

Madhya Pradesh High Court

Dheeraj Gupta vs The State Of Madhya Pradesh on 9 May, 2022

Author: Atul Sreedharan

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THE HIGH COURT OF MADHYA PRADESH  
BENCH AT JABALPUR  
(DIVISION BENCH)

CRIMINAL APPEAL No. 1592/2009

Dheeraj Gupta  
Vs.  
The State of Madhya Pradesh

&

CRIMINAL APPEAL No.1597/2009

Ashque Beg  
Vs.  
The State of Madhya Pradesh

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CORAM

Hon. Mr. Justice Atul Sreedharan, Judge.

Hon. Mrs. Justice Sunita Yadav, Judge.  
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Presence

Mr. Siddhanth Kocher, learned counsel for the appellants.  
Mr. Manohar Dixit, learned Panel Lawyer for the  
respondent/State.  
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JUDGMENT

(09th May, 2022) PER JUSTICE SUNITA YADAV.

These appeals have been filed against the common judgment and order dated 12.08.2009 by which the First Additional Sessions Judge to the First Additional Sessions Judge, Panna in Sessions Trial No. 132/2005 convicted the appellants herein under Section 302 of IPC for murder of Rahul @ Munna and sentenced them to undergo life imprisonment and a fine of Rs. 10,000/- failing to pay fine, to undergo additional rigorous imprisonment for one year and also convicted under Section 302 of IPC for murder of Deepa and sentenced to undergo life imprisonment and a fine of Rs.

1,000/-, failing to pay fine to undergo additional rigorous imprisonment for one month.

2. The prosecution story in brief is that on 05.06.2005 at about 11:45 in the night, the complainant Rohit Samari approached to Police Station City Kotwali, Panna by making a written complaint (Ex.P-8) to the effect that on 05.06.2005 at about 10:00 pm, his brother Rahul @ Munna was taken by Dheeraj Gupta and his friend Ashique Beg (the appellants herein), to have dinner in the house of Dheeraj Gupta. Thereafter, at 11:15 in the night, complainant Rohit Samari (PW-6) received a phone call from the uncle of one Pradeep Gupta informing him that a fight was going on with the brother of the complainant in the house of Gupta Ji at Tikuriya Mohalla. Upon receiving the phone call, the complainant called his friend Bhupendra Singh (PW-1) and they both went to the house of the appellant Dheeraj Gupta where the uncle of Dheeraj namely Babulal met them on the ground floor. When they asked Babulal about Rahul, he said Rahul was upstairs and also told them not to go upstairs as the police would be coming. However, the complainant and Bhupendra Singh ran up to the terrace and saw the dead body of Rahul lying on the floor of the terrace in a pool of blood. Rahul had multiple injuries on his head, face and foot. After that the complainant went to the police station and lodged the written complainant about the murder of his brother by the appellants Dheeraj and Ashique Beg.

3. The further prosecution story is that the police officials of police station Kotwali, Panna registered an FIR (Ex.P-9) under Section 302 read with Section 34 of IPC at Crime No.174/2005 against the appellants and also registered the Merg intimation No. 29/2005 (Ex.P-19) and thereafter, started investigation. On the same night, sister of appellant-Dheeraj Gupta, namely Kumari Deepa D/o Suresh Kumar Gupta was also found unconscious and injuries were found all over her body. The primary treatment of Kumari Deepa was done at District Hospital Panna and looking at her critical condition, she was referred to Gwalior Hospital for treatment. However, Kumari Deepa died on the way near Datia on 06.06.2005. The police have registered Merg No.30/2005 with regard to her death.

4. During the course of investigation, an inquest report of the dead body of Rahul was prepared vide Ex.P-2. The articles used in committing crime were seized and spot map was prepared.

5. The postmortem of Rahul @ Munna and Deepa was conducted. It was found that the death of Rahul @ Munna and Ku. Deepa was homicidal in nature. At first, the charge-sheet was filed only in connection with the murder of Rahul Samari; however, after the order of Chief Judicial Magistrate, Panna, a supplementary charge-sheet was filed in connection with the murder of Deepa.

6. The Chief Judicial Magistrate Panna committed the case to the Sessions/Trial Court. The Trial Court framed charges under Sections 302 of IPC (two counts) for murder of Rahul Samari and Deepa and in alternatively under Section 306 of IPC for abating deceased Deepa to commit suicide. The appellants herein denied to have committed aforesaid offences and took the defence of false implication.

7. After the completion of trial, the learned Trial Court has found the appellants guilty of offences as described above and sentenced them as described in Para-1 of the judgment.

8. Learned counsel for the appellants has argued that the impugned judgment and order is bad in law and in facts. The learned Trial Court committed grave error in not considering all facts, evidence, circumstances and law, in its perspective manner and learned Trial Court on the basis of presumption and surmises held guilty to the appellants and erroneously convicted them. It is further argued that the learned Trial Court while taking into consideration the case of the prosecution on the basis of circumstantial evidence failed to see that chain of circumstances of the case is not complete and no circumstances proved about involvement of the appellants in murder of the deceased persons and also link of circumstances are missing from the chain to establish the guilt of accused persons, therefore, learned Trial Court erred in convicting the appellants on the basis of conjecture or suspicion, which in fact not took place the legally proof of the prosecution case beyond reasonable doubt. The learned Trial Court has failed to appreciate that the FIR Ex.P-9 is ante-dated and ante-timed. The learned Trial Court has wrongly appreciated the evidence of different prosecution witnesses and did not consider the evidence of defence witnesses produced by the appellants herein.

9. On the other hand the learned counsel for the respondent- State submitted that the appellants have not been able to show any material which would merit the interference of this Court in the concurrent findings of the Court below.

10. PW-16, Dr. Manish Sharma has carried out the postmortem of deceased Rahul Samari. This witness has noted down the following injuries on the body of deceased while conducting the postmortem :-

1. Cut wound 4 inch x 3 cm x bone deep over left parietal bone obliquely fracture skull bone.
2. Cut wound 4 inch x 2 cm x skin deep right parietal bone inch behind injury no. (1).
3. Cut wound 10 cm x 1 cm x muscle deep right cheek horizontal.
4. Cut wound 10 cm x 1 cm x skin deep oblique from right side of nose to right lower up.
5. Cut wound right elbow transverse 10 cm x 3 cm x bone deep cut in all major blood vessels and separated elbow joint.
6. Cut wound right arm lower end 10 cm x 1 cm x deep transverse.
7. Cut wound over web between right thumb and index finger 5 cm x 2 cm x muscle deep.
8. Cut wound right side of abdomen below rib margin 5 cm x 1 cm x skin deep horizontal.

9. Puncture wound 4 cm x 1/2 cm x 4 cm below injury no. 8 piercing into abdominal cavity, horizontal.
  10. Cut wound left forearm lower half, horizontal 3 cm x 0.5 cm x skin deep.
  11. Cut wound left hand lateral side above little finger anteriorly 4 cm x 1 cm x skin deep.
  12. Cut wound left knee joint transverse 1 cm x 10 cm x bone deep # lower end of femur.
  13. Cut wound right tibia middle half, transverse 5 cm x 1 cm x bone deep # tibia below wound.
  14. Cut wound right side back, lower half above pelvis bone.
  15. Abb. injury 4 cm x 0.5 cm right side back over shoulder bone.
  16. Cut wound right knee joint laterally 3 cm x 1/2 cm x muscle deep oblique.
11. This witness has further opined that all the aforesaid injuries are ante-mortem and homicidal in nature.
12. PW-25, Dr. Sharad Dwivedi has conducted the MLC of deceased Ku. Deepa Gupta and found following injuries on her body :
1. Head Injury.
  2. Vertical incised wound of 4 x 1/2 x 1/2 cm on little finger of left hand.
  3. Transverse incised wound of 2 1/2 x 1/2 x 1/2 cm on front part of left ring finger.
  4. Transverse incised wound of 2 x 1/2 x 1/2 cm on front part of left middle finger.
  5. Transverse incised wound of 2 x 1/2 x 1/2 cm on front part of left first finger.
  6. Broken bones of left wrist.
  7. Abrasion of 4 cm on the outer part of left elbow.
  8. Incised wound 5 x 1 x 1/2 cm in the mid of right arm
  9. Deep abrasion of 2 cm in the right elbow.

10. Multiple abrasions in the right feet and toes.
11. Abrasion of 2 x 2 on left great toe.
12. Incised wound of 2 x 1/2 x 1/2 cm on left chin.
13. Incised wound of 2 x 2 cm on left lower lip.
14. Left eye was blue.
15. Contusion of 6 x 5 cm on left jaw.
16. Abrasion of 3 x 2 cm in left forehead.
17. Abrasion of 10 x 2 cm in left thigh.
18. Incised wound of 3 x 2 x bone deep cm in between of right leg.
19. Abrasion of 3 x 3 cm in right knee.

13. After the death of Deepa the postmortem of her dead body was conducted by PW-20 Dr. V.S. Upadhyay. In the postmortem, Doctor has found following injuries on the body of Deepa :

1. Contusion 2.5 cm x 1.2 cm left frontal bone above eyebrow, brownish in colour.
2. Contusion 1.5 cm x 0.5 cm lateral to left frontal bone, brownish in colour.
3. Contusion left cheek 6 cm x 5 cm brownish in colour.
4. Contusion at bridge of nose 0.8 cm x 0.3 cm, brownish in colour.
5. Incised wound at left chin 2 cm x 0.5 cm x 0.5 cm stitched brownish in colour.
6. Contusion left cubital fossa, oblique in direction 3 cm x 0.5 cm fluorescent brownish in colour.
7. Contusion left elbow anterior aspect 2 cm x 1 cm, brownish in colour.
8. Contusion at left shoulder part 4 cm x 2 cm, brownish in colour.
9. Contusion at left wrist joint collis fracture present 4 cm x 3 cm.
10. Incised wound at left index finger transverse 2 cm x 0.5 cm x 0.5 cm stitched.
11. Incised wound at left ring finger 1 cm x 0.5 cm x 0.5 cm, brownish in colour.

12. Incised wound at left middle finger 1.5 cm x 0.5 cm x 0.5 cm stitched.
  13. Incised wound at left little finger 2.5 cm x 0.5 cm 0.5 cm vertical.
  14. Left eye closed - blue.
  15. Incised wound at right upper arm oblique 5 cm x 1 cm x 0.5 cm stitched.
  16. Incised wound at right leg transverse 3 cm x 1 cm x 0.5 cm stitched.
  17. Contusion at right knee part 1.5 cm x 0.5 cm.
  18. Contusion at medial aspect of thigh 3 cm x 2 cm.
  19. Contusion at left leg medial malleolus aspect 2.2 cm x 1.2 cm.
  20. Contusion at left foot dorsum aspect 2.2 cm x 1.2 cm.
  21. Contusion at right loin region 1.5 cm x 1 cm.
  22. Lacerated wound at right temporal bone 2 cm x 1 cm x 1 cm, blood clotted on scalp.
  23. Contusion at right foot 2 cm x 1.5 cm dorsum aspect.
  24. Abrasion of right arm oblique 3 cm x 0.5 cm.
  25. Contusion at right elbow front 2 cm x 1 cm.
14. PW-20 V.S. Upadhyay has further opined that the death of Deepa was homicidal in nature.
15. The evidence of PW-20 V.S. Upadhyay and PW-25 Dr. Sharad Dwivedi remained unchallenged in their cross-examination and therefore, it is proved that the death of Rahul and Deepa who had multiple injuries in their bodies was homicidal in nature. Now it is to be seen whether the murder of Rahul and Deepa was committed by the appellants herein?
16. In this case, the only eye witness PW-2, Ajay has not supported the case of the prosecution and turned hostile. Therefore, we have to consider whether the prosecution has proved its case, based on the circumstantial evidence. The prosecution has relied upon the following circumstances to prove its case :-
1. The deceased Rahul was last seen with the appellants.
  2. Extrajudicial confession by the accused persons.

3. Recovery of incriminating articles from the possession of accused persons.

17. The evidence of (PW-6) Rohit Samari, brother of the deceased is relevant to consider the first circumstance to connect the appellants herein with the crime. This witness has deposed that on 05.06.2005 at about 10 pm the appellants herein came to his house and took away his brother-Rahul (since deceased) to have dinner with them. Thereafter at 11:15 p.m., the uncle of his friend Pradeep Gupta, telephonically informed him that his brother had a fight in the house of Dheeraj Gupta situated at Kishorganj. Upon receiving this information, the complainant called his friend Bhupendra (PW-1) and they both reached the place of occurrence. This witness has further deposed that Babulal who is the uncle of Dheeraj Gupta met them on the ground floor of the house when they arrived at the house of Dheeraj Gupta. When they asked Babulal about Rahul, he said that Rahul was upstairs and also told them not to go upstairs as the police would be arriving. However, the complainant and Bhupendra ran up to the third floor of the house and saw that the body of Rahul was lying on the floor of the terrace in the pool of blood. Upon seeing this, PW-6 Rohit Samari immediately came down stairs and went to his house which is situated between the place of occurrence and the police station City Kotwali, thereafter, wrote the complaint Ex.P/8 and went to Police Station to file his complaint.

18. PW-6 Rohit Samari has further deposed that after lodging the report, when he was returning from the police station, Sheikh Rais Khan (PW-24) and Akhtar Ahmed (PW-7) met him. They told him that they had seen Dheeraj Gupta and Ashique Beg with swords in their hands saying they had finished Rahul. This witness has further stated that his brother deceased Rahul was murdered because he had been having an affair with the sister of appellant Dheeraj Gupta.

19. PW-19 R.S. Rai who is also an Investigating Officer in this case has corroborated the statement of PW-6 Rohit Samari and deposed that upon the written complaint of Rohit Samari, he has lodged the FIR Ex.P/9 on the same day.

20. PW-23 Narendra Singh Parihar, who is the then Head Constable posted at City Kotwali, Panna, has proved Rojnamcha entries dated 05.06.2005 and 06.06.2005 (Ex.P/30) in which the information regarding an incident in front of old Kotwali is mentioned at serial No.342.

21. The statement of PW-6 Rohit Samari remained consistent in his lengthy cross-examination in respect to the facts narrated by him in the examination in chief. Nothing emerged in his cross-examination to discredit his statement. Therefore, the testimony of PW-6 Rohit Samari is found to be credible and trustworthy and on the basis of his testimony it is proved that on 05.06.2005 at about 10 pm the appellants herein came to the house of deceased Rahul and took him with them. Learned counsel for the appellants drew our attention towards the statement of PW-14 Jagdish Namdev and argued that the statement of Rohit is not trustworthy because this witness was in the house of PW-6 Rohit on 5.6.05 but did not see the appellants coming there. However, we are not impressed by his argument as PW-14 Jagdish has deposed that he went to the house of Rohit at 8 pm and left at 10 pm. Therefore, it is quite obvious that he did not see appellants who reached there when this witness had already left.

22. In view of the above discussion it is proved that appellants took the deceased Rahul from his home at about 10 pm, at 11.15 pm. PW-6 Rohit Samari received the information that a fight was going on with his brother Rahul. Immediately thereafter this witness reached the spot and saw the dead body of Rahul in the house of Babulal, who is the real uncle of appellant Dhiraj. The FIR was lodged at 11:45 in the same night. In view of above it is proved that the deceased was last seen with the appellants herein just before his murder.

23. The counsel for the appellant has argued that the conduct of PW-6 Rohit Samari is unnatural, as instead of taking the deceased to the hospital or rushing to the police station to lodge the report, this witness first went back to his house and prepared a written complaint (Ex.P-8) and then went to police station.

24. However, this argument has no weight as this witness has clearly explained that his house is between the place of occurrence and the police station City Kotwali, where he lodged the report. This witness is a teacher by profession and is also holding a degree in computer science. Being a well educated person, if this witness did not disturb the scene of crime where the deceased Rahul was lying in a pool of blood with almost 25 injuries on his body, his conduct cannot be described as unnatural.

25. The prosecution has examined PW-7 Akhtar Ahmed and PW-24 Sheikh Rais to prove the second circumstance that is extra judicial confession. PW-24 Sheikh Rais; however, turned hostile and did not support the prosecution story but PW-7 Akhtar Ahmed has corroborated the prosecution version and deposed that on the date of incident at about 00:11 p.m., when he was near Kishorji Temple, Rais Khan (PW-24) met him and told him to come along with him near Kachhari Road to see Naresh. When they were going towards Kachhari Road, they saw Dheeraj and Assu @ Ashique Beg, wearing blood stained cloths, having weapons in their hands. Dheeraj and Assu @ Ashique Beg were pronouncing that they had finished Rahul. This witness has further deposed that while they were coming back, they came to know that Rahul Samari had been murdered.

26. In cross-examination of PW-7 Akhtar Ahmed nothing infirm therein could be shown to weaken the acceptability and reliability of his statement. No omission or contradiction has been proved in his court statement with police statement. Therefore, the statement of this witness is found to be credible and cogent.

27. The learned counsel for the appellants argued that the Police statement of PW-7 is not worthy of credence as PW-24 Sheikh Rais does not corroborate vis-a-vis extra judicial confession and there is a delay in recording the police statement of PW-7 Akhtar Ahmad. But the said argument is not acceptable because it is well settled that merely on the ground of delay in recording police statement; the entire prosecution story cannot be disbelieved. This witness in his statement has explained that he was out of town for almost two months; therefore, the delay in recording his evidence does not have any impact on the credibility of the prosecution story. Besides the prosecution case cannot be disbelieved on account of any lacuna on the part of the investigating officer. In the case of Allarakha K. Mansuri Vs. State of Gujarat reported in [(2002) 3 SCC 57:2002 SCC (Cri) 519], it is observed that defective investigation by itself cannot be made a ground for



acquitting the accused.

28. The prosecution has examined PW-4 Amar Singh, PW-14 Jagdish Namdev and P.W-15 P. Pandey to prove the seizure of weapons used in crime at the instance of accused persons/appellants herein which is the third circumstance to connect them with the crime. PW-15 P. Pandey who has done this part of investigation deposed that at the instances of accused Dheeraj Gupta and Ashique Beg, he seized murder weapons and clothes worn at the time of incident. The statements of memorandums of appellants are Ex.P/8 and Ex.P/9. The seizure was conducted on 09.06.2005. This witness has further said that on 08.06.2005 he arrested the accused persons.

29. PW-13 Gopal Mishra has also supported the case of the prosecution and said that the police had seized blood stained cement, pieces of red colored bangles, a ring, a chain with small metallic bells, white colored silver like amulet, blood stained mat, one stick (danda) from the terrace of Babulal. The statement of this witness proves that the murder of deceased Rahul and Deepa was committed on the terrace of Babulal.

30. The counsel of the appellants argued that the evidence of P.W-15 P. Pandey and PW-13 Gopal Mishra, in respect to the statements of memorandum of accused persons/appellants and seizures on the basis of said statements and seizure of other incriminating articles, are not reliable because both the Panch witnesses PW-4 Amar Singh and PW-14 Jagdish Namdeo have turned hostile. However, this argument is not sustainable as P.W- 15 P. Pandey has proved beyond reasonable doubt the seizure of articles at the instance of accused persons. The evidence of the statement of PW-13 Gopal Mishra and P.W-15 P. Pandey cannot be disbelieved merely on the ground that the said witnesses are Police Officers. In the case of Govindaraju @ Govinda vs State By Sriramapuram P.S. & Anr order dt. 15 March, 2012 the Apex Court held as below:-

"It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in the success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such a witness.

16. This Court in the case of Girja Prasad (supra) while particularly referring to the evidence of a police officer, said that it is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.

17. Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. The courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statements can form the basis of conviction. Rather than referring to various judgments of this Court on this issue, suffices it to note that even in the case of *Girja Prasad* (supra), this Court noticed the judgment of the Court in the case of *Aher Raja Khima v. Sof Saurashtra* AIR 1956 SC 217, a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. This principle has been referred to in a plethora of other cases as well. Some of the cases dealing with the aforesaid principle are being referred hereunder.

18. In *Tahir v. State (Delhi)* [(1996) 3 SCC 338], dealing with a similar question, the Court held as under:-

"6. ... .In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

31. In this case also the statements of P.W-15 P. Pandey and PW-13 Gopal Mishra who are police officers are found to be trustworthy and the appellants herein have not established that these witnesses have any enmity with them. Therefore, there is no reason to disbelieve their evidence. Consequently, it is found that prosecution has successfully proved the recovery of incriminating articles and murder weapons at the instance of appellants. PW-15 P. Pandey has proved that the seized weapons were properly sealed on the spot and impression of seal was put on Exhibits P-6, P-7 and P-13. As per FSL reports Exhibit P-22, P-23 human blood is found on cloths, as well as on weapons seized from the appellants. In view of the above the third circumstance to connect the appellants with the crime is also found to be proved.

32. The appellant Dhiraj has taken the defence that the house of Babulal where the incident occurred does not belong to him. He lives two houses away from the house of Babulal; therefore, the presumption U/s 114 of IPC cannot be drawn against him and he cannot be held responsible for the murders of Rahul and Deepa. Appellant Dhiraj has examined his father Suresh Gupta as DW-4 who supported the factum that his house is two houses away from the house of his brother Babulal.

Pratap Shankar Gangele (DW-1) has also corroborated the statement of DW-4 Suresh Gupta and deposed that the father and the uncle of Dhiraj Gupta live in different houses. DW-3, Heeralal Gupta has also deposed along the same line.

33. We have gone through the entire evidence to consider the above defence taken by the appellants. It is not in dispute that Babulal is the real brother of Suresh Gupta who is the father of appellant Dhreej and they live in the same locality with two houses away. As per the prosecution version Babulal who is the real uncle of appellant Dhiraj is childless and adopted deceased Deepa. Dhiraj was looking after the shop of Babulal. Therefore, Dhiraj used to visit the house of their uncle Babulal. Deepa lived with Babulal who had adopted her. Deepa and Rahul were in love relationship against the wish of Deepa's family. On the fateful night appellants took deceased Rahul to the house of Babulal where Deepa lived. PW-18 Babulal has admitted in his court statement that he is childless. PW-19, R.S. Rai, the I.O. who is the writer of F.I.R. has stated at Para-7 of his statement that on 6.6.2015 he went to the place of occurrence where the parents of deceased Deepa as well as the uncle who had adopted Deepa as his daughter met him. This witness has also deposed at para 31 that Deepa lived with her uncle Babulal not with father Suresh. The above statement of this witness remained unchallenged in his cross-examination. In view of the above it is proved that Deepa lived in the house of her uncle Babulal.

34. P.W.-12 Neeraj Gupta has said at Para-5 of his statement that he lives in front of Babulal Gupta's house where Babulal Gupta has a hardware shop. Accused/appellant Dheeraj used to sit in that shop. He has also deposed that Dhiraj addresses many persons as uncle but only Babulal is the real uncle of appellant Dhiraj.

35. Consequently, in view of the above, it is proved that Babulal is the real uncle of appellant Dhiraj and his sister deceased Deepa. Babulal is childless and adopted Deepa as his daughter who lived in his house. Babulal lives only two houses away from the house of appellant Dhiraj, so also, the appellant Dhiraj used to sit in the shop of Babulal. Therefore, the presence of appellant Dhiraj and deceased Deepa in the house of Babulal cannot be disbelieved only on the ground that the said house is not owned by appellant Dhiraj.

36. The main defence of appellant Dhiraj is that at the time of incident he was attending the wedding ceremony at Richaria's house situated in the same locality. The actual culprit is someone else who was seen jumping from the roof of Babulal where dead body of Rahul was found. PW-18 Babulal who is uncle of appellant Dheeraj has stated that he sent his brother Suresh to hospital along with injured Deepa after she was found behind his house. When he came back to wear his shoes, he heard a sound of thud on the roof of Nanhelal whose house is adjacent to his house and also saw a person running through the lane.

37. D.W.-2 Jitendra Kumar Gupta deposed that in their vicinity Richariyas were hosting a wedding at their house on the same night when Deepa died. This witness met Dheeraj at the wedding at about 10 - 10:15 pm. After coming back from the marriage while he was sitting at his doorstep, he heard a sound of thud. As he came out of the house to check what had happened, he saw a skinny boy jumping off the roof of his house and running towards the lane.

38. The statement of D.W.-2, Jitendra Kumar Gupta and PW-18 Babulal cannot be relied upon as they never informed the police about the fact of seeing an unknown person jumping off the roof of his house on the fateful night despite having the knowledge of murder of two persons on the same night. So far as the presence of appellant Dhiraj at the venue of place of marriage is concerned, the incident occurred around 11 pm and D.W.-2, Jitendra Kumar Gupta is said to have seen accused Dhiraj for the last time approximately 10-10.15 pm in that ceremony; therefore, it was possible for the accused to commit the crime around 11 pm since the venue of the wedding ceremony was in the same vicinity. So far as the possibility of jumping or climbing up the roof of Babulal is concerned, PW-19 I.O. has said the roof of Babulal is around 10 feet above from the terrace of Nanhelal. DW-5 Satish Kumar Samele stated that the house of Babulal has three stories. He has prepared the map of the house of Babulal Gupta which is Exhibit- D/4. PW-18 Babulal has also said that his house has three stories and has only one entrance. One has to go through the drawing room to reach the terrace. He has also admitted that he had not seen that person going to his terrace through the drawing room. He said that his terrace is 6-7 feet above from the roof of Nanhelal with parapet walls around it. That means the roof of Babulal with a parapet wall is around 11-12 feet above from the terrace of Nanhelal. In view of the height of the terrace of Babulal it is quite impossible for a man to climb a wall of 11-12 feet having hard and sharp weapons with him then kill two persons and jump back again. So also no one tried to stop him.

39. The defence version is that on the fateful night appellant Dhiraj who was in Richharia's house to attend the wedding ceremony was informed that his sister Deepa had fallen from the roof. Immediately thereafter he left the place and went to the District Hospital to attend his sister and accompanied her until death. To prove this defence, he has examined DW-4 Suresh, DW- 6, Narendra Kumar Sharma and D.W.-7 Smt. Purnima Verma.

40. DW-6 Narendra Kumar Sharma has deposed that in the year 1996, he worked in a medical store owned by one Satish Pathak. The medical store was situated in front of the District Hospital Panna. On 05.06.2005, about 11:00 in the night, accused Dhiraj came to his shop 2 - 3 times. When he asked Dhiraj the reason for his being in the hospital, Dhiraj informed that his sister had fallen off the roof and was admitted to the hospital. However, the evidence of this witness does not gather confidence as this witness has not produced any cash memo, cash register, to corroborate that the accused allegedly purchased any medicine from his shop. This witness has also not shown any paper to prove documents relating to his employment in the medical store at relevant time.

41. D.W.-7, Smt. Purnima Verma has deposed that on 05.06.2005, she was in District Hospital Panna as a nurse and was performing her duties in night shift from 8:00 pm to 8:00 am. She saw Dhiraj Gupta at about 11:00 p.m. attending his sister Deepa in the same hospital. However, this witness has failed to show any document to prove her duty hours, her employment as a nurse in District Hospital; therefore, the evidence of this witness does not inspire the confidence of this court.

42. DW-4 Suresh who is the father of appellant Dhiraj deposed that he took his daughter Deepa to hospital after having found her lying in the back side of the house of his brother Babulal. Dhiraj also arrived at the hospital. His daughter Deepa was referred to Gwalior on the same night for further

treatment. Deepa died on the way near Dabra. Dhiraj was with him when Deepa was being taken to Gwalior. However, PW-22, Virendra Mohan, the police constable who was with Deepa in the ambulance did not support the statement of DW-4 Suresh. This witness has categorically stated that when they took Deepa to Gwalior, accused Dhiraj was not with them in the ambulance. The perusal of the merger intimation Exh.P/26 reveals that the constable, by whom the intimation of death of Deepa was given, went to Gwalior along with injured Deepa and her parents. The presence of appellant Dhiraj is not mentioned in Exhibit P-26. In view of the discussion as above it is not proved that appellant Dhiraj was in the hospital at 11 pm when the incident occurred and remained present with his sister Deepa until her death.

43. We have gone through the evidence of defence as well as prosecution witnesses who supported the plea of alibi taken by the appellant Dhiraj. According to DW-7 Purnima, she saw appellant Dhiraj in hospital at 11pm. However, according to PW-21 Sandip Sharma, when he reached the hospital at 11pm, Deepa had already been referred to Gwalior. That means Dhiraj had also left the hospital at 11 pm with his sister as deposed by his father Suresh (DW-4). However, PW-5 Saurabh has stated that Dhiraj and Rohit Samari met him at the wedding ceremony at 11 pm when he reached Richaria's house. In view of the material contradictions and variations in the statements of witnesses with respect to the presence of appellant Dhiraj at the wedding ceremony or hospital as discussed above, his presence with Deepa during her treatment and afterward is also found to be false. Consequently, it is proved that appellant's plea of alibi is explicitly his afterthought in order to prove himself innocent.

44. We have considered the version of defence that the death of Deepa was not homicidal instead it was on account of her fall from the roof. The statements of DW-4 Suresh Kumar Gupta and PW-18 Babulal are relevant on this point. DW-4 Suresh Kumar Gupta, the father of deceased Deepa and appellant Dhiraj, has stated that on 05.06.2005 at about 9:30 pm he came back home from his work and sent his son Dhiraj to the house of Richariya to attend the marriage. His daughter Deepa was sitting in front of their house. At about 10:15 to 10:30 in the night, he heard people talking that Deepa had fallen down from the roof. Hearing this, he, along with his wife, rushed to see their daughter. They saw Deepa lying unconscious, behind the house of his elder brother Babulal. He immediately took Deepa to the District Hospital on his motorcycle. His brother Babulal also went to the hospital along with wife.

45. PW-18 Babulal has stated that on 5.6.2005 at 11 pm in the night when he was sitting at the doorstep of his house, he heard noise of people that Deepa had fallen from the roof. He immediately went towards the back side of his house to check it out. He found his brother Suresh there. He sent Deepa to hospital with his brother Suresh. Although this witness turned hostile, he supported the fact that the dead body of a boy was found on the roof of his house on the same night when Deepa was found injured behind his house.

46. It has already been proved that the dead body of Rahul Samari was found on the roof of Babulal. In view of the above statements of Suresh Gupta and Babulal, now it is also proved that the body of badly injured Deepa was found behind the house of Babulal. As discussed earlier the pieces of broken bangles were found on the roof of Babulal where the body of deceased Rahul was lying. The

fact that Deepa was adopted by Babulal and was living with him in the same house has already been proved in earlier discussion. All the above circumstances prove that Deepa was present on the roof of Babulal at the time of incident and after the assault her body was put behind the house of Babulal and that is the reason she had fracture only on her wrists. By adopting the defence of the fall of Deepa from the roof, the appellants are apparently admitting the presence of Deepa on the roof of the house of Babulal from where she had allegedly fell on the ground. In view of the above discussion it is proved beyond reasonable doubt that Deepa was present along with Rahul on the roof of the house of Babulal and was murdered along with Rahul.

47. The Crime Details Form Exhibit P-10 reveals that the dead body of Deepa was found lying on chips and bricks but no lacerated wound was found on her body. The post mortem report of Deepa shows that she had fractures only in her left wrist. Had she fallen down from the roof of the third floor as is the story of defence, she would have multiple fractures on her body. It was not possible to have a fracture only on the wrist bone after having fallen off the roof of the third floor. As discussed earlier, PW-25 Dr. Sharad Dwivedi who conducted the post mortem of Deepa has opined that Deepa had 25 injuries on her body and injury no.2,3,4,5,8,12,18 which are incised wounds were caused by sharp object, injury no.2,3,4,5 found in fingers of both hands were caused on account of holding the sharp weapon. Post mortem report of Deepa as well as the statement of PW-25 Dr. Sharad Dwivedi proves that Deepa had multiple incised wounds and she tried to protect herself by holding the sharp weapon by hands.

48. Learned counsel for the appellants has argued that PW-20 Dr. V.S. Upadhyay, who conducted post-mortem of deceased Deepa did not opine that the death is homicidal; therefore, the appellants could not be convicted for her murder. We don't find much weight in this argument as it is an accepted principle that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. The value of medical evidence is only corroborative; it proves that the injuries could have been caused in the manner as alleged and nothing more. In the present case it is proved that deceased Deepa received as many as 25 injuries in which 7 were incised wounds which are ante-mortem in nature. The post-mortem doctor PW-20 Dr V.S. Upadhyay has opined that the death of Deepa was on account of coma and shock due to head injury and haemorrhage respectively and injury to internal organs. Therefore, the connection between the injuries caused by the appellants and the death of Deepa is established. The defence has failed to prove that such injuries were caused on account of some other reasons. Thus it is also proved that the death of the deceased was homicidal in nature and was caused by the appellants only.

49. The conduct of DW-4 Suresh and PW-25 Babulal also prove the involvement of the appellant Dhiraj in the crime who is the son of Suresh and nephew of Babulal. It is quite unnatural for a father or uncle not to inform or lodge any report to the police station after having found the badly injured body of their daughter / niece and knowing the fact that the dead body of some person is lying on the roof of their house. This fact indicates that these witnesses knew about the incident as well as the involvement of appellant Dhiraj in the crime and to protect him they did not try to report the matter to police. Based on the above discussion, the motive to kill deceased persons which was the love relations between the deceased Deepa and Rahul is also established.

50. Learned counsel for the appellant has argued that the FIR in this case is ante-dated and ante-timed. To buttress his argument, learned counsel placed reliance upon the case of Thanedar Singh Vs. State of M.P. AIR 2002 SC 175 and Meharaj Singh and another vs. State of U.P (1994) 5 SCC 188. However, when we looked into the evidence in the present case, we find that the prosecution has produced the roznamcha (daily diary) of Police Station Panna dated 05.06.2005 and 06.06.2005. PW-23-Narendra Singh Parihar has proved the entries of said roznamcha and deposed that according to the roznamcha, which is Exhibit P-30, on the date of occurrence at about 11:40 in the night a telephonic information has been received upon which one Head Constable along with one Constable was sent to the place of occurrence. On the same night at about 11:45, PW-6 Rohit Samari had filed the complaint which was registered in Roznamcha Sanha (daily diary) No.343 and upon which crime No.174/2005 was registered. He has further deposed that at the same time Merg No.29/2005 was also registered. He has further deposed that upon receiving the information Sub-Inspector R.S. Rai along with the Police Force was sent towards the place of occurrence. It is relevant to mention here that PW-18 Babulal, who is the uncle of accused/appellant Dheeraj, has also admitted that the police force had arrived at about 12:00 in the midnight. It is also clear that in the said daily diary at about 4:40 on the same day, an information regarding arrival of dead body in the District Hospital has been registered, upon which a merg under zero has been registered. Considering the above facts and the documents, the argument of the appellant becomes futile that the FIR is ante-dated and ante- timed.

51. The next argument of learned counsel for the appellant is that the place of occurrence is situated in a thickly populated vicinity, despite this; no hue and cry was made. Even the incident is not witnessed by any member of the locality. However, upon appreciating the evidence it is apparent that the incident took place in the house of the uncle of the accused/appellant Dheeraj and not in any public place; therefore, the absence of an independent witness is natural.

52. The learned counsel for the appellant has further argued that PW-1 Bhupendra Singh and PW-13 Gopal Mishra are said to have gone to police station along with PW-6 Rohit Samari, but they have not corroborated this aspect, therefore, the entire prosecution story becomes doubtful. However, this argument is not acceptable as merely on the grounds that prosecution witnesses have turned hostile does not impact the entire prosecution version, if it is corroborated by a trustworthy witness.

53. The next argument is that the postmortem of Rohit Samari (Exhibit P-27) dated 06.06.2005 does not reflect any details about the alleged incident regarding registration of FIR, Crime number etc. PW-10 Head Constable Keshari Prasad has also admitted that a copy of the FIR was not enclosed along with the application for postmortem, which shows that the FIR was not even registered at that juncture. However, this argument does not have any weightage as there is no mandatory provision which provides the details of incident or crime number in the application for postmortem. It has also been proved as discussed above that FIR was prompt and registered on the same day, therefore, merely non- mentioning of crime number or details about alleged incident does not discredit the prosecution case.

54. Learned counsel for the appellants argued that both FIR and Merg were registered at about 11:45 p.m. on 05.06.2005 which creates a serious doubt on the genuineness of both FIR and Merg because

the Head Constable P.W.-10 Keshari Prasad states that Merg was registered on the basis of FIR and the Sub-Inspector PW-19 R.S Rai states that Merg was registered first and then the FIR was registered after 10-20 minutes. The above argument does not have weight because PW-19, in his police statement at paragraph 12 after perusing both the documents stated that both Merg Intimation and FIR were registered at the same time which is 11:45 p.m. Since Merg intimation was registered by HCM and FIR was registered by this witness, therefore, their registration at the same time is possible.

55. The learned counsel for the appellants has further argued that the prosecution has failed to prove that the copy of the FIR was forwarded to the Magistrate by leading evidence; therefore, the prosecution case becomes doubtful. However, we don't find much weight in this argument. In the case of State of Rajasthan Vs Daud Khan, (2016) 2 SCC 607; (2016) 2 SCC (Cri) 793, the Apex Court has laid down that :

"The interpretation of Section 157 of the CrPC is no longer res integra. A detailed discussion on the subject is to be found in Brahm Swaroop v. State of U.P.[4] which considered a large number of cases on the subject. The purpose of the "forthwith" communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out."

In the present case as discussed above there is no delay in filing the FIR; therefore, mere noncompliance of Section 157 Cr.P.C. is of no consequence.

56. The next argument on behalf of the appellants is that PW-1 Bhupendra Singh and PW-13 Gopal Mishra have not supported the case of the prosecution that they went to Police Station after the incident along with PW-6 Rohit Samari, therefore, the statement of PW6 Rohit Samari and PW-19 R.S. Rai cannot be believed upon. However, this argument is not sustainable as the statement of PW-6 Rohit Samari has been found trustworthy, therefore, merely because other witnesses have turned hostile the entire prosecution case cannot be discredited. In the case of Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 and in Zahira Habibullah Shaikh (5) v. State of Gujarat , (2006) 3 SCC 374 it has been observed that; "Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation."

57. The way this case has been investigated by the investigating agency and conducted by the prosecution greatly bothered us. Firstly the investigating agency despite having evidence of unnatural death of deceased Deepa whose body had multiple ante- mortem injuries and who died on the same night and near the same place where the dead body of Rahul was found and having knowledge about the motive did not file charge sheet with respect to the death of Deepa until the



Chief Judicial Magistrate Panna had directed for the same. During the course of trial the prosecution did not produce the material witness PW-20 Dr. V.S. Upadhyay who conducted the post mortem of deceased Deepa and other key witnesses PW-21 Sandip Sharma, PW-22 Virendra Mohan, PW-23 Narendra Singh Parihar, PW-24 Sheikh Rais, and PW-25 Dr. Sharad Dwivedi. Therefore, these witnesses were summoned by the trial court and examined as court witnesses. It seems the investigating agency and the prosecution tried hard to save the culprits.

58. The overall facts of the case reveal that this is a case of honour killing. This is such a sorry state of affairs that the society at large still treats a girl as a property not a human being. The girls are paraya dhan or property of others and the right to dispose of this property or paraya dhan lies in its owner. Being a property, a girl has no right to choose her own destiny or partner. If a girl dare to choose her partner, the members of her family do not hesitate to brutally assassinate their own blood. Their honour is too high to touch their hearts.

59. Consequently, as discussed above the impugned judgment and order is found to be in accordance with facts and law and there is no reason to interfere with the said judgment and order.

60. In view of above, the appeal is found to be without substance, hence, dismissed.

(Atul Sreedharan)  
Judge

(Sunita Yadav)  
Judge

bj/-

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