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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-59-DB-2005
Date of Decision: 20.02.2025**

SURENDER KUMAR & OTHERS

... Appellants

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. APS Mann, Advocate
for the appellants.

Mr. R.S. Arya, Addl. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 08/11.01.2005 passed by the Addl. Sessions Judge, Narnaul.

2. The FIR was registered on 22.05.2002, the judgment of conviction and order of sentence passed by the Additional Session Judge, Narnaul is dated 08/11.01.2005, the appeal was filed on 24.01.2005 and the matter is being taken up for hearing now i.e. after a period of more than 22 ½ years from the date of registration of the FIR.

3. Briefly, the case of the prosecution was that on 22.05.2002 Laxmi Narain SI/SHO of Police Station Kanina received a telephonic message from CHC Kanina regarding the admission of injured Sunda Ram in a serious condition. He along with other police officials then rushed to CHC

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Kanina. When he reached in CHC Kanina, Sunda Ram had died. Kabool Singh was present and his statement was recorded, who alleged that 22.05.2002 he was returning to his house on his tractor on at about 4.30 P.M. and when he reached in front of the house of Ram Narain, his father also reached there who was taking the buffaloes towards the village Pond. In order to save the buffaloes, Kabool Singh took his tractor towards the house of Ram Narain as a result of which, the tractor drove over the stones outside the house of Ram Narain. It enraged the accused who were standing outside their house. They started abusing Kabool Singh in filthy language. However, Surajbhan father of Kabool Singh intervened and asked them not to abuse each other and he sent Kabool Singh to his house. When Kabool Singh reached his house, Sunda Ram, his uncle made an enquiry from him regarding the said Incident. Kabool Singh narrated the incident. On this, Sunda Ram asked Kabool Singh not to feel disturbed over this matter and he also assured him that he would go to the house of Ram Narain and would ask the accused not to behave in such a manner in future. Thereafter, Sunda Ram started for the house of Ram Narain. Kabool Singh and Sudesh followed him apprehending some mishappening. When Sunda Ram reached in front of the house of Ram Narain, all the accused armed with lethal weapons came out from their house. Surender and Jitender were armed with Kulharis (axe), Birender was armed with a Jelly and Subhash was armed with a Bankri. Seeing Sunda Ram, all the accused exhorted that Sunda Ram be killed. Thereafter Surender opened the attack and gave a kulhari blow on the head of Sunda Ram. Jitender gave a

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kulhari blow on the head of Sunda Ram. Subhash gave a Bankri blow on the head of Sunda Ram. Surender again gave a Khulhari blow on the head of Sunda Ram. On receiving the above said injuries, Sunda Ram fell down. Birender gave a jelly blow to Sudesh. The alarm raised by Sudesh etc. attracted Surajbhan and other persons who intervened and saved Sudesh etc. from the clutches of the accused. Subhash also gave a bite on the left hand of Surajbhan. On the basis of the statement of Kabool Singh, the First Information Report was lodged.

4. As per the doctor who attended to Sunda Ram deceased, MLR No. JK-268/02 dated 22.05.2002 of Sunda Ram revealed four injuries with sharp edged weapon. The Investigating Officer went to the place of occurrence, prepared the rough site-plan and also lifted bloodstained earth and took the same into possession vide a separate memo. Post-mortem of deceased was got conducted. The doctor handed over blood-stained clothes to the Investigating Officer which were also taken into possession vide separate recovery memo. Accused Birender, Surender and Subhash sons of Ram Narain were arrested on 23.05.2002. During the police remand, they made their disclosure statements separately and in pursuance of their disclosure statements, they got recovered the weapons of offence. The Khakha of the weapons were prepared and were taken into possession vide separate recovery memos. Rough site-plan of the place of recovery of weapons was also prepared. The blood-stained earth, clothes and weapons were sent to the FSL Madhuban for analysis and after completion of necessary investigation, report



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under section 173 Cr.P.C. was prepared.

5. On the above said allegations, the accused were charged under sections 302, 323, 325 read with section 34 IPC to which the accused did not plead guilty and claimed trial.

6. To substantiate its charge, the prosecution examined Dr. Jitender Kumar as PW1, Dr. Narveer Singh as PW2, Dr. Karan Singh as PW3, HC Mittar Sain as PW4, Constable Attar Singh as PW5, HC Anil Kumar as PW6, UGC Jagdish Chander as PW7, HC Rajender Kumar as PW8, Constable Mahesh Kumar as PW9, Partap Singh as PW10, Vijay Singh as PW11, Kabool Singh as PW12, Sudesh Kumar as PW13 and SI Laxmi Narain, I.O. as PW14. The relevant extracts are as under:-

Dr. Jitender Kumar (PW1) who medico-legally examined Sunda Ram (deceased), Sudesh Kumar and Surajbhan stated that on 22.05.2002 he medico-legally examined Sunda Ram son of Sheonath residents of village Sayana at about 08.05 P.M. and found the following injuries on his person:-

- 1. 2.5cmx0.3cm ×0.5cm Incised wound on scalp in right fronto-parietal region. bleeding. The colour was red with fresh bleeding.*
- 2. 3x0.3cmx0.5cm incised wound on scalp in left parietal region, colour was red.*
- 3. 2x0.3cm x0.3cm incised wound on scalp in occipital region in midline.*
- 4. 3x0.5x0.3cm incised wound on scalp in midline in parietal region. Colour was red.*



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As the patient was unconscious. CT head was advised for above all the four injuries and was referred to PGIMS Rohtak for CT head and management.

The nature of injuries was kept under observation and the weapon used was sharp and probable duration was within six hours. The carbon copy of the MLR was Ex. PA and the diagram was Ex.PA/1. He further stated that he sent rukka Ex. PB to the SHO. Police Station Kanina regarding the admission of the injured. Sunda Ram patient died at 8.20 P.M. before his transportation to PGIMS Rohtak. He then again sent rukka Ex. PC to Police Station Kanina intimating about the death of Sunda Ram injured. Three sealed parcels were opened i.e. two kulharis and one Bankri were taken out from these parcels. The Injuries on the person of Sunda Ram were possible with the said Kulharis and Barikri and Kulharis are Ex. P1, Ex. P2 and Bankri is Ex. P3.

On the same night on police request Ex. PD, he medico-legally examined Sudesh Kumar son of Sunda Ram and found one injury on his person:-

1. Complained of swelling and pain left thumb at metacarpophalangeal. Movements were restricted. No external mark of injury was seen at that time. X-ray was advised.

The injury was kept under observation caused by a blunt weapon. The probable duration could not be ascertained. Ex. PD/1 was the carbon copy of the MLR.



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On the same night, on police request Ex. PE he medico-legally examined Surajbhan son of Sheonath and found the following injury on his person:-

1. 0.5x0.3cm laceration was seen on left thumb in the proximal phalanx dorsally. Colour was red.

The injury was simple in nature and caused by blunt weapon. The probable duration was within six hours. Ex.PE/A was correct carbon copy of the MLR.

On 27.07.2002 on police request Ex.PF, he gave his opinion Ex.PF/1 which bore his signature. He further stated that he opined that injuries No.1 and 2 as shown in MLR of Sunda Ram were sufficient to cause death in the ordinary course of nature.

Dr. Narveer Singh (PW2) stated that he radiologically examined Sudesh Kumar son of Sunda Ram, resident of village Sayana who was referred to him by Dr. Jitender Kumar Medical Officer vide MLR No. JK/269/02 dated 22.05.2002 and found fracture of the proximal phalanx of the left thumb in his X-ray. The report was Ex. PG and X-ray film Ex.PG/1.

Dr. Karan Singh (PW3) stated that on 23.05.2002 on police request Ex. PH which was accompanied by inquest report Ex.PH/1 he conducted post-mortem examination on the dead-body of Sunda Ram son of Sheonath. The dead body was identified by Kabool Singh and Sudesh Kumar and following injuries were found on the dead body:-

1. Incised stitched wound over right fronto parietal region and haematoma was underlying it and fracture frontal bone was



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seen. The size of the injury was 2x3x3cms.

2. Incised wound left parietal region with haematoma underlying it and fracture left parietal bone was seen and the size was 3x2x1cm. Haematoma over brain tissue was also seen.

3. Incised wound over occipital region 2x3x2cms in size and the wound was stitched.

4. Incised wound over mid parietal region 3x3x2cms in size.

On thorax examination, no obvious injury was seen. On abdominal examination, no obvious injury was detected.

In his opinion, the cause of death was due to the head injury which was ante-mortem in nature and was sufficient to cause death in the routine course of life.

The time between injuries and death was variable and time between death and post-mortem was between 6 to 36 hours. After post-mortem examination, well stitched body along with its belongings along with the copy of PMR and police inquest papers duly signed was handed over to the police. The correct carbon copy of the PMR was Ex.PH/2. Ex.PH/3 was the diagram showing the location of the injuries. One sealed parcel bearing the intact seal of Director FSL Madhuban was opened. It contained one Kurta Ex. P4, Pajama Ex. P5, Jacket Ex. P6 and Kachha Ex. P7. These were the same which were handed over to the police after post-mortem examination.

HC Mittar Sain No.612 PW4, Constable Attar Singh No.454, PW5, HC Anil Kumar No.13 PW6 and UGC Jagdish Chander No.525 PW7



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tendered their affidavits Ex. PJ.Ex.PK.EX.PL and Ex. PM respectively, duly attested by the Chief Judicial Magistrate, Narnaul.

HC Rajender Singh (PW8) stated that on 22.05.2002 at about 9.40 P.M. he received rukka Ex.PN along with endorsement Ex. PN/1 made by SI Laxmi Narainm, upon which he recorded the formal FIR Ex.PO and sent the special reports immediately through UGC Jagdish Chander.

Constable Mahesh Kumar No.1616 PW9 stated that on 05.06.2002 he was posted as a Draftsman in S.P. Office Narnaul. On that day, he visited village Sayana and prepared rough notes and rough site-plan of the place of occurrence at the instance of Kabool Singh and Ram Chander. The scaled site plan was Ex. PP. It depicted the correct position at the spot. The marginal notes were correct and bore his signatures. The scale used was 1''=20.

Partap Singh PW10 was the photographer who deposed that he was proprietor of Pooja Photo Studio Kanina and on 22.05.2002 he went to the hospital with some police officials where he took two photographs of the dead body. The negatives were Ex. P10 and Ex. P11 and the enlarged photographs were Ex. P8 and Ex.P9. On the following day, he went to village Sayana along with the police party where he took five photographs of the place of occurrence. The negatives were Ex. P17 to Ex. P21 and the enlarged photographs were Ex. P12 to Ex.P16. The enlarged photographs were developed without touching or re-touching. The enlarged photographs bore his signature.

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Vijay Singh (PW11) stated that 24.05.2002 he along with Jile Singh went to the Police station Kanina and in their presence, the accused were interrogated. During interrogation, they made their disclosure statements Ex. PQ, Ex. PR, Ex.PS and Ex. PT and in pursuance of their disclosure statements, the accused got recovered the weapons of offence.

Kabool Singh appeared as PW12 and made a statement as per the FIR. However, he stated that the injury given by Birender with a Jelly on Sudesh was given lathi wise. He also added that he identified the dead body of Sunda Ram at the time of the postmortem examination and also during inquest proceedings.

Sudesh Kumar appeared as PW13 and supported the version of the complainant/Kabool Singh (PW12) except the improvement as above.

Laxmi Narain SI (PW14), the Investigating Officer of this case stated that on 22.05.2002 on receipt of a telephonic message from CHC Kanina he reached the hospital and recorded the statement Ex.PN of Kabool Singh and gave his endorsement Ex.PN/1 and sent the same to Police Station through constable Anil Kumar, upon which formal FIR Ex. PO was registered. The photographs of the deceased Sunda Ram were taken and inquest report Ex.PH/I under section 174 Cr.P.C. was prepared. Sudesh Kumar was got medico-legally examined vide application Ex.PD, photographs of the place of occurrence were also taken the rough site-plan was prepared which bears his signature. Bloodstained earth was lifted from the place of occurrence Ex. PU/1. Anil Kumar Constable produced a sealed

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packet containing the clothes of the deceased and a copy of PMR which were handed over to him by the doctor after post-mortem examination. He took the same in sealed parcel vide memo Ex.PU/2.

On 23.05.2002 he moved an application Ex.PH for conducting the post-mortem examination on the dead body of Sunda Ram and on the same day the accused Surender, Birender and Subhash were arrested and Jitender was arrested on 24.05.2002. They made their disclosure statements Ex. PQ, Ex. PR. EX.PS and Ex.PT respectively in the presence of Jile Singh and Vijay Singh (PW11). In pursuance of their disclosure statements, they got recovered Kulharis Ex. P1, Ex. P2, Bankri Ex.P3 and Jelly Ex. P22 which were taken into possession vide recovery memo Ex.PQ/2, Ex.PR/2, Ex.PS/2 and Ex. PT/2 and sketch of Kulhari Ex.PQ/1 jelly Ex.PR/1, Kulhari Ex. PS/1 and Bankri Ex.PT/1 were prepared. Rough site plans of the place of recovery of the weapons Ex. PR/3, Ex.PS/3, Ex./PT/3 and Ex. PQ/3 respectively were prepared. The blood-stained earth was taken into possession vide recovery memo Ex. PU/1 and Ex.PU/2. Statements of the witnesses were recorded and after completion of investigation, report u/s 173 Cr.P.C. was prepared.

PWs- Ram Chander, Satish and Surajbhan were given up as unnecessary. Thereafter, the PP tendered in evidence report of FSL Ex. PX and Ex.PX/1.

7. Statements of the accused under Section 313 Cr.P.C. were recorded. They denied the allegations of the prosecution and stated that they were innocent and had been falsely involved in this case by the complainant



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due to enmity and party faction in the village. They however, did not opt to lead any evidence in defence and closed the same.

8. Based on the evidence led, the accused/appellants came to be convicted and sentenced by the Court of Addl. Sessions Judge, Narnaul vide judgment and order of sentence dated 08/11.01.2005 as under:-

Convicts	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Surender	302 R/w 34 IPC	Life imprisonment	Rs.2000/- each	RI for 06 months
	323 R/w 34 IPC	RI 06 months	-	-
	325 R/w 34 IPC	RI 02 years	Rs.500/-	RI 02 months
Birender	302 R/w 34 IPC	Life imprisonment	Rs.2000/- each	RI for 06 months
	323 R/w 34 IPC	RI 06 months	-	-
	325 R/w 34 IPC	RI 02 years	Rs.500/-	RI 02 months
Subhash Chand	302 R/w 34 IPC	Life imprisonment	Rs.2000/- each	RI for 06 months
	323 R/w 34 IPC	RI 06 months	-	-
	325 R/w 34 IPC	RI 02 years	Rs.500/- each	RI 02 months
Jitender	302 R/w 34 IPC	Life imprisonment	Rs.2000/- each	RI for 06 months
	323 R/w 34 IPC	RI 06 months	-	-
	325 R/w 34 IPC	RI 02 years	Rs.500/-	RI 02 months

All the sentences were ordered to run concurrently.

9. It is the aforementioned judgment, which is under challenge, in the present appeal.

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10. The learned counsel for the appellants contends that only related prosecution witnesses were examined despite the presence of independent ones. Mahavir S/o Kalu is stated to be the cousin of the deceased who took him to the hospital. However, he has not been examined. Birender did not cause any injury to the deceased. It cannot be said to be a case of common intention as envisaged under Section 34 IPC and hence, he was entitled to acquittal on this count alone. Bloodstained earth was not lifted from the spot and therefore, it casts a doubt on the entire prosecution case. The recovery of the weapons is doubtful as no independent prosecution witness was examined in that regard. The witnesses of recovery are otherwise discrepant in material particulars. The medical evidence is contrary to the ocular account. As per the complainant/Kabool Singh (PW12), his initial version in the FIR is that Birender had given a Jelly blow on the thumb of Sudesh. However, the medical opinion was to the effect that the said injury was a lacerated wound. Faced with this situation, the prosecution improved its versions and PW12-Kabool Singh and PW13-Sudesh both stated that the said injury had been given by using the Jelly lathiwise. Additionally, as per the prosecution case, Subhash is stated to have bitten the left thumb of Surajbhan. However, as per the doctor the injury on the left thumb could not have been caused by a bite. Therefore, the accused were entitled to acquittal. He lastly, contends that as it is a case of sudden occurrence Exception 4 to Section 360 IPC would come to the aid of the accused and the conviction, if any could be recorded only under Section 304 IPC and not under Section 302 IPC.



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11. On the other hand, the learned counsel for the State contends that medical evidence is totally in consonance with the ocular account. PW12/Kabool Singh and PW13-Sudesh an injured witness are consistent in the manner in which the occurrence took place. Minor discrepancies cannot create a doubt in the entire prosecution case. Bloodstained earth was recovered from the place of occurrence. The weapons of offence have also been recovered from the accused. He, therefore contends that no fault could be found with the judgment of conviction and therefore, the present appeal was liable to be dismissed.

12. We have heard the learned counsel for the parties and gone through the records.

13. As regards, the evidentiary value of the statement of a 'related witness' and that of an 'interested witness', the Hon'ble Supreme Court has held as under:-

In *State of Rajasthan Versus Smt. Kalki & another, 1981(1)*

SCC 752, it was held as under:-

"6. As mentioned above the High Court has declined to rely on the evidence of P. W. 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased". and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not



equivalent to 'interested. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P. W. 1. had no interest in Protecting the real culprit, and falsely implicating the respondents.”

(emphasis supplied)

In **Hari Obula Reddi & others Versus State of A.P., 1981(3)**

SCC 675, it was held as under:-

“12. P.W. 1 also had fully supported the prosecution story set out at the commencement of this judgment. He emerged unshaken from the ordeal of a lengthy and searing cross-examination. He frankly admitted his close relationship with the deceased. At first flush, our impression was that P.W. 1 is a partyman of the deceased who had borne with the deceased in earlier incidents of factious strife. In order to clear up the point, we further heard the arguments of the learned counsel and carefully scrutinised the record all over again. We find that in any incident, litigation or previous proceeding with which the deceased or his partymen were concerned, P.W. 1 did not figure as an accused, or respondent or a witness or in any other capacity. Thus, all that can be said is that P.W. 1, being the maternal uncle of the deceased, and P.W. 2, being the son of a person who was being prosecuted along with the deceased for the murder of a person belonging to the opposing faction of the accused, can be said to be interested witnesses. But it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary



is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent, with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the Court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the Court may look for some assurance, the nature, and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.”

(Emphasis supplied)

In **Jayabalan Versus Union of Territory of Pondicherry, 2010(1)**

SCC 199, it was held as under:-



“21. It is the case of the appellant that the evidence of the prosecution witnesses, namely, PWs 1 to 4 is not reliable as all the aforesaid witnesses were very closely related to the deceased and were inimical to the appellant. We find no merit in this submission of the appellant. PWs 1, 2, 3 and 4 being the brother, the father and the two sisters respectively of the deceased are closely related to the deceased and this fact is not and cannot be disputed. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

(Emphasis supplied)

In **Yogesh Singh Versus Mahabeer Singh & others, 2016(4)**

RCR (Criminal) 753, it was held as under:-

“28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (See Anil Rai v. State of Bihar, 2001(3) RCR (Criminal) 722 : (2001) 7 SCC 318; State of U.P. v. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. v. State of U.P., 2011(5) RCR (Criminal) 780 : 2011(5) Recent Apex



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Judgments (R.A.J.) 305 : (2011) 13 SCC 206; Dahari & Ors. v. State of U. P., 2013(1) RCR (Criminal) 131 : 2012(6) Recent Apex Judgments (R.A.J.) 227 : (2012) 10 SCC 256; Raju @ Balachandran & Ors. v. State of Tamil Nadu, 2013(2) RCR (Criminal) 567 : 2013(2) Recent Apex Judgments (R.A.J.) 622 : (2012) 12 SCC 701; Gangabhavani v. Rayapati Venkat Reddy & Ors., 2013(4) RCR (Criminal) 853 : 2013(6) Recent Apex Judgments (R.A.J.) 110 : (2013) 15 SCC 298; Jodhan v. State of M.P., (2015) 11 SCC 52.”

(emphasis supplied)

14. A perusal of the aforementioned judgments would reveal that there is a difference between a ‘related witness’ and an ‘interested witness’. A witness may be called ‘interested’ only when he or she derive some benefit from the result of a litigation in the decree of a civil case or in seeing an accused person punished. A witness who is a natural one and is the only possible eye-witness in the circumstances of a case cannot be said to be ‘interested witness’. The evidence of a related/interested prosecution witness is not necessarily unreliable evidence. There is no rule that the evidence of an ‘related/interested witness’ must also be corroborated before conviction can be based upon it. All that is necessary is that the evidence of such a witness must be subjected to careful scrutiny and accepted with caution.

15. In the instant case, the witnesses are related *inter se* but it is not the absolute law that the statement of such a witness has no evidentiary value. In fact, it is quite unlikely that a related prosecution witness would name an innocent person as an accused and let go of the actual culprit. A close scrutiny of the statement of PW12-Kabool Singh would reveal that all the four accused

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namely Surender, Jitender, Birender and Subhash came out from their house armed with deadly weapons i.e. Kulharis, Bankri and Jelly. Surender and Jitender were armed with Kulharis (axe each), Subhash was armed with a Bankri and Birender was having a Jelly. Surender gave two kulhari blows on the head of Sunda Ram. Jitender also gave a Kulhari blow on the head of Sunda Ram and Subhash also gave a Bankri blow on the head of Sunda Ram. His version is duly corroborated by PW13-Sudesh Kumar witness. They were subjected to lengthy cross-examination but stood firm. They being closely related to the deceased and the occurrence taking place near their house, their presence cannot be doubted. The injuries on the person of Sunda Ram were further corroborated by Dr. Jitender Kumar (PW1) who deposed that the weapon used was sharp edged one. This fact was further corroborated by Dr. Karan Singh (PW3) who conducted the post-mortem on the dead body of Sunda Ram son of Sheonath. Surajbhan and Sudesh Kumar PWs had also received injuries at the spot in this occurrence. Sudesh Kumar was also examined by Dr. Jitender Kumar (PW1) subsequently on the application of the police Ex.PD and was found to have received an injury with a blunt weapon. Surajbhan was also examined at the same time who had also received an injury with a blunt weapon. Dr. Narveer Singh (PW2) found a fracture on the injury of Sudesh Kumar in his report Ex.PG. Therefore, the evidence of these witnesses cannot be discarded on the ground that they are related to the deceased. Minor discrepancies in the ocular and medical account do not affect the substratum of the prosecution case.



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16. Non-examination of any independent witness itself is not fatal to the prosecution. There is a general tendency amongst independent witnesses to shun giving evidence in the courts because of the likelihood of such a witness incurring the wrath of the accused person or his family. As has been mentioned above, the testimony of PW12-Kabool Singh/complainant and PW13-Sudesh Kumar are sufficient in the circumstances of the case, without any necessity of any other independent corroboration.

17. As regards the arguments of there being no common intention to commit the offence and occurrence having taken place suddenly, it would be pertinent to recapitulate the sequence of events. As per the prosecution case, at about 04.30 PM an occurrence took place regarding the tractor of the complainant party going over the stones placed by the accused in the Gali. After the quarrel, the deceased went towards the house of the accused in order to make them understand not to quarrel. It is at that stage that all the four accused who are real brothers and sons of Ram Narain came duly armed, caused multiple injuries on the head of the deceased and injuries to Sudesh (PW13) and Surajbhan, the father of the complainant and brother of the deceased. The complainant party had proceeded towards the house of the accused unarmed. Therefore, apparently, the accused have taken undue advantage of the fact that the complainant party was unarmed and committed the offences in question. As regards the common intention, it can arise at the spur of the moment while the occurrence is afoot as has been held in the cases of *The State of Karnataka Versus Battegowda & others, Criminal Appeal*



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No(s).1694/2014 and *The State of Rajasthan Versus Gurbachan Singh & others, 2023(1) Crimes 65*. Therefore, merely because Birender did not cause any injuries on the deceased would not absolve him of his liability.

18. As regards the non-lifting of blood from the site of occurrence creating a doubt in the prosecution case, it is pertinent to mention here that Laxmi Narain SI (PW14) categorically stated that blood-stained earth was lifted from the place of occurrence vide Ex.PU/1 and the same was sealed. The report of the FSL Madhuban, Ex. PX clearly shows that the blood-stained earth was analysed and found material disintegrated. Ex. PX report also shows that the blood-stained earth was sent to FSL Madhuban for analysis. Therefore, this argument is without merit.

19. As regards the argument that the recovery of weapons from the possession of the accused is doubtful because no independent witness was associated at the time of recovery and the witnesses examined by the prosecution made discrepant statements, it may be pertinent to note that PW14 Laxmi Narain, IO categorically stated that Surender, Birender and Subash were arrested on 23.05.2002 and accused Jitender was arrested on 24.05.2002. They made disclosure statements Ex. PQ, Ex. PR, Ex.PS and Ex.PT separately and got recovered the weapons i.e. Kulaharis, Jelly and Bankri etc. from the chhapper which were taken into possession vide recovery memo Ex.PQ/2, Ex.PR/2, Ex. PS/2, Ex. PT/2 vide recovery respectively. Although, he admitted that no independent witness was joined, but this fact is also not sufficient to disbelieve the recoveries from the accused. Ordinarily,

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public witnesses do not come forward to join investigation due to fear of enmity or due to harassment. The weapons were produced at the time of trial. Dr. Jitender Kumar (PW1) who medico-legally examined Sunda Ram (deceased) and others categorically admitted in his cross-examination that the injuries on the person of Sunda Ram were possible with Kulharis and Bankri Ex. P1 to Ex.P3 and injuries No. 1 and 2 were sufficient to cause death in the ordinary course of nature. Hence, the prosecution has successfully proved that the recovery of weapons was effected from the possession of the accused which were used to cause injuries to the deceased.

20. As regards the argument that there is a conflict between the ocular and medical evidence with respect to the injuries on the person of Sudesh and Surajbhan, the said discrepancies which are minor in nature and do not affect the prosecution case which stands duly proved.

21. The cumulative effect of the above discussion is that the prosecution has established its case beyond reasonable doubt and therefore, finding no merit in the present appeal, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

20.02.2025

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No