigation permission of District Collector, Kota was sought for to file challan against the accused appellant for offence under Section 3/25 of the Arms Act in the Court of Judicial Magistrate, 1st Class, Sangod. Cognizance was taken in the matter and as it was triable by the Sessions Court, the case was committed to the Court of Sessions, Kota and, ultimately, it was tried by the Additional Sessions Judge. No. 3, Kota. On 28.10.1995, after hearing the learned Public Prosecutor and the counsel for the accused appellant, the learned trial court framed charges against the accused appellant under Section 302 IPC and Section 3/25 of the Arms Act. The accused appellant pleaded not guilty to the charges and claimed to be tried.

9. The prosecution in support of its case examined as many as 19 witnesses and Ex.P-1 to Ex.P-31 were produced as documentary evidence. In addition to this, F.S.L. report has also been produced. Along with the charge-sheet, though, the letter of sanction of filing of challan against the accused appellant for the offence under Section 3/25 of the Arms Act and arrest memo of the accused appellant were filed, but during the trial the same were not got exhibited by the Public Prosecutor. The accused appellant was examined under Section 313 Cr.P.C. and in defence he produced Mst. Firoz Bano (PE-4) as (DW-1) and in documentary evidence, documents Ex.D-1 to Ex.D-4 have been produced.

10. The accused appellant, in his statement recorded under Section 313 Cr.P.C., has stated that because of the villagers having enmity against him he had falsely been implicated in the case.

11. After considering the evidence on record and hearing the learned counsel for the parties, the learned trial court, under its judgment and order 5.11.1998, convicted the accused appellant for the offence under Section 302 IPC and 3/25 of the Arms Act and sentenced him as stated earlier. Hence, this appeal.

12. Learned counsel for the appellant contended that Balram (PW-1), Ashraf (PW-2) and Anwar Hussain (PW-3), though, they have been examined as eye witnesses of the incidence, but have not supported the prosecution case and they have been declared hostile. Similar is the case of Smt. Jenab, the mother of the deceased. She has also been declared hostile. Firoz Bano (PW-4) supported the prosecution case but later on she appeared in witness box in defence for the accused and was examined as DW-1. In her statements recorded as DW-1, she has not supported the prosecution case.

13. So far as Ismile Khan (PW-8) is concerned, it is submitted that though he has been produced as an eye witness of the incidence, he is wholly unreliable. He has not disclosed this fact of seeing of incidence alleged to have been committed by accused appellant in his statement recorded under Section 161 Cr.P.C. (Ex.D-2). Further, he is having the litigation against the accused appellant, thus he did appear in the witness box against him.

14. As regards Shakeel Mohd. (PW-9), it is submitted that, though he is produced as an eye witness of the incidence, there are serious contradictions in his statement which creates doubt in his account as eye witnesses.

15. Hanif Mohd. (PW-10), Shamshuddin (PW-11) and Chhotu Lal (PW-12) are the supporting witnesses but they do not support the prosecution case and they have been declared hostile.

16. It is next contended that the prosecution has failed to, prove recovery of the weapon of offence. Janki Lal (PW-16), who is 'motbir' witness, has been declared hostile, Similarly, Dr. Vinit Kumar Gupta (PW-19), who conducted post mortem on the body of the deceased, is not a reliable witness. Other two witnesses are related to investigation. Summing up his arguments, Shri Rajawat, learned counsel for the appellant, Submitted that the conviction of the appellant, on the basis of this evidence, is not safe. The prosecution has failed to prove its case against the accused appellant beyond reasonable doubt.

17. It is urged that Firoz Bano (PW-4) and Jenab (PW-7), as per parcha bayan, are the eye witnesses of the incidence. In the investigation, many of the persons

had been inserted as eye witnesses and it creates a serious suspicion on the veracity and fairness of the investigation.

18. Firoz Bano (PW-4) was produced in evidence but her statement could not have been relied upon as the same have not been made on oath. Otherwise also she appeared in defence as DW-1 where she has not supported the prosecution story. She has made a categorical statement that the accused has not caused any gun shot injury to the deceased.

19. Lastly, it is contended that taking everything worst against the accused appellant, the case does not travel beyond Section 304 Part-II (PC). The accused appellant is in jail for last more than seven years and he may be punished for the period already undergone by him.

20. On the other hand, Miss, Sumitra Goyal, learned Public Prosecutor, supported the judgment and order of the learned trial court. It is submitted that Firoz of Bano (PW-4) is the eye witness of this incidence and her statements have rightly been relied upon by the learned trial court. The learned Public Prosecutor urged that there appears all the possibility that taking the advantage of weakness of this lady Firoz Bano, she would have been pressurized by the accused appellant and compelled her to appear in defence to support his case. In the facts of this case, Miss. Sumitra Goyal, learned Public Prosecutor, strongly contended that the statements recorded of this lady in defence have rightly not been relied upon by the learned trial court. It has next been contended that the accused appellant has influenced other witnesses of the incidence using muscles and money power or otherwise which is clearly reflected from the fact that most of them have turned hostile. The worst part of the matter is that the mother of the deceased has also turned hostile, may be for the reason that both accused and deceased are her sons. The medical evidence supported the case of the prosecution. Even after excluding the statements of the witnesses who have been declared hostile, ample evidence is available on record to being home the accused appellant to guilt, Replying to the last contention raised by the learned counsel for the appellant that this case does not travel beyond Section 304 Part-II IPC, her submission is that it is a brutal murder by a brother of his own brother in a day light at home and rightly

he has been appropriately punished.

21. We have given our thoughtful consideration to the contentions raised by the learned counsel for the accused appellant as well as the learned Public Prosecutor.

22. Having gone through the record of this case, we shocked and surprised how the eye witness of this murder, which is alleged to have been committed by the accused appellant in a day light of his own brother at his house, have appeared as defence witness.

23. Learned counsel for the appellant submitted that this Court, in the Cr.Misc. Application No. 262/98 filed by the accused appellant under Section 482 Cr.P.C. has permitted the accused appellant to produce this lady in defence. We are not in agreement with this statement of fact made by the learned counsel for the appellant. Having gone through the record of the case we are satisfied that surreptitiously and taking the advantage of the weakness of the Court, who would not have read or known of the facts of this case, this eye witnesses, whose statements had already been recorded as PW-4, was put in defence as DW-1. Not only this, we further found from the record of this case that on the date when this Firoz Bano (PE-4) appeared in witness box as a defence witness, the post of Public Prosecutor was not manned. In the absence of Public Prosecutor her statements were recorded as DW-1. A trick appears to have been played by the accused with the Court and possibly in the absence of Public Prosecutor it would have caught in his this trick.

24. Be that as it may, Firoz Bano, who was the eye witness of this incidence, had been cited as eye witness in the case. Her statements were recorded as PW-4 and she could not have been produced by the accused in his defence. Reference here may have to the provisions of Section 311 Cr.P.C. We have considered it to be appropriate to reproduce the same in this order which reads as under: -

'311. Power to summon material witnesses, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, Summon any person as a witness, or examine any person in attendance, though

not summoned as a witnesses, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.'

25. On bare perusal of this Section we find that court may, on the motion either of prosecution or the defence or its own, at any stage of an inquiry, trial or other proceedings under the Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined if his evidence appears it to be essential to the just decision of the case.

26. Question which falls for consideration is whether an eye witness of the incidence can be summoned as a witness in defence. The learned counsel for the accused appellant and the learned Public Prosecutor has failed to cite any decision of this Court or any other. High Court or the Apex Court where it is held that it is permissible to the Court under Section 311 Cr.P.C. to summon a prosecution witness, whose statements have been recorded on the court, in defence to support the case of the accused. This power to the Court to summon any person as a witness is available in a case where the evidence that person appears it to be essential to the just decision of the case. Firoz Bano (PW-4) had already been summoned and examined as a prosecution witness and the power under Section 311 Cr.P.C. is not available to the Court to summon her as a defence witness or as she was in attendance to record her statements as a defence witness. We do not find anything on record of the trial court that her evidence appeared it to essential to do the just decision of the case.

27. As to the power to recall or re-examine any person already examine, suffice to say that it does not mean of examining a witness in defence whose statements have already been recorded as a prosecution witness. It is the power to recall or re-examine. A witness whose statements have already been recorded as a prosecution witness, may be recalled and re-examined by the Court under this provision of the Cr.P.C. if his evidence appears it to be essential to the just decision of the case. But this recalling ad re-examination of the witness whose

statements have been recorded does not mean nor this provision empowers the court to permit the prosecution witness to be examined as a defence witness. It is not the case of recalling and re-examination of the witness whose statements have already been recorded. 'For just decision' of the case does not mean-a person to be permitted to resile from his/her own statements already recorded and turn hostile to the prosecution case. This way where the accused is permitted or taking it to be permissible to examine any prosecution witness, whose statements have already been recorded, in his support not a single conviction and sentence would have been there in the criminal cases where heinous offences are committed. This way such a permission is granted it would result in granting undue advantage, liberty and favour to the unscrupulous accused who, by exercise of their muscle, money or other power, even after recording of statements in support of prosecution case as eye witness of the incidence, will pressurize or threaten them to appear in their defence and resile from their own statements already made on oath. This meaning is given to this provision and where it is taken to this extent power vests with the trial court, it will result in acquittal of many of unscrupulous accused by way of their muscle power, money power or other influences.

28. The matter in the trial court was going on for recording the statements of the prosecution witnesses. On 7th of November, 1997 an application at page No. B 5/1 was filed by the accused appellant purporting to be under Section 311 Cr.P.C. praying therein that in the interest of justice Firoz Bano (PW-4) be recalled and opportunity be given to the accused to cross-examine her. There is an affidavit of Smt. Firoz Bano (PW-4) enclosed to this application at page No. B 5/2 dated 27th of August, 1997. The application was considered by the learned trial court and the same was dismissed under its order dated 1st of December, 1997. The learned trial court rejected this application on the ground that the accused appellant has cross-examination this witness earlier and now an attempt has been made to get her statements changed under this pretext. From the affidavit which has been filed along with application, it clearly comes out that she has stated contrary to what she has given in her statements on oath in the Court. This order of the learned trial court dated 1st of December, 1997 was challenged by the accused appellant in this Court by filing S.B. Criminal Misc. Application No. 262/1998. This application was to be decided by this Court vide its order dated 18th of February, 1998.

A copy of this order is there at page No. B 4/3 in file of trial court. Having gone through the order of this Court dated 18.2.1998 we are satisfied that the accused appellant had not been permitted to produce Firoz Bano (PW-4) as a defence witness. What the court has said that regarding the mental condition of Firoz Bano (PW-4) if any medical certificate is produced along with the application, the court shall pass thereon order after considering the same in accordance with law This court has observed in this order that regarding the mental condition of Firoz Bano (PW-4) medical certificate has not been produced. The court has further declined to make any discussion in respect of the affidavit of Firoz Bano filed by the accused along with the application dated 7th of November, 1997.

29. Another application has been filed in the trial court by the accused appellant on 9th of March, 1998 which is at page B 5/5. Therein a prayer has been made that Firoz Bano (PW-4) be summoned for her re-examination. This prayer has been made in the context that many important questions were left out to be put to this witness. Further it is stated that the witness has produced her affidavit dated 27th of August, 1997 in the Court and exhibiting thereof is most important and if it is not done he (accused) will be deprived of justice. She has been prayed to be summoned for her re-examination in the change circumstances. The application is dated 7th of March, 1998 but was presented in the court on 9th of March, 1998. The trial court did not pass any order on that application. On 16th of September, 1998 the learned counsel for the accused appellant before the trial court chose not to press that application presented on 9th of March, 1998 and the same was dismissed. The matter was fixed on 6.10.1998 for recording of the statements of the accused under Section 313 Cr.P.C. On 6th of October, 1998 the statements of the accused appellant were recorded under Section 313 Cr.P.C. and the matter was fixed on 16th of October, 1998 for the defence evidence. From the proceedings of the trial court we find that the post of Public Prosecutor was not manned and the proceedings in the case were going on in the absence of the Public Prosecutor atleast from 13th of August, 1998. In the absence of the Public Prosecutor the evidence of the prosecution was ordered to be closed on 16th of October, 1998 as the Public Prosecutor was not present and rightly so because nobody was appointed by the State Government. On this date on behalf of the accused appellant an application was presented praying therein that Smt. Firoz

Bano be examined as defence witness. Same was ordered to be allowed by the trial court. The learned trial court has not recorded any reason in support of this order allowing the application of the accused appellant filed on 16th October, 1998. On the same date, statements of Firoz Bano, who appears to have been brought in the court by the accused for her examination as DW-1, were recorded. The matter was adjourned to 29th of October, 1998 for final argument. In the statements recorded of Firoz Bano as DW-1, she has totally denied of happening of any such incidence meaning thereby she appears to have been forced to give a clean cheat to the accused appellant in this case.

30. The contention of the learned counsel for the accused appellant is that the prosecution has been totally demolished and disproved in view of the statement of complainant herself and the accused appellant may be acquitted of the charges of committing murder of his brother.

31. The statement of the complainant Firoz Bano (DW-1) recorded as DW-1 cannot be read in favour of the accused. The affidavit filed along with the application by the accused appellant dated 9th of March, 1997 is a procured document by threat or coercion or otherwise. It is difficult to accept it to be a voluntary statements given on oath in the form of affidavit by Firoz Bano her husband has been murdered. This affidavit filed by her and statements given in trial court as DW-1 go adverse and against the natural conduct of the prudent person. Ultimately, the accused appellant succeeded in producing the complainant as a defence witness. The statements of the complainant recorded in defence cannot be taken to be legally tendered evidence. She was not subjected to cross-examination by the prosecution side. The learned trial court has recorded the statements of the complaint as a defence witness in the absence of the Public Prosecutor. The post of Public Prosecutor was not manned and the statement of the complaint have been recorded in the absence of the P.P. The statement of a witness who is not subjected to cross-examination, though the other side is not responsible in any manner to go it uncross-examined, cannot be read against that party, here that the cost of repetition it is to be stated that the statements of the complaint as the post of P.P. was not manned, it is not a statement in the eye of law and it is not admissible in evidence. Nobody was present for State to cross-

examine this witness and it cannot be read against the prosecution. Where that way things are allowed to go in judicial courts, the prosecution against accused in many of the cases would be brought to ground by unscrupulous accused persons.

32. The matter can be seen and examined yet from another angle. Though under Section 311 Cr.P.C. as already said earlier, the court is not empowered to call the prosecution witness whose statements have already been recorded, as a defence witness but otherwise also that learned trial court has not recorded any reason in support of its order dated 16.10.1998 permitting the accused appellant to produce the complainant, who was a prosecution witness and her statements had already been recorded, as a defence witness. The learned trial court has passed only one line order-'arguments heard on the application and the application is allowed' (English translation). It is an order not befitting to and expected from the Judicial Officer of the rank of Additional Session Judge. The order of the judicial court, may be interlocutory or final, should be supported with reasons and the grounds. An order of judicial court which is not supported by reasons and grounds, is a perverse one. The reasons and grounds in support of an order to be passed by a judicial officer, are required at least for two reasons; firstly, reasoned order against whom it is made will have the reasons and grounds so as to satisfy that court has not acted arbitrarily and, secondly if the matter is taken to the higher court or forum in appeal or revision, the court to which it is brought be know of the reasons and the grounds which appealed to the lower court to pass that order and it would become easy for the higher court to examine its legality, propriety and correctness.

33. This aspect needs to be considered yet from another angle. It is not unknown and a notice of this fact can be taken that heavy pendency of the matters is there in the courts. It is a high time where all endeavour is to be made both by the members of the Bar and the courts subordinate as far as possible that avoidable litigation may not come in the courts. Cryptic order more so when it comes from the desk of a judicial officer in a judicial matter, cannot be allowed to stand by the higher court and same may be set aside only on this ground. Meaning thereby whole exercise undertaken by a judicial officer will go waste. Matter may be remanded back to the court and again it is to be considered afresh. That is how valuable and precious judicial time of two courts is being wasted or may go

unproductive.

34. To sum up our discussions on this point, we are satisfied that for the reasons given in the preceding paragraphs, the statements of Firoz Bano made in defence as DW-1 cannot be taken and read against the prosecution.

35. The post mortem on the body of the deceased was conducted by Dr. Vineet Kumar Gupta (PW-19). The injuries which were found on the body of the deceased are-

Ante mortem injuries-

(i) Multiple Gun shot wounds of size varying settered over an area of size 10'x 6,' inch over left side of Abdomen and lower half of left side of chest and left flank wounds are oval shaped. Margins are blackened and tattooing. Inverted edges 10 wounds cavity deep and rests are skin and muscle deep,

(ii) Gun shot wound 1/4' x 1/4' inch over left cheek, bone deep stated 1' inch in front of left ear. Edges inverted. Blackening and Tattooing of margins.

(iii) Gun shot wound 1/6' x 1/6' inch over Right side of chest 2' inch away from lower end of sternum.

(iv) Gun shot wound 1/2' x 1/4' inch over anterior aspect of left forearm 3' inch below the elbow. Oval shaped.

36. Dr. Vineet Kumar Gupta (PW-19), in his report, opined that Talib Hussain died because of syncope caused by severe haemorrhage due to ante mortem injuries of organs of abdomen and lung. He further certified that in ordinary course of nature these injuries are sufficient to cause death. On oath he has given out the cause of death was syncope caused by severe haemorrhage due to ante mortem injuries caused to the deceased by gun shot at the two parts of his body.

37. Having gone through the post mortem report (Ex.P-30) and the statements of Dr. Vineet Kumar Gupta (PW-19), we are satisfied that it is a case of homicidal death. The death of the deceased was because of syncope caused by severe haemorrhage due to injuries on abdomen and lungs. In ordinary course of nature

these injuries were sufficient to cause death of the deceased. From Ex.P-1, the panchnama of the body of the deceased and the statements of Mohan Lal Yogi (PW-17), Firoz Bano (PW-4), Smt. Jenab (PW-7), it is clear that the death of deceased was as a result of gun shot fire.

38. On perusal of the statements of Firoz Bano (PW-4) and Smt. Jenab (PW-7), though later was declared hostile, it comes out that on the day and at the time of incidence deceased Talib Hussain was at his house. Having gone through the document Ex.P-1 and the statements on Mohan Lal Yogi (PW-17), the investigation officer, we are satisfied that the death of the deceased was caused in his house at village Gardana. To prove the case of causing death of Talib Hussain by gun shot against the accused appellant the prosecution has produced both direct and supporting evidence. Firoz Bano (PW4), Smt. Jenab (PW-7), Ismail Khan (PW- 8), Shakeel Mohd. (PW-9), Hanif Mohd. (PW-10), Shamshuddin (PW-11), Chhotu Lal (PW-12) and Saeed (PW-13) are the eye witnesses. Hanif Mohd. (PW10), Shamshuddin (PW-11) and Chhotu Lal (PW-12) have not supported the prosecution case in the trial and on the request of the Public Prosecutor they were declared to be hostile.

39. Smt. Jenab (PW-7), the mother of the deceased and the accused appellant, has been declared hostile. She has turned hostile possibly for the reason that the accused appellant is also her son. But she has admitted that the deceased was falling dead at his house, he was shot dead at his house. From her statements things are very clear that the deceased was murdered by gun shot fire at his residence. So far as the recovery of gun from the accused appellant, she has shown her ignorance.

40. Ismile Khan (PW-8), the grandfather of the deceased and the accused appellant, stated that the accused had fired at the deceased and ran away. Shakeel Mohammad (PW-9) has also supported the prosecution case. He saw the accused appellant running from the scene of occurrence with gun. He entered the house of deceases where he found that the deceased had sustained the gun shot injury. He was dead.

41. From the statements of Hafiz Mohammad (PW-IO), though was declared hostile, it comes out that the deceased had died due to gun shot injury. The recovery of gun on the information of accused and been made. Information memo is Ex.P.-23. Recovery memo of gun is Ex.P-4 thus has been proved by Mohan Lal Yogi (PW-17). Evenif, for the reason that from open place this recovery of gun was made, this evidence may be taken weaker, the ocular evidence find support by the medical evidence.

42. Firoz Bano (PW-4), the widow of the deceased, who is an eye witness of the incidence, has made a categorical statement that she has witnessed firing at her husband by gun by the accused appellant. He died due to this gun fire. Lengthy cross-examination has been made but she stood to be test thereof. She stated in her cross-examination- [^]xksyh pyh rc eSa esjs ifr ds [kkV ls djhc ,dgkFk nwj gh Fkh** she furtherstated in her cross-examination- [^]vuoj usvius dejs dh lkb ZM dh nhokj ds dksus ij [kM+k gksdj xksyh pykbZ Fkh**She has stated that [^][kkV ij cSBs gg, esjsifr dk eqag ml rjQ Fkk ftl rjQ ls vuoj us xksyh pukbZ Fkh** Statements of this witness find support by the medical evidence. The doctor has opined that deceased Talib hussain died because of syncope caused by severe haemorrhage due to ante mortem injuries of organs of abdomen and lung. In ordinary course of life these injuries are sufficient to cause death.

43. Dr. Vinit Kumar Gupta (PW-19), who had conducted the post mortem on the dean body of the deceased, has given out the details of injuries and stated that he found many gun shot wounds on the lower part of chest and abdomen, out of which ten were deep wounds. In the cross-examination, he stated that all these injuries are possible to cause by one gun fire.

44. To an occurrence took place in a dwelling house, the most natural witness would be the inmates of that house. In the case of State of Rajasthan v. Teja Ram and Ors. (1), their Lordships of the Supreme Court held-

'The over-insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even

seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is jurisdiction for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood . may be replete with other residents also.'

45. In the case of State of Haryana v. Tek Singh and Ors. (2), Hon'ble the Supreme Court held:-

'Considering the evidence of prosecution witnesses and the reasons recorded by the Trial Court, is apparent that the entire approach of the High Court in appreciating the evidence of the eye-witnesses is erroneous. The close relationship, witnesses naturally would have a tendency to exaggerate or add facts but while appreciating the evidence exaggerated facts are to be ignored unless it affects substratum of prosecution story. In the case of State of U.P. v. M.K. Anthony (AIR 1985 SC 48), this court pointed out that while appreciating the evidence of a witness the approach must be whether evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies of trial matters not touching the core of the case, hyper-technical approach in persuasion of the evidence should be avoided.'

46. Reference here may have also to the decision of the Apex court in the case of Leela Ram (D) through Duli Chand v. State of Haryana and Anr. (3).

47. In the case of Suresh Singh and Ors. v. State of Haryana (4), their Lordships of the Supreme Court held that even if where a part of evidence is not believed

including motive part, the entire prosecution case cannot be through out. The evidence ascribing role of accused in giving blows can be accepted.

48. Having been closely, carefully and minutely scrutinised the statements of Firoz Bano (PW-4) and the statements of other witness and the medical evidence as unfolded through Dr. Vinit Kumar Gupta (PW-19), who has conducted the post mortem on the dead body of the deceased, we are unable to persuade ourselves that the entire statement of this witness to be discarded.

49. As a result of the aforesaid discussion, we are satisfied that the learned trial court is correct in its approach that the prosecution has proved its case beyond reasonable doubt against the accused appellant.

50. Consequently, this appeal fails and the same is dismissed.

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