

Prem Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-26-2002

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

Appeal No. : D.B. Criminal Appeal No. 391 of 1998

Appellant : Prem Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

F.C. Bansal, J.

1. The appellant Prem Singh was indicted by learned Additional Sessions Judge No. 1, Kota in Session Case No. 36/95 for having committed murder of Deepak. He has been convicted and sentenced under Section 302, IPC vide its judgment dated April 6, 1998 to undergo imprisonment for life and a fine of Rs. 500/- in default of payment of fine to further undergo two months rigorous imprisonment. Against this judgment of conviction and sentence the present action for filing the appeal has been resorted to by the appellant.

2. Briefly stated the prosecution story is that on 11.6.1995 at 11:05 P.M., P.W. 14 Rajendra Singh Rathore, SHO, P.S. Kunhadi, Kota City recorded 'Parcha Bayan' Ex. P. 1 of Smt. Rekha (P.W. 1) W/o Bheru Lal, by caste-Dhobi, R/o Sakatpura, (Kota City) at her house, wherein she stated that today after around 7:30 P.M., she and her nephew Pappu @ Deepak were ironing clothes. At that time Hansraj and Satya Narain quarrelled each other and Sattu chased Hansraj when Hansraj ran from the place of scuffle. It was also stated by Rekha (P.W. 1) that at that time Durga Singh was abusing her. When her nephew Deepak asked Durga Singh not to abuse her (Rekha) then Deepak was told to come out of the house and thereafter, Prem Singh caused injury with a knife to Deepak. Rekha also stated in Ex. P. 1 that children informed her that Deepak had sustained injury with a knife. She was also beaten up and abused by Ramgopal Teli. When she wanted to take Deepak in an Autorikshaw, the driver of Auto-rikshaw was told not to take Deepak in his Auto-rikshaw. It was also stated in Ex. P. 1 that Deepak was inflicted injuries by Prem Singh and Mahaveer with knives. After that she took Deepak to hospital where he succumbed to his injuries. On the basis of 'Parcha Bayan' Ex. P. 1, Rajendra Singh, SHO registered a case under Section 302/34, IPC and Section 3 Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act at 11:30 P.M. and investigation commenced. Formal FIR. is Ex. P. 16. The Investigating Officer Bal Mukund (P.W. 16) reached on the spot and prepared Site Plan Ex. P. 2. Blood smeared soil and control soil were also seized and sealed vide Ex. P. 3. Inquest Report Ex. P. 8 of the dead body of Deepak was prepared by P.W. 16 Bal Mukund. Post-mortem examination on the dead body of the deceased was conducted by P.W. 10 Dr. Y.K. Sharma and he prepared post-mortem report Ex. P. 12 as well as Injury Report Ex. P. 11. Blood stained 'Shirt' and 'Chaddi' belonging to the deceased which he was wearing at the time of the incident were also seized and sealed vide Seizure Memo Ex. P. 4. Statements of the witnesses under Section 161 Cr PC were recorded. Appellant Prem Singh was arrested vide Arrest Memo Ex. P. 18. On his information given in police custody and recorded under Section 27 of the Evidence Act and at his instance, a knife (Chhura) was recovered from the house of the appellant. It was seized and sealed vide Recovery Memo Ex. P. 10. On completion of investigation, a chargesheet was laid against the appellant in the Court of Judicial Magistrate No. 2, Kota

(South), who committed the appellant to the Court of learned Sessions Judge, Kota, who transferred the file to the Court of learned Additional Sessions Judge No. 1, Kota.

3. Learned trial Judge framed charges under Section 302 IPC and 4/25 of the Arms Act, which were denied by the appellant and he claimed trial.

4. The prosecution examined as many as 16 witnesses in support of its case. In the statement recorded under Section 313 Cr PC., the appellant claimed innocence and stated that he was falsely implicated in the case. He further stated that at the time of the alleged incident, he was not present on the spot. In his defence the appellant examined 4 witnesses.

5. Learned trial judge after hearing the final submissions of both the parties, convicted and sentenced the appellant as indicated here-in-above. However, the appellant was acquitted of the charge under Section 4/25 of the Arms Act.

6. We have heard Learned Counsel for the appellant, learned Public Prosecutor, scanned and scrutinized the material on record.

7. Learned Counsel for the appellant did not dispute the fact of homicidal death of the deceased Deepak, The prosecution also has succeeded in proving that deceased Deepak sustained as many as seven injuries with a sharp weapon and because of these injuries, he died after a few hours of the incidents. As per statement of P.W. 10 Dr.Y.K. Sharma, Medical Jurist, M.B.S. Hospital, Kota, on Post-mortem examination, following injuries were found on the dead body of Deepak:

Ante-motem injuries:

(1) Stab wound 1/4' x 1/8' x 1/2' vertical on left 2nd ICS medial rib.

(2) Stab wound 1/2' x 1/4' x cavity deep Tran. 4' below left nipple direction going upwards and posteriory responding lower lobe of left lung (Lung wound 1/4' x 1/4' x 3/4') bleeding cavity filled blood and cloths.

- (3) Incised wound 3' x 2' x 2' vertical on lower 1/3rd of anterior aspect of left upper arm.
- (4) Stab wound 1' x 1/2' x 2' Tran. on middle out aspect of left thigh.
- (5) Stab wound 3/4' x 1/2' x 1' Tran. on upper 1/3rd medial aspect of right thigh.
- (6) Incised wound 3' x 3/4' x 1/4' vertical on lower 1/3rd and lat. aspect of left leg.
- (7) Stab wound 1/2' x 1/4' x 3/4' Tran. on middle of right hip.
- (8) Tiny abrasion on dorsum of back of chest.

8. Dr. Sharma also stated that all the injuries were antemortem in nature. The cause of death was shock due to injury to left lung. Injury Report Ex. P. 11 and Post-mortem Report Ex. P. 12 were prepared by him which bear his signature. Post-mortem examination was conducted within 24 hours of the death of the deceased. In his cross-examination, he also stated that injury to left lung was sufficient in the ordinary course of nature to cause death.

9. On close and careful scrutiny of the statement of Dr. Sharma, we have found it wholly reliable and it proves that the death of Deepak was homicidal as he sustained as many as seven injuries with a sharp weapon. One of the injury which was to the left lung, proved fatal.

10. The prosecution case rests upon the testimony of P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi. They are alleged to be the eye-witnesses of the occurrence. Deceased Deepak was the newphew of P.W. 1 Rekha. P.W. 3 Birdhilal is the father of the deceased and it is clear from his statement that P.W. 1 Rekha is the wife of Bheru Lal, who is younger brother of Birdhilal. The wife of Birdhilal (mother of the deceased) is the real sister of P.W. 1 Rekha. P.W. 5 Radha and P.W. 9 Laxmi are the daughters of P.W. 1 Rekha and P.W. 7 Hemant Kumar is her son. The first contention of Learned Counsel for the appellant is that P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi, being the relatives of the deceased, are interested as well as partisan witnesses and, therefore, their testimony cannot be relied upon. We have given

our thoughtful consideration to this submission. The Apex Court in *Lehna v. State of Haryana* : [2002]1SCR377 held as under:

We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

In *Dalip Singh v. State of Punjab* : [1954]1SCR145 , it has been laid down as under:

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.'

The above decision has since been followed in *Guli Chand v. State of Rajasthan* : 1974 CriLJ331 in which *Vadivelu Thevar v. State of Madras* : 1957 CriLJ1000 was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh* case in which surprise was expressed over the impression which prevailed in the minds

of the Members of the bar that relatives were not independent witnesses. Speaking through Vivian Bose. J., it was observed: AIR p.366 para 25.

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. State of Rajasthan* : 1952 CriLJ547 at 59(A). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel. Again in *Masalti v. State of U.P.* : [1964]8SCR133 , this Court observed: AIR PP. 209-10, para 14

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct. To the same effect is the decision in *State of Punjab v. Jagir Singh* : 1973 CriLJ1589 In *State of Punjab v. Jugraj Singh and Ors.* : 2002 CriLJ1503 , while reiterating the same the Apex Court indicated that the testimony of the witnesses could not be discarded only on the ground that they happened to be the relations of the deceased. To the same effect are the decisions in *Ashok Kumar Pandey v. State of Delhi* , : 2002 CriLJ1844 and *Bhagwan Singh and Ors. v. State of M.P.* : 2002 CriLJ2024 . *Hukum Singh and Ors. v. State of Rajasthan*, 2000 Cr LR (SC) 759; *Dalveer Kaur v. State of Punjab*, 1976 (4) SCC 158, *Sukhdeo v. State of Rajasthan*, 2000 (1) Cr LR(Raj.) 281 and *Ram Lakhan and Ors. v. State of U.P.* 1996 Cr LR (SC) 479.

11. In view of decisions of the Apex Court and of this Court, the evidence of all the aforesaid witnesses cannot be discarded only on this ground that they happen to be the relatives of the deceased Deepak.

12. In *State of Haryana v. Ram Singh*, : 2002 CriLJ987 , the Apex Court held as under:

Admittedly all the supposed eye-witnesses are relations of the deceased. As such they fall within a category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the Court will be rather strict in its scrutiny as to the acceptability of such an evidence.

13. In *Ram Lakhan and Ors. v. State of U.P.* (supra), while expressing the same view the Apex Court held that it is well settled that the evidence of close relatives cannot be excluded solely on the ground that they are interested witnesses. In such a situation, it is the duty of the Court to scrutinize the evidence of such witnesses very carefully and if there is any doubt as regards their trustworthiness, the Court may discard their evidence.

14. Keeping in view the aforesaid decision of the Apex Court, the testimony of P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi will be scanned and scrutinized.

15. Learned Counsel also contended that P.W. 5 Radha aged 12 years, P.W. 7 Hemant Kumar aged 10 years and P.W. 9 Laxmi aged 9 years come in the category of 'child witness' and there was every possibility of tutoring them and, therefore, no reliance can be placed upon their testimony. It is true that Radha, Hemant Kumar and Laxmi are child witnesses but only on this ground, their testimony cannot be disbelieved. In *Suryanarayana v. State of Karnataka*, 2001 Cr LJ. 705, the Apex Court held as under:

Admittedly, Bhavya (P.W. 2), who at the time of occurrence was about four years of age, is the only solitary eye-witness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case

suggest no possibility of there being any other person as an eye-witness. The evidence of the child witness cannot be rejected per se, but the Court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The witness of P.W. 2 cannot be discarded only on the ground of her being of Teen age. The fact of being P.W. 2 a child witness would require the Court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of child witness cannot be made the basis of discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the Courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the Courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

This Court in *Panchhi v. State of U.P.* : 1998 CriLJ4044 , held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law (vide *Prakash v. State of M.P.* : 1992 CriLJ3703 ; *Baby Kandayanathi v. State of Kerala* 1993 Supp (3) SCC 667 : 1993 AIR SCW 2192 : AIR 1993 SC 2275 : 1993 Cri LJ 2605; *Raja Ram Yadav v. State of Bihar* : 1996 CriLJ2307 ; *Dattu Ramrao Sakhare v. State of Maharashtra* (1987) 5 SCC 341.

To the same effect is the judgment in State of U.P. v. Ashok Dixit, : 2000 CriLJ1436 .

16. In view of the aforementioned decisions of the Apex Court, the contention raised by Learned Counsel for the appellant deserves to be rejected. The evidence of the witnesses cannot be rejected on this sole ground that the witness is a child. The only legal requirement is that the evidence of the child witness must be evaluated with utmost care which is being done in the instant case.

17. P.W. 1 Rekha stated that on the fateful day at about 7:30 P.M., She was at her shop where Deepak was ironing clothes. At that time Hansraj and Satyanarayan sitting on the compound wall of Chambal Residential Colony were abusing. A little later, she heard that Sattu (@ Satyanarayan) was caused knife injury and she saw Hansraj and Satyanarayan fleeing away in the lane of Durga Singh. Thereafter Durga Singh came at his shop and started abusing her and he said that because of her, quarrel took place in locality whereupon Deepak asked Durga Singh not to abuse. Rekha further stated that thereafter Prem Singh came at her shop. Prem Singh abused Deepak and told him to come out of the shop. After that he went to his house and returned at her shop having a 'Chhura'. He caught hold of Deepak and dragged him from the shop. Having brought Deepak on the road, Prem Singh caused an injury with a knife (Chhura) on the chest of the deceased Deepak. Thereafter, he dragged Deepak from that place to the compound wall of Chambal Colony and inflicted injuries with a knife on the person of Deepak. It was also stated by P.W. 1 Rekha that when she came out of the shop to save Deepak, Gopal Teli caught hold of her and thereby prevented her. She was also slapped by Gopal Teli. After getting herself free from Durga Singh when she ran towards the place of occurrence, the appellant Prem Singh fled away. She further stated that she took Deepak to M.B.S. Hospital but his life could not be saved. She also stated that her 'Parcha Bayan' Ex. P. 1 was recorded by the police. The statement of P.W. 1 Rekha has been corroborated by P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi. It would be pertinent to mention here that the shop of P.W. 1 Rekha is part and parcel of her house where she resides with her family. It was also, stated by Rekha that Deepak was brought up by her and he had been residing with her for the last 13-14 years. As per the statement of P.W. 5 Radha,

P.W. 7 Hemant Kumar and P.W. 9 Laxmi, they were at their house at the time of the alleged incident and they had seen the appellant Prem Singh inflicting injuries with a 'Chhura' (knife) on the person of the deceased Deepak. They also stated that the appellant Prem Singh dragged the deceased Deepak from the shop and took him on the road and caused one injury there and further dragged the deceased near the compound wall of Chambal Colony and inflicted several injuries at that place on the person of the deceased Deepak. Thus, all these four witnesses deposed on oath that the deceased Deepak were caused injuries with a 'Chhura' (knife) by the appellant Prem Singh.

18. Learned Counsel for the appellant vehemently argued that in her 'Parcha Bayan' Ex. P. 1, P.W. 1 Rekha stated that the children told her that Deepak had sustained knife injury and, therefore, it is clear that she herself had not seen the alleged incident. It was also contended by Learned Counsel for the appellant that there are material contradictions as well as omissions in the statements of P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi and it is not safe to rely upon them to punish the appellant. Learned Counsel pointed out certain omissions and contradictions in the statements of the aforesaid witnesses. In her 'Parcha Bayan' Ex. P. 1, Rekha stated that both Mahaveer and Prem Singh inflicted injuries with a knife to Deepak, whereas in her statement recorded during the trial, she stated that only Prem Singh caused injuries on the person of the deceased Deepak. In her statement Ex.D. 2 recorded under Section 161, Cr PC P.W. 5 Radha stated that at the time of the alleged incident, she was cooking meals inside her house whereas in her deposition in the Court, she stated that after having served meals to her sister and brother, she was collecting utensils. P.W. 7 Hemant Kumar stated in his police statement Ex.D. 3 that on 11.6.1995 at about 7:00-7:30 P.M. he was taking his meal inside his house whereas in his deposition in the Court, he stated that just before the alleged incident he was playing outside their shop.

19. We have considered the above contention raised by Learned Counsel for the appellant and also have perused the aforesaid and other contradictions and omissions pointed out by Learned Counsel. In *Leela Ram v. State of Haryana and Anr.*, : AIR 1999 SC3717 , it is held by the Supreme Court:

There is found to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise. Hardly one comes across a witness whose evidence does not contain some exaggeration or embellishments some times there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give slightly exaggerated account. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. Mere hair splitting on the available evidence ought not to be undertaken and instead the totality of the situation ought to have been reviewed.

20. In another case, *State of Himachal Pradesh v. Lekh Raj and Anr.* : 2000 CriLJ44 , the Apex Court held that:

Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credible to the depositions. Parrot like statements are disfavoured by the Courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the

case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* : 1974 CriLJ624 , held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish v. State of Madhya Pradesh* : 1981 CriLJ630 , this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki* : 1981 CriLJ1012 , held that in the depositions of witnesses there are always normal discrepancy, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

21. As stated above, the Apex Court in *Suryanarayana v. State of Karnataka* (supra) indicated that some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a Child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen.

22. It has been held by the Apex Court in *State of Tamil Nadu v. Karuppusamy and Ors.*, 1992 Cr LR (SC) 376 that only a tutored witness can depose in a parrot-like fashion. On the contrary, a natural witness is bound to commit mistakes.

23. Having gone through the statements of P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi, we do not find any vital or material contradiction or omissions therein. There may be, no doubt, some minor discrepancies or variations in the evidence of the aforementioned witnesses but, it is not of such serious nature which may prove fatal to the prosecution case and make it doubtful. It is as a result of normal course of human conduct. Parrot-like statements are disfavoured by the Courts. The discrepancies, contradictions and omissions pointed out by Learned Counsel for the appellant are, in our opinion, of minor

nature and they are not in material particulars. The trial Court has accepted their testimony as no inherent defect was pointed out by the defence. We also find no reason to take a contrary view. It is true that in her 'Parcha Bayan' Ex. P. 1, P.W. 1 Rekha stated that Mahaveer also caused injury to Deepak, but only on this ground her testimony recorded during trial, cannot be held as unreliable. When we peruse the entire 'Parcha Bayan' Ex. P. 1 of P.W. 1 Rekha, we come to the conclusion that the contention of Learned Counsel for the appellant that the 'Parcha Bayan' Ex. P. 1 of Rekha proves that she had not seen the alleged incident but was informed about the incident by the children, is devoid of force and cannot be accepted. In our considered opinion, it was stated by P.W. 1 Rekha in her 'Parcha Bayan' Ex. P. 1 that at the time of the alleged incident she was present at her shop. Deepak also was there and he was ironing clothes. The appellant Prem Singh came at her shop and asked Deepak to come out of the shop and thereafter, caused injury with a knife on the person of Deepak. Looking to this statement of P.W. 1 Rekha, we come to the conclusion that she herself had seen the appellant Prem Singh causing injury with a knife on the person of the deceased Deepak. As per prosecution story, the appellant Prem Singh gave one knife blow to the deceased on the road in front of the shop of P.W. 1 Rekha and thereafter, the appellant took the deceased Deepak near the compound wall of Chambal Colony where he inflicted other injuries with knife on the person of the deceased Deepak. As stated by P.W. 1 Rekha in her deposition that she was not allowed to go to the place of occurrence to save the deceased Deepak by Durga Singh and his wife as they caught hold of her. Looking to this statement of P.W. 1 Rekha, it may be possible that she had seen the appellant causing one injury to the deceased Deepak on the road and the later part of the incident which occurred near the compound wall of Chambal Colony, was not seen by her. But from the statement of P.W. 1 Rekha also, it stands proved that the appellant Prem Singh had inflicted injuries with a sharp edged weapon on the person of the deceased Deepak which resulted in his death. As regards the testimony of child witnesses Radha, Hemant Kumar and Laxmi, on close and careful scrutiny, we have found it reliable and trustworthy. The criticism levelled against their evidence that they were tutored etc. is wholly baseless and un-warranted. The discrepancies of minor nature pointed out by Learned Counsel for the appellant lend credence to the

testimony of these witnesses. Though each of the three witnesses has been cross-examined at length but, there is nothing brought out in their statements to shake their veracity. They are closely related to the deceased. No reason has been assigned that they would tell a lie to falsely implicate the appellant and save the real culprit, if anyone else was responsible for the death of the deceased Deepak. They have been believed by the trial Court and we find no reason to doubt the veracity of the testimony of anyone of them.

24. The presence of P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi at or near the place of occurrence at the time of the alleged incident is natural. First part of the incident took place near the shop of P.W. 1. Rekha where all these witnesses were present when the alleged incident took place. Later part of the incident took place near the compound wall of Chambal Colony which is situated at a distance of only twenty two feet from the shop of P.W. 1 Rekha as mentioned in Site Plan Ex. P. 2 and not disputed by the appellant. This place was visible from the shop of P.W. 1 Rekha and, therefore, the alleged eye-witnesses could see the later part of the incident from their shop.

25. For the reasons stated above, we come to the conclusion that the testimony of P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi is reliable and proves beyond reasonable doubt that the deceased Deepak was killed by the appellant by causing as many as seven injuries with a sharp weapon knife (Chhura), Moreover, the aforementioned eye-witnesses get corroboration from medical evidence also. As stated above, on post-mortem examination, P.W. 10 Dr. Y.K. Sharma found as many as seven injuries of sharp weapon on the person of Deepak. In the opinion of Dr. Sharma, injury to the left lung was sufficient in the ordinary course of nature to cause death. In his opinion, the cause of death of Deepak was shock due to injury to the left lung. Apart from that, P.W. 11 Siraj Ahmed who was declared hostile by the prosecution, also stated that when he reached at the place of occurrence, he saw the appellant Prem Singh having Katar (sharp edged weapon) in his hand. Looking to this statement, the defence of the appellant that he was not present on the spot at the time of the alleged incident, is liable to be rejected.

26. Learned Counsel for the appellant also contended that the prosecution has withheld independent witnesses who had seen the alleged incident and, therefore, it cannot be held that the prosecution has succeeded in proving its case beyond reasonable doubt.

27. The Apex Court in *Munshi Prasad and Ors. v. State of Bihar* : 2001 CriLJ4708 , held that:

A complaint focused that except the interested witnesses none else from the nearby residential areas has been examined-this is so: it is the quality of the evidence and not the quantity, which is required. The crux of the issue being has the prosecution been able to bring home the charges with the evidence available on record--if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in the number of witnesses cannot be termed to be a requirement for the case.

28. In another case, *Sheelam Ramesh and Anr. v. State of Andhra Pradesh* (2000) Cr LR (SC) 30, the Apex Court observed that 'Having examined all the eye-witnesses even if other persons present nearby not examined, the evidence of the eye-witnesses cannot be discarded. Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence.'

29. Again in *Paramjit v. State of Haryana*, (2000) Cr LR (SC) 511, it was observed by the Apex Court that 'Also there is no substance in the submission that independent witnesses were not examined. The prosecution only needs to lead evidence sufficient to prove its case.'

30. In view of the aforesaid observations of the Apex Court, it cannot be held that the prosecution has failed to bring home the charge levelled against the appellant merely on the ground that no independent eye-witness of the occurrence was produced by the prosecution. Assuming for arguments sake that the independent witnesses who had seen the occurrence were not produced by the prosecution, in our opinion, the evidence of P.W. 1 Rekha P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi is acceptable as competent and truthful and there is no need to

look for any other evidence to prove the guilt of the appellant. Therefore, the contention raised by the Learned Counsel for the appellant has no force and it is rejected.

31. As regards the evidence adduced by the appellant in his defence, the trial Court has found it unreliable and untrustworthy. In his statement DW-1 Abdul Salam stated that a scuffle took place between Sattu and Hansraj and when Deepak intervened, he also sustained injuries. He further stated that Prem Singh was not present there. DW-2 Anil Sharma, DW-2 Satyanarayan and DW-3 Shabeer Ahmed also stated that Hansraj and Sattu @ Satyanarayan (DW2) caused injuries to each other and at that time, Prem Singh was not there. Deepak also sustained injuries when he intervened. Having perused the entire statements of these witnesses, we are also of the opinion that they are not the reliable witnesses. Had the appellant Prem Singh not caused injuries to the deceased Deepak, why P.W. 1 Rekha, P.W. 5 Radha, P.W. 7 Hemant Kumar and P.W. 9 Laxmi would have stated against him and spared the real culprit. In our considered opinion, the witnesses produced in defence by the appellant appeared in the witness box to save the appellant by their false testimony.

32. The trial Court has found the appellant guilty for offence under Section 302, IPC. Learned Counsel also contended that no case under Section 302, IPC is made out against the appellant. At the most he can be held guilty under Section 304 Part-II of the Indian Penal Code. No motive has been proved by the prosecution. There was no previous enmity between the deceased and the appellant and the incident took place all of a sudden. It was not a pre-meditated act of the appellant. He had no intention to cause death of the deceased. In these circumstances, the act of the appellant comes within the mischief of Section 304, Part-II, IPC. Learned Public Prosecutor supported the judgment of the trial Court.

33. We have given our thoughtful consideration to the contentions of Learned Counsel for the appellant. As stated above, as many as seven injuries were caused with a sharp weapon by the appellant on the person of the deceased Deepak. One of the injuries was on the left side of chest which is a vital part of the body. Because of this injury left lung was injured. In the opinion of the Medical

Jurist P.W. 10 Dr. Y.K. Sharma, injury to the lung was sufficient in the ordinary course of nature to cause death and in his opinion, this injury had resulted in death of the deceased Deepak. Deepak was immediately taken to the hospital from the place of the occurrence but within a few hours he was declared dead. It is also clear from the evidence of P.W. 1 Rekha that after having given challenge to Deepak to come out of the shop, the appellant went to his house and came back at the shop having a knife in his hand and thereafter, he dragged the deceased Deepak out of the shop of Rekha and inflicted several injuries with a knife on the person of the deceased Deepak. In these circumstances, it can safely be inferred that the appellant had intended to kill Deepak and caused such injury which was sufficient in the ordinary course of nature to cause death. In our opinion, the appellant has rightly been convicted for the offence under Section 302, IPC by the trial Court.

34. For the reasons stated above, we agree with the view taken by the trial Court that the prosecution has succeeded in proving its case against the appellant.

35. Consequently, the appeal of the appellant Prem Singh is dismissed. The judgment of his conviction and sentence passed by learned Additional Sessions Judge No. 1, Kota stands confirmed.