

RAHUL

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v.

STATE OF HARYANA

(CRIMINAL APPEAL No.262 of 2021)

MARCH 03, 2021

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[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

Indian Penal Code, 1860 – s.302 r/w. s.34 – Arms Act, 1959 – s.25(1B)(a) – Prosecution case was that the appellant-accused suspected that his wife was in illicit relation with the victim-deceased – The appellant informed his father-in-law and his brother-in-law about the same and all three of them decided to eliminate the victim-deceased – All three of them had taken victim-deceased to a hill and fired on him and thereafter thrown him in a pit – A telephonic message regarding the body was received in Police station – After receiving the said information, the police officials reached the spot – The inspecting officers found marks of dragging of the deceased on the kacha road which was going towards the hill and on checking of the dead body, they also found two fire-arm shots on both sides of waist along with other injuries – FIR was registered u/s. 302 r/w. s.34 IPC and s.25 of the Arms Act – News item along with a photograph of the deceased was published for identification of the body – The body was identified by PW-12-mother of deceased and PW-3-brother of deceased – After recording their statements and collecting necessary evidence, the appellant and his father-in-law were arrested – The other accused brother-in-law of appellant absconded – Both PW-3 and PW-12 stated that victim was taken by the appellant and his brother-in-law from a bus stop – Further, on basis of the disclosure statement of the appellant, a country made pistol and two live cartridges were recovered from the house of his bua-DW-1 – The Trial Court found both appellant and his father-in-law guilty for offence u/s. 302 r/w. s.34 and appellant also guilty u/s.25 of the Arms Act – The High Court confirmed the conviction of appellant and acquitted his father-in-law – Aggrieved, the appellant filed an appeal before the Supreme Court – Held: There is no reason to disbelief the recovery of weapon from the residence of DW-1 – Further, as per the FSL report, the country made pistol .315 bore used by the appellant was found in working order and

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- A *both the fired cartridges recovered from the spot and fired bullet taken out from the body of the deceased were found fired from the country made pistol recovered at the instance of appellant-accused – PW-5-doctor had deposed that the cause of death was because of fire-arm injuries and he had clearly stated that the fired bullet which was marked as Ex.P1 was same which was taken out from the body of the deceased – As far as testimony of PW-3 and PW-12 is concerned, merely because they are related, by itself is no ground, to reject their testimony – A close relative who is natural witness cannot be regarded as an interested witness – It is fairly well settled proposition that even the evidence of interested person can also be considered provided such evidence is corroborated by other evidence on record – There is a complete chain of evidence which would lead to irresistible conclusion that the appellant-accused has committed the offence.*
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Dismissing the appeal, the Court

- D **HELD:** 1. Although it is the contention of the appellant that as PW-3 and PW-12 are family members/close relations of the deceased, as such, their testimony is to be discarded, but the same cannot be accepted. Merely because PW-3 and PW-12 are related, by itself is no ground, to reject their testimony. Further, a close relative who is a natural witness cannot be regarded as an interested witness. It is fairly well settled proposition that even the evidence of interested person can also be considered provided such evidence is corroborated by other evidence on record. [Para 17][515-C-E]
- F 2. It is clear from the deposition of PW-5 (doctor) and the post mortem report that, injuries were caused over the body of the deceased with a fire-arm and the bullet was found embedded in the body. It is also clearly stated that death was due to fire-arm injuries and was ante mortem in nature. He has clearly stated that the fired bullet which was marked as Ex.P1 was the same which was taken out from the body of the deceased. [Para 18][516-E-F]
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- H 3. If the oral evidence on record coupled with the documentary evidence is closely scrutinized, this Court is of the considered view that there is a complete chain of evidence which

would lead to irresistible conclusion that the appellant-accused has committed the offence and none else. Even the recoveries are sufficiently proved with the cogent evidence. In the disclosure statement the appellant-accused has stated that he has kept the weapon with his Bua. Though she was examined on behalf of the accused to disprove the recovery, at the same time, she has admitted in the cross-examination that police have visited her place a year and a half earlier to her statement. If this part of evidence is examined, coupled with the other documentary evidence on seizure, there is no reason to disbelieve the recovery of weapon, from the residence of appellant's Bua. All the recoveries have been proved by examining witnesses for such recoveries. Only in view of the disclosure statement Ex.PX recoveries of pistol .315 bore and cartridges were made from the house of his Bua recovery memo Ex.PY on 24.08.2010. Further, as per the FSL report Ex.PXX, the country made pistol .315 bore used by the accused-appellant for committing the murder of the deceased was found in working order and both the fired cartridges recovered from the spot and fired bullet taken out from the body of the deceased, are found fired from the country made pistol recovered at the instance of appellant-accused. Further, the injuries on the person of deceased have been proved by doctor who was examined as PW-5. The material evidence on record produced by the prosecution has been further corroborated by call details of mobile phones of father-in-law of appellant, brother-in-law of appellant and victim and such call details have been proved by the statement of PW-14. Further, it is also well settled that if other evidence on record clearly establishes that the deceased was murdered by the appellant by using fire-arm, the factum of motive loses its importance, more so, in this case the motive has been established by leading cogent evidence to show that only because the deceased had developed relationship with appellant's wife, has decided to eliminate the deceased. [Para 19][516-F-H; 517-A-E]

4. From the evidence on record, this Court is of the considered view that prosecution has proved the guilt of the accused beyond reasonable doubt by leading cogent evidence. Further, the motive is also proved by the prosecution. [Para 20][517-E-F]

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- A **5. In the case of Sanjay Thakran relied on by the the appellant, this Court has held that certain tests are to be fulfilled by the prosecution by leading cogent evidence, when the case rests upon circumstantial evidence. Further, in the case of Wakkar this Court has held that mere recovery itself cannot be the basis for conviction and recovery of incriminating articles and its evidentiary value has to be considered in the light of other relevant circumstances. However, having regard to evidence on record in this case on hand, this Court is clearly of the view that the prosecution has satisfied all the tests mentioned in the case of Sanjay Thakran to bring home the guilt of the accused, by resting upon the circumstantial evidence. If the factum of recoveries is considered along with other evidence in entirety, it gives an irresistible conclusion that the appellant alone has committed offence by using the weapon,which is recovered from the house of DW-1 who is the Bua of the appellant. Further, it is also to be noted that whether the guilt of the accused is proved or not based on the circumstantial evidence, each case has to be judged on the overall assessment of the evidence on record, as such this Court is of the view that the case law which is referred above, relied on by the the appellant, would not render any assistance to accept his plea that the appellant was falsely implicated. [Para 21][517-F-H; 518-A-C]**
- B **6. The High Court, in the appeal filed by the appellant herein and his father-in-law, reappreciated the evidence on record and confirmed the conviction and sentence, so far as the appellant is concerned and acquitted the other appellant, i.e.,his father-in-law. Though it is contended by the appellant, on same set of evidence while acquitting the other accused there is no reason to confirm the conviction and sentence so far as the appellant herein is concerned. In the impugned judgment, the High Court has recorded reasons for acquittal of the other appellant, i.e.,father-in-law of appellant. PW-3, in his deposition has clearly stated that when he along with his mother and deceased, went to Badhra, after some time deceased was separated from them, and came back along with appellant and brother-in-law of appellant (proclaimed offender) in a Maruti car. It is stated by PW-3, at that**
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time deceased stated that he was going to Haridwar and would come back in 3-4 days. Thereafter, victim-deceased went along with appellant and brother-in-law of appellant. To the same effect is the statement of PW-12, mother of the deceased. From the said evidence on record, it stands established that the deceased was last seen in the company of appellant and appellant's brother-in-law (proclaimed offender) only. There was no mention that father-in-law of the appellant-accused (appellant before the High Court) also accompanied deceased for going to Haridwar. In the absence of any evidence on record to show that deceased was also seen with appellant's father-in-law lastly by PW-3 and PW-12, the High Court has come to the conclusion, that prosecution has not proved its case beyond reasonable doubt so far as the other appellant-father-in-law is concerned. In view of such reasoning recorded by the High Court and evidence on record there are justifiable reasons for acquitting the other appellant, father-in-law of appellant, while confirming the conviction so far as the appellant herein is concerned. [Para 22][518-C-H]

*Kanhaiya Lal & Ors. etc. v. State of Rajasthan (2013)
5 SCC 655 : [2013] 6 SCR 361; Ram Chander & Ors.
v. State of Haryana (2017) 2 SCC 321 : [2017] 1 SCR
10 – relied on.*

*State of Goa etc. v. Sanjay Thakran & Anr. Etc. (2007)
3 SCC 755 : [2007] 3 SCR 507; Kanhaiya Lal v. State
of Rajasthan (2014) 4 SCC 715 : [2014] 3 SCR 744;
Wakkar & Anr. v. State of Uttar Pradesh (2011) 3 SCC
306 – referred to.*

Case Law Reference

[2007] 3 SCR 507	referred to	para 10	
[2014] 3 SCR 744	referred to	para 10	
(2011) 3 SCC 306	referred to	para 10	G
[2013] 6 SCR 361	relied on	para 17	
[2017] 1 SCR 10	relied on	para 17	

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- A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 262 of 2021

From the Judgment and Order dated 06.12.2016 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. D-1060-DB/2012.

- B Tathagat Harsh Vardhan, Aditya Singh, Vikas Verma, Advs. for the appellant.

Dinesh Chander Yadav, AAG, Amit Gupta, Sanjay Kumar Visen, Advs. for the respondent.

The Judgment of the Court was delivered by

- C **R. SUBHASH REDDY, J.**

1. Leave granted.

2. This appeal has been preferred, aggrieved by the judgment and order dated 06th December 2016 passed by the High Court of Punjab &

- D Haryana at Chandigarh, confirming the conviction recorded and sentence imposed, for the offence punishable under Section 302 read with Section 34 of Indian Penal Code (IPC) and under Section 25(1B)(a) of the Arms Act, 1959, by the learned Sessions Judge, Bhiwani.

3. On 07.08.2010 a telephonic message was received in Police Station, Charkhi Dadri from one Jaswant Singh, resident of Village

- E Kaliyana, to the effect that in the pit of panchayat land adjoining Kaliyana-Jhojhu road towards hill, dead body of a young boy was lying. After receiving the said information, the Inspector of Police/SHO of the Police Station along with other police officials reached the spot for investigation. After reaching the place of occurrence, they found a dead body of an

- F unknown person with fire arm injury marks. At the place of occurrence, two empties of brass having *marka* of 8 MM PF on their bottom were recovered along with a pair of *chappals*. Blood-stained earth was collected from the spot and converted into sealed parcels. The complainant Jaswant Singh who was examined, during the trial, as PW-

- G 6 was present and his statement was recorded. The inspecting officers have found marks of dragging of the deceased on the *kacha* road which was going towards hill; there were also marks of tyres of a small vehicle. On checking of the dead body by the police, they have noticed two fire-arm shots on both sides of waist and there was a deep wound on the back of right ear and left jaw of the mouth was cut. The dead body was

- H smeared with blood and they suspected, some unknown persons have

brought the deceased in a vehicle and committed murder by causing fire arm injuries. On the complaint of Jaswant Singh (PW-6) a crime was registered in FIR No.297 on 07.08.2010 for the offence punishable under Section 302 read with Section 34, IPC and Section 25 of the Arms Act.

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4. After registering the crime, investigation was taken up. The post mortem of the dead body was conducted in PGIMS Rohtak. For identification of dead body, news item was got published in the newspaper along with the photograph of the deceased. During the investigation of the case, on 14.08.2010, the mother of the deceased Kasturi Devi (PW-12) and the brother of the deceased, by name, Anil Kumar (PW-3) approached the police on the basis of news publication and identified the deceased as Jitender, who was son of PW-12 and brother of PW-3 and resident of Kanhra. After recording the statements of the aforesaid witnesses, investigation was proceeded on the basis of call details of the deceased and statements of the mother and brother of the deceased. After collecting necessary evidence, the appellant herein, i.e., Rahul, a resident of Mirpur was arrested on 21.08.2010. It is stated that during the interrogation, the accused Rahul made disclosure statement that about six months earlier he was married with Priyanka, daughter of Ramesh, caste *Jat*, resident of village Chandwas. He had suspicion on the character of his wife and he is stated to have informed his father-in-law Ramesh Kumar and brother-in-law Ashok Kumar, that Priyanka has illicit relation with Jitender (deceased), resident of village Kanhra. Therefore, they have decided to eliminate Jitender. As per the case of the prosecution, on 06.08.2010 at about 06:00 p.m. as per their plan, appellant (Rahul) called Jitender, his father-in-law Ramesh and brother-in-law Ashok to Badhra. He was having a Maruti car bearing registration no.DL-9CJ-5165 and thereafter in Badhra, Jitender had two bottles of beer and he came under influence of liquor. Further, the case of the prosecution is that all of them have taken the deceased from Jhojhu to Kaliyana hill where Jitender also got down from the car and they have fired on the deceased and thrown him in the pit. The Maruti car bearing registration no.DL-9CJ-5165 and the mobile phone of the accused Rahul were taken into possession vide recovery memo. Further it is stated that on 23.08.2010, the appellant-accused pointed the place of occurrence and on 24.08.2010, in pursuance of his disclosure statement, a country made pistol .315 bore and two live cartridges were seized from the house of his *Bua*, resident of Old Housing Board Colony, Bhiwani. It is alleged that during the investigation the other accused, namely, Ramesh also

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- A suffered disclosure statement and disclosed that the SIM of phone which he was using, was in the name of his brother-in-law, and he was talking to his son-in-law (Rahul) by using the said SIM. As the other accused Ashok Kumar was absconding, non-bailable warrants were pending execution and proceedings under Sections 82 and 83 of Cr.PC were also issued.
- B 5. After completion of the investigation, final report under Section 173 of Cr.PC was filed against the appellant herein and Ramesh for their trial and the case was committed to the Court of Sessions. On the aforesaid allegations, the appellant (Rahul) and other accused, by name, Ramesh were charge-sheeted under Section 302 read with Section 34, IPC; and the appellant herein was also charge-sheeted for offence under Section 25(1B)(a) of the Arms Act, 1959. Accused pleaded not guilty and claimed trial.
 - 6. To prove the charges framed against the appellant and another, prosecution has examined 20 witnesses, namely, PW-1, Krishan Lal; PW-2, Manjeet; PW-3, Anil, brother of deceased Jitender alias Jittu; PW-4, Ravinder Pal, Senior Scientific Officer; PW-5 Dr. Hitesh Chawla; PW-6 Jaswant Singh (complainant); PW-7 Dharmender Singh, draftsman; PW-8 Inderjeet, photographer; PW-9 HC Ravinder Kumar; PW-10 HC Arvind Kumar; PW-11 ASI Surat Singh; PW-12 Kasturi, mother of deceased Jitender; PW-13 constable Jasveer; PW-14 constable Manoj Kumar; PW-15 Krishan Singh, Reader to District Magistrate; PW-16 Sarif Singh; Inspector (investigating officer); PW-17 ASI Amir Singh; PW-18 EHC Rajbir Singh; PW-19 constable Radhey Shyam; and PW-20 Vijender Singh, Deputy Superintendent of Police (Investigating Officer). In defence, on behalf of the accused, DW-1 Rani, widow of Jagdish was examined.
 - 7. After completion of the trial, the Sessions Judge, Bhiwani, by recording a finding that the prosecution has proved the charges, vide judgment dated 17.10.2012, held that both the accused Rahul (appellant herein) and Ramesh were guilty for offence under Section 302 read with Section 34, IPC and appellant Rahul is also found guilty for offence under Section 25 of the Arms Act and convicted them accordingly. By order dated 20.10.2012 both the accused were sentenced to undergo life imprisonment and to pay a fine of Rs.20,000/- each, in default of payment of fine, to undergo rigorous imprisonment for a further period of one year each under Section 302 read with Section 34, IPC and further
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sentenced appellant Rahul to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- for offence under Section 25 of the Arms Act, 1959. Both the sentences were ordered to run concurrently.

8. Aggrieved by the conviction recorded and sentence imposed by the learned Sessions Judge, Bhiwani, the appellant, along with another accused, namely, Ramesh approached the High Court of Punjab & Haryana at Chandigarh by way of Criminal Appeal No.D-1060 of 2012. The High Court, by judgment and order dated 06.12.2016, while confirming the conviction recorded and sentence imposed on the appellant, has allowed the appeal partly by acquitting the other accused, namely, Ramesh. The High Court has held that prosecution has failed to prove its case against Ramesh (appellant before High Court) beyond reasonable doubt.

9. We have heard Sri Tathagat Harsh Vardhan, learned counsel appearing for the appellant and Sri Dinesh Chander Yadav, learned Additional Advocate General for the State of Haryana.

10. Learned counsel for the appellant has made the following submissions :

- The incident in question was a blind murder and the conviction is solely based on the circumstantial evidence.
- PW-3 (Anil) and PW-12 (Kasturi) who are brother and mother respectively of the deceased, are interested witnesses and the conviction is based on the testimony of these interested witnesses, to prove that deceased was last seen with the appellant.
- PWs-3 and 12 have made improvements in their statements and there are material contradictions in their depositions. Moreover, PW-3 was declared hostile by the prosecution.
- Both these star witnesses have tried to introduce new theory imputing motive for the first time by stating that panchayat was held by Ramesh and Ashok against Jittu (deceased) for latter calling Priyanka, daughter of Ramesh and sister of Ashok.
- The conviction is based on the alleged recovery of weapon at the instance of the accused – appellant herein and said weapon was used in commission of offence, though the same was not proved by the prosecution.

- A • In absence of any other independent evidence, courts below have committed error in accepting such evidence which is with material contradictions. It is submitted that PW-3 has himself stated in the chief examination that he did not have any suspicion on anyone, and there was no enmity or grudge with the accused persons. Further the conduct of the aforesaid two witnesses is not trustworthy and is unnatural. Thus, last seen theory is to be disbelieved and discarded. It is submitted that any amount of suspicion, cannot substitute proof and as such it was the duty of the courts to take utmost precaution before ordering conviction on the basis of circumstantial evidence.
- B • Recovery alleged to have been made at the behest of the appellant is false and unreliable, as much as, no independent witness was called to substantiate the so-called recovery of .315 bore country made pistol and two live cartridges.
- C • Lastly stating that the appellant has been falsely implicated in the instant case and is undergoing incarceration from last about 11 years, it is submitted that it is a fit case to allow the appeal by acquitting the appellant for the charges levelled against him.
- D • To support his contention that the suspicion, howsoever grave, cannot replace proof, learned counsel relied on the judgment of this Court in the case of **State of Goa etc. v. Sanjay Thakran & Anr. Etc.**¹ wherein this Court has laid down the tests to be applied, when the case rests upon circumstantial evidence. Relying on the aforesaid judgment,
- E F it is submitted that the tests stated in the above said judgment are not satisfied by the prosecution, to bring home the guilt of the accused. Further, in support of the argument that the ‘circumstance of last seen together’ does not by itself necessarily lead to inference that it was the accused who committed crime and there must be something more to establish
- G connection between accused and the crime, that points to guilt of accused and none else, he has placed reliance on a judgment of this Court in the case of **Kanhaiya Lal v. State of Rajasthan**². Further, submitting that to prove the guilt of the accused based on circumstantial evidence, the

H ¹(2007) 3 SCC 755

²(2014) 4 SCC 715

evidence and circumstances must form a chain of events, placed reliance on a judgment of this Court in the case of **Wakkar & Anr. v. State of Uttar Pradesh**³.

11. Learned Additional Advocate General appearing for the State, by drawing our attention to the statements of various witnesses which are on record, has submitted that apart from the evidence of PW-3 and PW-12 several other witnesses were examined on behalf of the prosecution to prove the guilt of the appellant. It is submitted that if the entirety of evidence is taken into consideration, it makes it clear that the appellant alone has committed the offence. It is further submitted that the motive was also established, namely, that deceased had developed relation with Priyanka who is the wife of the appellant. It is further submitted that the forensic report also supports the case of the prosecution to show that the weapon, recovered at the instance of the appellant from the residence of his *Bua*, was used for committing the offence. Lastly, it is submitted that merely because PW-3 and PW-12 who are brother and mother respectively of the deceased were examined to prove the case of the prosecution, same is no ground to discard their testimony, if the same is corroborated along with other oral and documentary evidence on record. It is submitted that having regard to facts and circumstances of the case, the prosecution has clearly proved the chain of events and if the same is considered along with the post mortem report and the recoveries effected at the instance of the appellant, it leads to an irresistible conclusion that the appellant has committed the offence. Further, it is submitted that the trial court as well as the High Court have elaborately considered the evidence on record and in view of the concurrent findings, so far as the appellant is concerned, there are no grounds to interfere with the same.

12. We have considered the submissions made by the learned counsel on both sides and perused the material on record.

13. Though the appellant (Rahul) and another accused, namely, Ramesh were tried together and were convicted by the trial court but on appeal the High Court has allowed the appeal *qua* Ramesh and acquitted him of the charges by recording a finding that prosecution has failed to prove the guilt of the accused Ramesh beyond reasonable doubt. At the same time, the High Court has confirmed the conviction recorded and sentence imposed, by the trial court, on the appellant. As there is no

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- A appeal by the State challenging the acquittal recorded by the High Court, as such, we are only required to examine whether the circumstantial evidence on which basis the conviction of appellant (Rahul) is recorded, establishes the guilt of the accused or not. Before we deal with the contentions advanced, we need to notice the relevant evidence which is led by the prosecution to prove the case against the accused appellant (Rahul).
 - 14. It is the case of the prosecution that appellant Rahul has married Priyanka, who is the daughter of Ramesh and sister of Ashok. It is the case of the prosecution that because of the relationship of the deceased Jitender @ Jittu with Priyanka who is the wife of the appellant, the appellant and other accused have decided to eliminate the deceased. It is true that the entire case rests upon the circumstantial evidence. In ocular evidence there is a deposition of PW-3 and PW-12 who are brother and mother respectively of the deceased. Merely because two of the witnesses are related to the deceased, that by itself, is no ground to discard their testimony. If their testimony is corroborated by other evidence on record, same can be relied on to establish the guilt of the accused.
 - 15. In this case PWs-1 and 2 were declared hostile and PW-3 also, at some stage, was declared hostile. He was cross-examined by the counsel for the prosecution. In his chief examination, PW-3 (Anil), brother of the deceased (Jittu) has deposed that, Jitender alias Jittu was his younger brother. On 06.08.2010, Ramesh from village Chandwas had come to his house and he told Jittu in his presence at about 02:00 or 02:30 p.m. that appellant (Rahul) would come in the evening and he had a programme of going to Haridwar in order to bring '*kawar*'. Thereafter in the evening at about 05:00 p.m., he, his mother and brother Jittu went to Badhra in a bus. They purchased some articles and after some time Jittu separated from them and after two hours, Rahul (appellant), Jittu and Ashok came in a Maruti car 800 CC No.DL-9CJ-5165 and told them that they were going to Haridwar and would come back in 3-4 days. Jittu had gone with Rahul and Ashok. After 3-4 days he tried to contact his brother on his mobile, but both the mobiles were switched off. Further, he has deposed that on 14.08.2010 his sister had read the newspaper and told him the description of cloths and slippers which were mentioned in the newspaper. Thereafter, he also read the newspaper, as such they went to Police Station and saw the cloths of Jittu and the photographs of dead body of Jittu. They identified the cloths

and photographs of Jittu. At that time he did not have any suspicion on anyone. After he has deposed to some extent by way of chief examination, he was declared hostile at the request of the Public Prosecutor and he was further cross-examined by the Public Prosecutor. In the cross-examination, he has admitted that he stated to police that his brother had made a telephone call to Priyanka - sister of Ashok Kumar and on that, Ashok and Ramesh came to their house and protested, and that might be the reason for murdering his brother Jittu. Senior Scientific Officer – Ravinder Pal Singh was examined as PW-4 and in his deposition, he stated that he along with his assistant inspected the spot and prepared his report under Ex.PE and he also prepared the rough sketch Ex.PF. Doctor who had conducted post mortem examination, namely, Dr. Hitesh Chawla, was examined as PW-5. In his deposition he has stated that he along with Dr. Jitender Jakhar conducted post mortem examination on the body of a male individual on 09.08.2010 and they have noticed following injuries :

“The length of the body was 180 cm. The body was wearing :- D

(1) A multicoloured (orange, white, black check shirt) full sleeved, with imprint over its inner back as shown in post-mortem report. The shirt was blood stained and showing holes corresponding with underlying injuries.

(2) A white baniyan with trademark as Rupa’s Joy 90 cm. The E baniyan was blood stained.

(3) A cream pant with hook and zip tied in situ. The pant was blood stained and having a trademark over inner side of zip as shown in post mortem report.

(4) Blue and grey stripes underwear with elastic waist having imprint Jockey over its elastic.

(5) Red thread around neck having a yellow metallic locket of “Shivji” in it.

The body was at room temperature. It was emitting foul smell. Clusters of eggs and maggots of size 0.3-0.5 cm were present all over the body at places. Scalp hairs were black, 6-8 cm long, peeled off with moderate traction. The mouth, lips and tongue was deformed. The eyes were closed. Moustaches were 0.3-0.5 cm long black, beard was shaven. The mouth was open with tip G

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- A of tongue protruding out. Facial features were distorted. Rigor mortis was passed off; marbled appearance of skin was present at places. Epidermis was peeled off at places. The chest was tense. Abdomen was distended. Greenish discolouration was seen over anterior abdominal wall. Pubic hairs were 2-3 cm long, black coloured and curly. Penis and scrotum were distended.
- B All ends of long bones were fused including medial end of clavicle. Cranial sutures namely sagittal, coronal & lambdoid were not obliterated on the inner table as well as outer table of skull. Body of sternum was fused; xiphoid and manubrium were not fused.
- C All third molars were erupted and showing mild to moderate attrition.
- The following injuries were over the body:
- (1) A firearm entry wound of size 2.5 x 2.0 cm over right anterior chest wall, 3 cm medial to right nipple, 5 cm away from midline and 140 cm above right heel. The margins of wound were irregular, inverted and abrasion collar for 3-5 mm was present all around the entry wound. The wound was directed laterally downwards, backwards from left to right, piercing the 3rd and 4th ribs anteriorly, pleura and underneath lungs to emerge out as wound no.2.
- (2) A firearm exit wound of size 1 x 0.5 cm over upper back right side, 10 cm away from midline and 15 cm below shoulder blade. The margins of wound were everted and irregular.
- (3) A firearm entry wound of size 2 x 2 cm over left anterior chest wall, 4 cm medial to left nipple and 5 cm away from midline and 139 cm above left heel. The margins of wound were irregular, inverted and abrasion collar for 3-5 mm was present all around the entry wound. The wound was directed backwards, downwards, from left to right, piercing the 3rd intercostal space, underneath pleura, lung, the pericardium, base of heart and trachea. The bullet was found embedded just beneath the skin, in muscular space over right upper back along the inferior border of scapula, 12 cm away from midline and 18 cm below shoulder blade. The length of bullet was 3.0 cm. The whole of track was ecchymosed in its entire length.
- (4) A firearm entry wound of size 3.0 x 2.0 cm over left side of face, lateral to left angle of mouth and 155 cm above left heel.

The margins of wound were irregular, inverted. The medial end of wound was reaching up to lateral angle of mouth. The wound was directed medially backwards and upwards from left to right; the left ramus of mandible, left maxilla and right maxilla was fractured into multiple pieces with the fractured ends showing infiltration of blood; to emerge out as wound no.5.

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(5) A firearm exit wound of size 2.5 x 2.0 cm situated 5 cm behind right ear. The margins of wound were everted and irregular.

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The topographic representations of the injuries described was made and attached with post mortem report.

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The following findings were observed on systemic examination :-

Skull, vertebrae and internal organs of generation were healthy. The membranes of brain, hyoid and peritoneum were intact. Brain was thickish, grayish pasty. The large vessels and urinary bladder were empty. Stomach contained app. 30 cc. of mucoid material and its mucosa was pale. Small intestine contained chime. Large intestine contained fecal matter and gases. The liver, spleen and kidney were pale and softened.”

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The doctor (PW-5) has deposed that the cause of death was because of fire-arm injuries and they were ante mortem in nature. Probable time that elapsed between injuries and death was immediate and that of between death and post mortem examination was 1-3 days. Further, through him, it is proved that the fired bullet Ex.P1 was the same which was taken out from the body of the deceased. The complainant (Jaswant Singh) who has informed to the police at first instance, was examined as PW-6. He has deposed, reiterating the information which he has given to police. The draftsman who prepared the scaled site plan Ex.PT was examined as PW-7 and to prove the photographs Ex.PW8/1 to Ex.PW8/8, PW-8 Inderjit was examined. PW-10 Head Constable Arvind Kumar, who was on patrolling duty along with other police officials, has inspected the car of the appellant on 21.08.2010 and he was interrogated by the investigating officer to whom disclosure statement was made under Ex.PV. Further, PW-10 has also pointed out that the appellant has disowned the earlier statement and stated that he concealed the pistol and cartridges in House No.160, Housing Board, Bhiwani in the house of his Bua. That disclosure statement was recorded as Ex.PX. The mother of the deceased PW-12

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- A (Kasturi) in her deposition while stating that Jittu was taken by the appellant (Rahul) and Ashok from the bus stop stating that they were going to Haridwar to bring '*kawar*'. She has further stated that few days prior to occurrence, a panchayat was convened by Ramesh and Ashok on the point that her son Jittu was making telephone calls to daughter of Ramesh and only due to this the accused have killed her son. PW-16 – Investigating Officer (Sarif Singh) in his deposition has clearly stated that he lifted two empties from the spot and they were taken into possession and sealed vide memo Ex.PL. He also stated that he lifted blood-stained earth from the spot which was sealed in parcel vide memo Ex.PK. Further, PW-17 – ASI Amir Singh in his deposition C has stated that on 25.08.2010 he was posted as I.O. at Police Station Charkhi Dadri and after arresting Rahul he has interrogated him and he made his disclosure statement Ex.PLL. Vijender Singh, Dy. Superintendent of Police/SHO, P.S. Sadar, Dadri was examined as PW-20 on 31.08.2010.
- D 16. In defence, accused examined DW-1 – Rani, widow of Jagdish, resident of House No.160, Old Housing Board Colony, Bhiwani. In her deposition, she has stated that appellant-accused is her real nephew. Though she has stated in her cross-examination that appellant (Rahul) never resided with her and he was residing in village Mirpur, Distt. Meerut, has clearly admitted that police officials had come to her residence.
- E Though she was examined to disprove the recovery of pistol from her house at the instance of the appellant, but at the same time she has admitted in the cross-examination that police officials had come to her house about a year and half earlier to her statement.
- F 17. Though it is mainly contended by the learned counsel for the appellant that the motive attributed is an improved version in the statements made by PW-3 and PW-12, but in a case of this nature it is to be noticed that deceased was known to the appellant (Rahul) and Ramesh. Merely because PW-3 has deposed at first instance that there was no suspicion or any animosity between the deceased and the appellant G but at the same time he has clearly stated that on 06.08.2010, Ramesh, the other accused had come to village Chandwas and in his presence Ramesh told to Jittu at about 2:00 or 2:30 p.m. that Rahul would come in the evening and they have planned to go to Haridwar in order to bring '*kawar*'. Further, it is also clearly deposed that the same day evening PW-3 – Anil went along with his brother Jittu and his mother Kasturi – H PW-12 to Badhra in a bus and they purchased some articles, thereafter

Jittu was separated and after two hours Rahul, Jittu and Ashok came in a Maruti car and stated that they were going to Haridwar and would come back. Initially no suspicion was indicated but at the same time when PW-3 was declared hostile and in cross-examination by the Public Prosecutor he has admitted that he stated to police, his brother Jittu had made a telephone call to Priyanka, sister of Ashok Kumar and on that Ashok who is the brother of Priyanka and Ramesh, father of Priyanka, came to their house and protested. He also indicated, that might be the reason for murdering his brother Jittu by the appellant and other accused. PW-12 who is the mother of the deceased has, in clear terms, stated that few days prior to the occurrence, a panchayat was convened by Ramesh and Ashok on the point that her son Jittu was making telephone calls to daughter of Ramesh and due to this they killed her son. Although it is the contention of the counsel for the appellant that as PW-3 and PW-12 are family members/close relations of the deceased, as such, their testimony is to be discarded, but the same cannot be accepted. Merely because PW-3 and PW-12 are related, by itself is no ground, to reject their testimony. Further, a close relative who is a natural witness cannot be regarded as an interested witness. It is fairly well settled proposition that even the evidence of interested person can also be considered provided such evidence is corroborated by other evidence on record. At this stage, it is apposite to refer to a judgment of this Court in the case of **Kanhaiya Lal & Ors. etc. v. State of Rajasthan⁴**. Paragraphs 24 and 25 of the said judgment read as under :

“24. In *Hari Obula Reddy v. State of A.P.* (1981) 3 SCC 675 a three-Judge Bench has opined that it cannot 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 the 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.” (SCC pp.683-84, para 13)

25. In *Kartik Malhar v. State of Bihar* (1996) 1 SCC 614 this Court has stated (SCC p.621, para 15) that a close relative who is

⁴ (2013) 5 SCC 655

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- A a natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.”
- While rejecting the plea that the witnesses were in close relation
- B to the deceased, in the case of **Ram Chander & Ors. v. State of Haryana**⁵ this Court has held as under :
- “33. The submission of the learned counsel for the appellants that since Guddi (PW 9) was in close relation with the deceased persons, she should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in *Dalbir Kaur v. State of Punjab* (1976) 4 SCC 158 and *Harbans Kaur v. State of Haryana* (2005) 9 SCC 195, which lays down the following proposition (*Harbans Kaur case*, SCC p.198, para 7)
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- D “7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.” ”
- E 18. It is clear from the deposition of PW-5 (doctor) and the post mortem report that, injuries were caused over the body of the deceased with a fire-arm and the bullet was found embedded in the body. It is also clearly stated that death was due to fire-arm injuries and was ante mortem in nature. He has clearly stated that the fired bullet which was marked as Ex.P1 was the same which was taken out from the body of the deceased.
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- G 19. If we closely scrutinize the oral evidence on record coupled with the documentary evidence, we are of the considered view that there is a complete chain of evidence which would lead to irresistible conclusion that the appellant-accused has committed the offence and none else. Even the recoveries are sufficiently proved with the cogent evidence. In the disclosure statement the appellant-accused has stated that he has kept the weapon with his *Bua* at House No.160, Old Housing Board Colony, Bhiwani. Though she was examined on behalf of the accused to disprove the recovery, at the same time, she has admitted in
- H ⁵ (2017) 2 SCC 321

the cross-examination that police have visited her place a year and a half earlier to her statement. If this part of evidence is examined, coupled with the other documentary evidence on seizure, there is no reason to disbelieve the recovery of weapon, from the residence of appellant's *Bua*, i.e., House No.160, Old Housing Board Colony, Bhiwani. All the recoveries have been proved by examining witnesses for such recoveries. Only in view of the disclosure statement Ex.PX recoveries of pistol .315 bore and cartridges were made from the house of his *Bua* at Bhiwani vide recovery memo Ex.PY on 24.08.2010. Further, as per the FSL report Ex.PXX, the country made pistol .315 bore used by the accused-appellant for committing the murder of the deceased was found in working order and both the fired cartridges recovered from the spot and fired bullet taken out from the body of the deceased, are found fired from the country made pistol recovered at the instance of accused (Rahul). Further, the injuries on the person of deceased have been proved by doctor who was examined as PW-5. The material evidence on record produced by the prosecution has been further corroborated by call details of mobile phones of Ramesh, Ashok Kumar and Jitender and such call details have been proved by the statement of PW-14. Further, it is also well settled that if other evidence on record clearly establishes that the deceased was murdered by the appellant by using fire-arm, the factum of motive loses its importance, more so, in this case the motive has been established by leading cogent evidence to show that only because the deceased had developed relationship with appellant's wife Priyanka, has decided to eliminate the deceased.

20. From the evidence on record, we are of the considered view that prosecution has proved the guilt of the accused beyond reasonable doubt by leading cogent evidence. Further, the motive is also proved by the prosecution.

21. In the case of **Sanjay Thakran**¹ relied on by the learned counsel for the appellant, this Court has held that certain tests are to be fulfilled by the prosecution by leading cogent evidence, when the case rests upon circumstantial evidence. Further, in the case of **Wakkar**³ this Court has held that mere recovery itself cannot be the basis for conviction and recovery of incriminating articles and its evidentiary value has to be considered in the light of other relevant circumstances. However, having regard to evidence on record in this case on hand, we are clearly of the view that the prosecution has satisfied all the tests mentioned in the case of **Sanjay Thakran**¹ to bring home the guilt of the accused, by resting

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- A upon the circumstantial evidence. If the factum of recoveries is considered along with other evidence in entirety, it gives an irresistible conclusion that the appellant alone has committed offence by using the weapon, which is recovered from the house of DW-1 who is the *Bua* of the appellant. Further, it is also to be noted that whether the guilt of the accused is proved or not based on the circumstantial evidence, each case has to be judged on the overall assessment of the evidence on record, as such we are of the view that the case law which is referred above, relied on by the learned counsel for the appellant, would not render any assistance to accept his plea that the appellant was falsely implicated.
- C 22. The High Court, in the appeal filed by the appellant herein and another accused Ramesh, reappreciated the evidence on record and confirmed the conviction and sentence, so far as the appellant is concerned and acquitted the other appellant, i.e., Ramesh. Though it is contended by learned counsel appearing for the appellant, on same set of evidence while acquitting the other accused Ramesh there is no reason to confirm the conviction and sentence so far as the appellant herein is concerned. In the impugned judgment, the High Court has recorded reasons for acquittal of the other appellant, i.e., Ramesh. PW-3 Anil, in his deposition has clearly stated that when he along with his mother and deceased Jittu, went to Badhra, after some time Jittu was separated from them, and came back along with Rahul (appellant) and Ashok (proclaimed offender) in a Maruti car. It is stated by PW-3, at that time Jitender @ Jittu stated that he was going to Haridwar and would come back in 3-4 days. Thereafter, Jitender @ Jittu went along with Rahul and Ashok. To the same effect is the statement of PW-12 (Kasturi), mother of the deceased. From the said evidence on record, it stands established that the deceased Jitender @ Jittu was last seen in the company of Rahul (appellant) and Ashok (proclaimed offender) only. There was no mention that Ramesh (appellant before the High Court) also accompanied Jitender @ Jittu for going to Haridwar. In the absence of any evidence on record to show that deceased was also seen with Ramesh lastly by PW-3 and PW-12, the High Court has come to the conclusion, that prosecution has not proved its case beyond reasonable doubt so far as the other appellant Ramesh is concerned. In view of such reasoning recorded by the High Court and evidence on record there are justifiable reasons for acquitting the other appellant, namely, Ramesh, while confirming the conviction so far as the appellant herein is concerned.
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23. For the aforesaid reasons, as the appeal is devoid of merits, same is dismissed. However, as it is stated by learned counsel for the appellant that he has already served sentence for more than 11 years, it is needless to observe, that after completing 14 years of sentence it is open to the appellant to make representation for remission of the sentence. If such representation is made, the concerned authority/Jail Superintendent has to send the same to the Government which is to be considered in accordance with the policy of the State.

Ankit Gyan

Appeal dismissed.