



CRA-D-969-DB-2016 (O&M)

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Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced:- Full Judgment.

Vijay Kumar @ Neetu

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MS.JUSTICE ALKA SARIN

HON'BLE MR.JUSTICE RAMESH CHANDER DIMRI

Argued by:-Mr.Gurinder Singh, Advocate and
Ms.Kiran Verma, Advocate (Legal Aid Counsel)
for the appellant.

Mr.Aman Dhir, DAG, Punjab.

Ramesh Chander Dimri J. :

1. Through the present appeal, the appellant/accused (for brevity, “appellant”) challenges a judgment of conviction dated 11.07.2016 and an order of sentence dated 12.07.2016 passed in Sessions Case No.175 of 2015 titled as “*State Vs. Vijay Kumar alias Neetu*”, arising out of an FIR No.82 dated 01.08.2015 under Sections 302, 307, 323, 324 of the Indian Penal Code, 1860 (for brevity, ‘1860 Code’) registered at Police Station Longowal, through which, the appellant was convicted under the said sections and was sentenced to undergo rigorous imprisonment for life with a direction to pay a fine of Rs.25,000/- under Section 302 of the said Code and in default of payment of fine, to undergo further rigorous imprisonment for two years; rigorous imprisonment for two years and to pay a fine of

Rs.2000/- under Section 324 of the said Code and in default of payment of fine, to undergo further rigorous imprisonment for two months; and rigorous imprisonment for one year and to pay a fine of Rs.1000/- under Section 323 of the said Code and in default of payment of fine to undergo further rigorous imprisonment for one month.

2. The prosecution case, as unfolded by the final report under Section 173 of the Code of Criminal Procedure (for brevity, '1973 Code'), is that PW1 Tarsem Chand is resident of ward No.9, Patti Longowal. He deals in household works. He used to live with his wife Pushpa Devi, his daughter-in-law Komal and grandson Mansan Goyal. His son Som Kumar was married to the said Komal daughter of Sh. Jagdish Rai resident of Sangrur 15 years ago. They had above-stated son from the said marriage. In the year 2007, the said Som Kumar went missing. His whereabouts were not known till the date of the occurrence in question. Because of the said reason, family members of his daughter-in-law Komal had started raising a dispute with him either to give to her share in the property or to get her remarried. With the consent of both the families, he got his daughter-in-law Komal married to one Subhash Kumar son of Sh. Jethu Ram resident of Cheema. The said Subhash Kumar started living as son of PW1 Tarsem Chand in his house. They were spending life peacefully. On 28.07.2015, a girl was born to the said Komal. To look after her, PW1 Tarsem Chand and his family sent

the said Komal to the matrimonial home of Kirna Devi daughter of Tarsem Chand situated at Patti Longowal. On 01.08.2015 at about 2 p.m. Vijay Kumar (appellant), son of Sh. Jagdish Rai resident of Sangrur, real brother of the said Komal came to the house of Tarsem Chand on his motorcycle. The said Tarsem Chand started talking to the appellant in his bedroom and sent his wife Pushpa Devi to kitchen for preparing tea. In the meanwhile, the appellant demanded Rs.2 lakhs from Tarsem Chand then and there. However, he expressed his inability. The appellant got enraged because of such refusal and insisted that he will take the money from Pushpa Devi wife of Tarsem Chand. The appellant then went to the said Pushpa Devi in the kitchen and demanded Rs.2 lakhs from her but she also refused to pay the same. Enraged, the appellant took out a sword like kirch from his waistband (Dabb) and inflicted 7/8 blows thereof in the abdomen of the said Pushpa Devi. Because of such blows, Pushpa Devi died at the spot. Tarsem Chand raised alarm 'killed-killed'. The appellant in order to kill him also attacked him but Tarsem Chand caught hold of his hand. The appellant scuffled with Tarsem Chand. In the meanwhile, son-in-law Uggur Sain of Tarsem Chand who was resident of Patti Longowal came there. With the help of said Uggur Sain, Tarsem Chand overpowered the appellant. Immediately thereafter, many people gathered in the house of Tarsem Chand. People intimated about the occurrence to the police. Accordingly SHO Palvinder Singh of Police Station Longowal reached there with

his companion employees. Tarsem Chand got recorded his statement Ex.PA to the said SHO. The appellant was also handed-over to the police. On the basis of the said statement, the above-stated FIR was registered. Investigation was set into motion. Photographer was called to the spot. Photographs of the place of occurrence were taken. On the asking of the police, fingerprint expert ASI Ranjit Singh also reached the spot. The said SHO instructed him to take fingerprints of the appellant and also from the said kirch. Rough site-plan of the place of occurrence was prepared. Inquest proceedings on dead body of the said Pushpa Devi were conducted. Her dead body was sent to Civil Hospital, Sangrur for postmortem examination. Tarsem Chand was instructed to get him medico-legally examined and obtain a report in that regard. Blood of Pushpa Devi spread on floor of kitchen of the house was put in a plastic container and was converted to a sealed parcel. The said sword like blood-stained kirch was converted to a sealed parcel and was taken into police possession. Separate parcels of kirch and collected blood were prepared. Motorcycle bearing registration No.PB-19D-1034 of the appellant which contained a bag containing sheath of kirch, a currency note of Rs.100/- denomination contained in a purse and a mobile phone were taken into police possession through a separate recovery memo. Statements of witnesses were recorded. Case property was deposited with the concerned MHC. Autopsy on dead body of Pushpa Devi was got conducted from Civil Hospital,

Sangrur. After postmortem, the dead body was handed-over to its legal heirs. On reaching the Police Station, the appellant was interrogated. During investigation, photographs of the place of occurrence were taken into police possession. Recovered case property was sent to FSL Mohali for examination. On completion of investigation against the appellant, final report against him was presented before the concerned Magistrate.

3. On receipt of the said report, the concerned Magistrate, after complying with the provisions contained in Section 207 of the 1973 Code, vide its order dated 12.10.2015, committed the case to the Court of Sessions. After such commitment, the Learned Sessions Judge, Sangrur heard the prosecution and the appellant on the issue of framing of charges against the appellant. After such hearing, it charge-sheeted the appellant under Sections 302, 324 and 323 of the 1860 Code. However, he did not plead guilty to the charges and claimed trial.

4. In support of its case, the prosecution examined 11 witnesses including the complainant Tarsem Chand and PW2 Uggar Sain in its evidence.

5. On completion of prosecution evidence, the Learned Sessions Judge recorded statement of the appellant under Section 313 of the 1973 Code. In the said statement, he denied the entire prosecution case and then stated that he has been falsely implicated in

it. However, despite availing opportunity to lead evidence, the appellant did not examine any witness in his defence.

6. On closure of evidence, the Learned Sessions Judge heard the parties on merits of the case. After such hearing, the impugned judgment and order were passed in the above-stated terms. Aggrieved of the same, the appellant is in appeal.

7. The learned counsel for the appellant and the learned DAG, Punjab have been heard on merits of the appeal. With their assistance, record has been perused.

8. Learned counsel for the appellant have argued that no independent witness of the occurrence in question has been examined. Depositions of PW1 Tarsem Chand and PW2 Uggar Sain are false and doubtful. They are interested witnesses. Motorcycle Ex. PC did not belong to the appellant. Bag, currency note and mobile allegedly recovered from the spot did not belong to the appellant. In fact the complainant didn't want to keep the sister (Komal) of the appellant in her matrimonial home and for that reason the appellant has been falsely implicated. They have accordingly prayed for acceptance of the appeal. In support of their arguments, they have relied upon **“Ramji Surjya Vs. State of Maharashtra”, AIR 1983 SC 810.**

9. Per contra, Learned Deputy Advocate General, Punjab has argued that the depositions of PW1 Tarsem Chand and PW2 Uggar Sain, read with each other, establish commission of the

offenses in question by the appellant beyond a shadow of reasonable doubt. Although they were relatives of the said Pushpa Devi, yet, at the time of occurrence in question, no one except Tarsem Chand and the appellant was present with her. PW2 Uggar Sain also came when the appellant had already committed murder of the said Pushpa Devi. Public and police came into the house much later and therefore non joining of any person from the public is not fatal to the prosecution case. Investigation has corroborated the said two prosecution witnesses on all material counts. He has, accordingly, prayed for dismissal of the appeal.

10. Before proceeding further, the prosecution evidence deserves to be summarized. It is as under:-

10.1 PW1 Tarsem Chand, in his examination-in-chief, in respect of the occurrence in question, has inter alia deposed that on 01.08.2015 at about 2 p.m., the appellant, real brother of his daughter-in-law Komal, came to him on his motorcycle. The said witness took the appellant to his bedroom and started talking with him. Pushpa Devi (wife of the said witness) had gone to kitchen to prepare tea. The appellant Vijay Kumar demanded Rs.2 lakhs from the said witness but he expressed his inability to pay the same. At this, the appellant insisted that he will take the money from Pushpa wife of the said witness and went to her in the kitchen. He demanded the said amount from her but she also expressed her inability to pay it. On the said reply of the said Pushpa, the appellant, all of a sudden,

took out a kirpan like sharp edged weapon "Kirch" and gave 7/8 blows thereof in stomach of Pushpa. She succumbed at the spot to the injuries caused to her. When the said witness tried to intervene and raise alarm, the appellant scuffled with him. In the process of said scuffle, PW2 Uggar Sain reached there. With his assistance, the said witness overpowered the appellant. Thereafter, many persons gathered at the spot. They reported the matter to the police. Police party reached his residence. His statement was recorded. He handed-over the appellant to the police. His statement Ex.PA contains his signature. On that very date, he went to Civil Hospital, Sangrur and the Doctor prepared MLR of his injuries. The appellant is present in the Court. He identifies him. He also identifies the kirch Ex.MO/1 produced in the Court. It is the same weapon which was used by the appellant for commission of the said crime.

10.2 PW2 Uggar Sain, in his examination-in-chief, has inter alia deposed that on 01.08.2015, he was going to market of Longowal to purchase household articles for preparing special diet after delivery of the above-stated Komal. On the way, he noticed that there was a crowd in front of the house of his in-law's family. He accordingly went inside the house and noticed that the appellant was armed with a blood-stained kirch (small kirpan) and was scuffling with father-in-law namely Tarsem Chand of the said witness. Public standing at gate of house of his father-in-law was horrified. Dead body of mother-in-law of the said witness was lying in the kitchen. The said

witness then helped PW1 Tarsem Chand in blind-folding the appellant and making him to sit there. In the meanwhile, police arrived at the spot and took the appellant in custody. Police party inspected the dead body and recorded statement of PW1 Tarsem Chand. It also prepared inquest proceedings at the spot. Statement of the said witness was also recorded. He identifies his signature on the inquest proceedings at point 'A' thereof. Kirch Ex.MO/1 was taken into police possession in his presence and was converted to a parcel. He identifies his signature on the recovery memo Ex.PA. Motorcycle of the appellant was also taken into police possession through a separate recovery memo Ex.PC containing his signature. From a bag Ex.MO/2 of the appellant, sheath Ex.MO/4 of kirpan and currency note Ex.MO/5 of Rs.100/- denomination contained in a purse as well as one Samsung mobile phone Ex.MO/3 were taken into police possession through a separate recovery memo Ex.PD containing signature of the said witness. Blood stained scratches from floor of the kitchen were collected which were put in a separate plastic container and were then converted to a sealed parcel. The said parcel was then taken into police possession through a separate recovery memo Ex.PE. The appellant is present in the Court and the said witness identifies him. Police had recorded statement of the said witness.

10.3 PW3 Dr.Karamdeep Singh Kahal, Medical Officer of Civil Hospital Sangrur, in his examination-in-chief, has inter alia

deposed that on 02.08.2015, he was posted as such in the said hospital. On that date, on an application Mark-A moved by the police, SMO of the said hospital deputed the said witness to conduct postmortem examination on the dead body of the said Pushpa Devi. The said witness conducted such examination and found 15 injuries on her body as have been mentioned in his affidavit Ex.PG. After conducting the said examination, he opined that Pushpa Devi died because of shock and haemorrhage due to the said injuries which were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The said witness also prepared the postmortem examination report and pictorial diagram, carbon copies whereof are Ex.PH and Ex.PH/1 respectively. Time elapsing between injury and death was immediate whereas between death and postmortem examination was within 24 hours. After conducting the said examination, the said witness handed over duly stitched dead body with its belongings and clothes etc. alongwith seal impression 'KDK', copy of the postmortem examination report and the police papers duly initialled by him, to the police.

10.4 Dr.Baljeet Singh, Medical Officer of Civil Hospital, Sangrur, in his examination-in-chief, has inter alia deposed that on 01.08.2015, he was posted as such in the said hospital. On that date, he medico-legally examined PW1 Tarsem Chand who was brought to the said hospital by the police at about 6 p.m. He detected 2 injuries on person of PW1 Tarsem Chand as mentioned in his examination.

Both injuries were kept under observation. Probable duration of injuries was within 6 hours. Weapon used to cause injury No.1 was sharp and to cause injury No.2 was blunt. MLR, copy of which is Ex.PJ, bears his signature. He also prepared pictorial diagram carbon copy of which is Ex.PJ/1. PW1 Tarsem Chand did not get himself examined for X-ray about the said injuries. Both injuries were simple in nature. The said examination was done on an application Ex.PL and his report in that regard is Ex.PL/1.

10.5 PW5 Inspector Palvinder Singh, in his examination-in-chief, has inter alia deposed that on 01.08.2015, when he was posted as SHO of the said Police Station, a message was received that murder of Pushpa Devi had been committed in the house of PW1 Tarsem Chand. On the basis of the said intimation, the said witness and others reached the said house. Therein, PW1 Tarsem Chand and PW2 Uggar Sain handed over the appellant to the police party. It was brought to their notice that blood-stained Kirch was lying on the table. The said witness inspected the spot and found dead body of Pushpa Devi lying in the kitchen of the said house. He recorded statement Ex.PA of PW1 Tarsem Chand and endorsed the same with his endorsement Ex.PA/1. On the basis of the said statement, endorsement Ex.PA/2 was recorded. Photographer reached the spot on his call. On the direction of the said witness, photographs of the place of occurrence were taken. The said witness prepared the rough site-plan Ex.PM of the place of occurrence with the assistance of

PW1 Tarsem Chand which is correct as per the spot. After examining the dead body of Pushpa Devi, the said witness prepared inquest report Ex.PN. Dead body was identified by PW2 Uggar Sain and one Ved Parkash. Their statements were recorded. The dead body was then taken to the hospital for postmortem examination. PW1 Tarsem Chand was also instructed to accompany the police personnel. Fingerprint expert SI Ranjit Singh also reached the spot in the presence of the said witness. The said SI tried to take fingerprints from the kirch but could not succeed. He gave a report in that regard. The said kirch was taken into police possession through a separate memo Ex.PB. Blood scratches from the floor of the kitchen were put into a small container and were taken into police possession through a recovery memo Ex.PE. PW2 Uggar Sain intimated the said witness that a black hand-bag belonging to the appellant was also lying there. He opened the same and found a sheath of kirch as well as a purse having Rs.100/- note and a mobile make Samsung. The said articles were taken into police possession through a recovery memo Ex.PD. From the rear courtyard of the complainant motorcycle bearing registration No.PB-19D-1034 on which the appellant had come to the spot was taken into police possession through a recovery memo Ex.PC. On reaching the Police Station, the said witness interrogated the appellant. Grounds of arrest cum intimation memo Ex.PQ was prepared. It was attested by PW2 Uggar Sain and ASI Harmeet Singh. The appellant was lodged in police lock-up and case property

was deposited with the concerned MHC in an intact condition. On 02.08.2015, after post-mortem examination of dead body of Pushpa Devi, SI Pritam Singh produced clothes and articles of the dead body of Pushpa Devi in a sealed parcel with copy of post-mortem report. The same were taken into police possession. Dead body of Pushpa Devi was handed-over to her relatives. Photographs Ex.MO/7 to Ex.MO/16 of the place of occurrence were taken. The appellant is present in the Court. The said witness identifies him. He also identifies case property Ex.MO/1 to Ex.MO/6.

10.6 PW6 Head Constable Gurinder Singh, in his examination-in-chief, has tendered his duly sworn in affidavit Ex.PS. In the said affidavit, he has inter alia deposed that he is posted as Head Munsif of the said Police Station and charge of the malkhana remains with him. On 01.08.2015, case property etc. recovered in the present case were deposited with the said witness. On 12.08.2015, he took out a parcel containing plastic container of blood, a parcel containing kirch like sword alongwith sample seal from malkhana of the said Police Station. The same were handed-over to Constable Chamkaur Singh in an intact condition for deposit thereof to FSL, Mohali. The said case property was deposited by Constable Chamkaur Singh in the said FSL on 13.08.2015. Till the said case property remained in possession of the said witness, it was never tampered with.

10.7 PW7 Dharminder Singh, in his examination-in-chief, has inter alia deposed that on 02.08.2015, he was called by the police to Randhawa Patti Longowal and at the instance of PW1 Tarsem Chand, he prepared scaled site-plan Ex.PT of the place of occurrence with correct marginal notes. He has seen the site-plan in the Court. It bears his signature.

10.8 PW8 SI Satnam Singh, in his examination-in-chief, has inter alia deposed that on 02.08.2015, he was posted as SHO of Police Station Longowal. On that date, he called Draftsman Dharminder Singh and at the pointing out of PW1 Tarsem Chand, a scaled site-plan Ex.PT was prepared by Draftsman Dharminder Singh which was handed-over to the said witness. Photographer Bhupinder Singh handed over photographs Ex.MO/7 to Ex.MO/16 to the said witness. The same were taken into police possession vide recovery memo Ex.PV attested by Bhupinder Singh and other witness/es. The said witness recorded statements of the witness/es. On completion of the investigation, he prepared report under Section 173 of the 1973 Code which bears his signature.

10.9 PW9 Ravinder Sharma, Junior Assistant in the office of DTO, Barnala, in his examination-in-chief, has inter alia deposed that he has brought the summoned record in respect of the above-stated motorcycle which stood transferred in the name of one Janak Raj son of Nahar Chand, resident of Kaleka, District Barnala, on 24.12.2009

and till examination of the said witness, the said vehicle was in the name of the said Janak Raj.

10.10 PW10 Bhupinder Sharma, in his examination-in-chief, has inter alia deposed that he is running a photographer shop in the name of Mintu Studio at Longowal. On 10.09.2015, he was called by the police in the house situated near Doctor Dhaula. The said witness clicked the photographs at the spot. Subsequently, the said photographs were produced before the Investigating Officer which were taken into police possession through a recovery memo Ex.PV. Photographs are Ex.MO/2 to Ex.MO/16. The same depict the true place of occurrence clicked by the said witness and are free from retouching.

10.11 PW11 Constable Chamkaur Singh, in his examination-in-chief, has filed his affidavit Ex.PW mentioning that on 12.08.2015, Constable Gurinder Singh took out the case property from malkhana of the said Police Station through ticket no.108 of that date and handed-over the same to the said witness in an intact condition for delivery thereof to FSL, Mohali. In terms of the directions given by Head Constable Gurinder Singh, the said witness reached the office of DPO Sangrur and got the said articles forwarded. The said witness deposited the said case property in FSL, Mohali. On return to the Police Station, he deposited the receipt with MHC of the said Police Station. Till the said case property remained in his possession, it was not tampered with.

11. As observed earlier, through the impugned judgment and order, the appellant has been convicted/ sentenced under Sections 302, 324 and 323 of the 1860 Code. Therefore, first of all charge under Section 302 of the said Code is being dealt with. The said section punishes murder. Section 299 of the said Code defines culpable homicide whereas Section 300 thereof defines murder. To prove a charge under the said section, the prosecution is required to establish ingredients contained in the said two sections. In terms of Section 300 of the said Code, act/conduct of an accused should not come within the exceptions provided under it. In other words, if it comes within such exceptions, the act committed cannot be treated as murder. Therefore, to prove an offence of murder, the prosecution in the present case was required to establish any one of the four conditions of the said section. Mental attitudes mentioned in Section 300 of the said Code were explained by the Hon'ble Supreme Court in its decision "**Rajwant Singh & another Vs. State of Kerela**", AIR 1966 SC 1874 while referring to its celebrated decision in "**Virsa Singh Vs. State of Punjab**", (1953) SCR 1495. Relevant observations made in respect thereof are reproduced as under:

"8. The argument requires close examination. Two offences involve the killing of a person. They are the offence of culpable homicide and the more heinous offence of murder. What distinguishes these two offences is the presence of a special mens rea which consists of four mental attitudes in the presence of any of which the lesser offence becomes greater. These four mental attitudes are stated in Section 300 IPC as

distinguishing murder from culpable homicide. Unless the offence can be said to involve at least one such mental attitude it cannot be murder.

9. The first clause says that culpable homicide is murder if the act by which death is caused is done with the intention of causing death. An intention to kill a person brings the matter so clearly within the general principle of mens rea as to cause no difficulty. Once the intention to kill is proved, the offence is murder unless one of the exceptions applies, in which case the offence is reduced to culpable homicide not amounting to murder.

10. The second clause deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is two-fold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be the likely consequence of the intended injury. English Common Law made no clear distinction between intention and recklessness but in our law the foresight of the death must be present. The mental attitude is thus made of two elements- (a) causing an intentional injury and (b) which injury the offender has the foresight to know would cause death.

11. The third clause discards the test of subjective knowledge. It deals with acts done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the

consequences or not. As was laid down in Virsa Singh v. State Of Punjab [1953] SCR 1495 for the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established.”

12. In “**Jai Prakash Vs. State (Delhi Administration)**”, (1991) 2 SCC 32, in respect of third attitude prescribed in Section 300 of the 1860 Code, the Hon’ble Supreme Court has observed as under:

“13.xxxx xxxx xxxx xxxx
 In Clause Thirdly the words "intended to be inflicted" are significant.; As noted already, when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the Court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in **Virsa Singh's case** the weapon used, the degree of force released in wielding it, the antecedent relation of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature

and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered

14.xxxx xxx xxx

15.When an accused inflicts a blow with a deadly weapon the presumption is that he intended to inflict that injury..... Of course much depends on the facts and circumstances of each case.”

13. The said observations hold the field till date and have been reiterated by the Hon’ble Supreme Court in its subsequent decisions time and again.

14. In respect of the charge under Section 302 of the 1860 Code, primarily, the prosecution has examined PW-1 Tarsem Chand and PW-2 Uggar Sain, may be that the other witnesses examined by it have deposed about investigation etc. done in the matter. Above summarized deposition of PW1 Tarsem Chand establishes that on the date and at the time of the occurrence in question, he was present in his house with his wife Pushpa Devi. It also establishes that on such date and time, the appellant came to his house on his motorcycle from rear gate of such house and first of all had a conversation with the said witness in his bed room. His deposition is categoric that in such conversation, the appellant demanded Rs.2 lakhs from the said witness but he expressed his inability to pay the same because of which, the appellant insisted to demand the said money from wife Pushpa Devi of the said witness and accordingly, went to kitchen of the said house where she was preparing tea. His deposition also

establishes that the place where Pushpa Devi was preparing tea was clearly visible from the corridor where the said witness had come from his bed room. He is categorical that the appellant inflicted 7/8 blows of kirpan like weapon-kirch in abdominal area of Pushpa Devi because of which she died at the spot. His deposition further establishes that before inflicting the said injuries on her, the appellant demanded Rs.2 lakhs from her but she also expressed her inability and then the appellant inflicted the said injuries on her. Cross-examination conducted on the said witness shows that his credit in respect of such deposition could not be impeached. In such examination, he has categorically deposed that on the said date and time, the appellant had come to his house from back-side gate thereof which stood bolted but was opened by his wife Pushpa Devi when the appellant arrived there and knocked the gate. The said fact was deposed by him in such examination only on the asking of the learned defence counsel. Therefore, his omission to mention the said fact in the statement Ex.PA is inconsequential in the present case. He also is categorical in his such examination that his wife Pushpa Devi brought the appellant to the bed room whereafter he and the appellant were sitting in the said room and his wife had brought water for them. He is further categorical in such examination that he and the appellant talked for about 10-15 minutes. True it is that he has also deposed in his examination that he had lent money to the appellant on two earlier occasions and he appellant did not return the said money but he did

not state the said fact to the police. At the same time, question in respect thereof was put to him in cross-examination. Otherwise, considering the nature of the occurrence in question and the circumstances under which it was committed, he may have forgotten to disclose the said fact to the police as his wife had died. Nevertheless, his such omission has no material bearing on fate of the case in question. His deposition also establishes that the place where the deceased Pushpa Devi was preparing tea was visible from the place where they were sitting in the bed room through window of the kitchen and the said bed room was adjoining the kitchen. His cross-examination also establishes that police reached the spot in the manner deposed by him in his examination-in-chief. There is nothing in his cross-examination to doubt him about the facts deposed by him in examination-in-chief. So far as PW2 Uggar Sain is concerned, his above summarized examination-in-chief establishes that on seeing the crowd in front of house of PW1 Tarsem Chand, he went to the said house and saw that the appellant was holding the above-stated kirpan like weapon-kirch and was scuffling with PW1 Tarsem Chand. It also establishes arrival of the police at the spot and recovery of the articles deposed by him by the police from the place of occurrence in his presence. In his cross-examination, he is categorical that he entered the said house from main gate thereof and they apprehended the appellant, took him outside and then made him to sit in the vehicle. He has clearly deposed about recording of the statement of his father-

in-law PW1 Tarsem Chand. On a question put to him about location of the said kirch, he has replied that it was lying on the table when the police arrived at the spot. Therefore, cross-examinations conducted on the said two prosecution witnesses did not at all impeach their credit. Their depositions, if read in entirety, establish that on the above-stated date, time and place, the appellant caused above-stated 7/8 injuries in abdomen of wife Pushpa Devi of Tarsem Chand.

15. To prove its case, the prosecution, as stated above, has also examined PW3 Dr.Karamdeep Singh Kahal, a Medical Officer from Civil Hospital Sangrur. His above summarized deposition establishes that on 02.08.2015, he had conducted postmortem examination on dead body of the said Pushpa Devi. His affidavit Ex.PG establishes that the said Pushpa Devi had following 15 injuries on her person:

“1. Incised wound of 2x1 cm obliquely placed on the lat. Aspect of right side of chest in the lateral part along the mid axillary line, approx. 7 cm below axilla clotted blood present. On exploration of abdomen there was large amount of clotted blood in the peritoneal cavity and pleural cavity on the right side. On exploration of the chest, there was injury to the right side of the lung, clotted blood present ni the pleural cavity, there was injury to subcutaneous tissue and muscles.

2. An incised wound of 2x1 cm obliquely placed over the right side of abdomen 15 cm Lat. To umbilicus and 2 cm below subcostal margin, clotted blood present. On exploration of the abdomen, there was injury to the

subcutaneous tissues, muscles and peritoneal cavity, mixed with peritoneal fluid, there was injury with liver (right lobe).

3. Incised wound of 2x1 cm vertically placed 5 cm left to umbilicus in line umbilicus. Clotted blood present.

4. Incised wound 2x1 cm horizontally placed 4 cm medial to left Ant. Sup. Iliac spine and 5 cm above it. Clotted blood present.

5. Incised wound of 2x1 cm horizontally placed 4 cm Lat. to left Ant. Sup. Iliac spine and 5 cm above Ant. Sup. Iliac spine, clotted blood present.

6. Incised wound of 2x1 cm obliquely placed 10 cm above Lt. Ant. Sup. Iliac spine and 5 cm lateral to it. Clotted blood present.

7. Incised wound of 2x1 cm horizontally placed 11 cm above Lt Ant. Sup. Iliac spine and 5 cm Lat. to it. Clotted blood present.

8. Incised wound of 2x1 cm approx. 15 cm above left Ant. Sup. Iliac spine Horizontally placed clotted blood present.

9. Incised wound of 2x1 cm vertically placed 7 cm from midline to Lt. side, subcostal margin, clotted blood present.

10. Incised wound of 2x1 cm horizontally placed 10 cm from midline to Lt. side. Clotted blood present.

11. Incised wound horizontally placed 10 cm from midline to Lt. side. Clotted blood present.

12. Incised wound obliquely placed 12 cm below Lt. nipple. (size 2x1 cm) clotted blood present.

13. Incised wound of 2x1 cm obliquely placed in ant. Auxiliary line on left side 20 cm from midline. Clotted blood present.

14. A bruise of approx. 12 cm x 5 cm over right inguinal area. On exploration, there was clotted blood in the subcutaneous tissues on exploration of the abdomen, there was injury to the subcutaneous tissues and peritoneum. Lot of blood (clotted) in the peritoneal cavity mixed with semidigested food. On further exploration there was injury to the ant and post. Wrap of stomach.

15. Clotted blood was present in the nostril. On an exploration, there was injury to the underlying soft tissue.”

16. Postmortem report Ex.PH and pictorial diagram Ex.PH/1 show location of the injuries caused to the said Pushpa Devi. The said injuries are stated to have been caused by the above-stated kirpan like kirch in her abdominal area. Deposition of PW4 Dr.Kahal also establishes that the deceased died because of the said injuries which were ante-mortem and were sufficient to cause death in the ordinary course of nature. Depositions of PW5 Inspector Palvinder Singh and other witness/es establish the investigation carried out by the police for getting autopsy on the dead body of the said Pushpa Devi done. Cross-examination conducted on the prosecution witness/es does not at all show that the injuries to Pushpa Devi were caused in any other manner by anyone else. Rather the depositions of the above-stated two material witnesses establish that only the appellant caused such injuries to her in the above-stated manner which led to her immediate death and further that such injuries were caused to her with an intent to cause her death. The said injuries have also been proved to be ante-mortem and sufficient to cause death in the ordinary course of

nature. The said facts clearly establish mental attitude/s is provided in Section 300 of the said Code. No exception provided under Section 300 of the 1860 Code has been pleaded, proved and established by the appellant. The plea of false implication taken by appellant, therefore, is not at all borne out of the record. There is no evidence in that regard. After all, the appellant was brother of daughter-in-law of Tarsem Chand. The said relationship establishes their proximity to each other and vulnerability in the same. In that view of the matter, PW1 Tarsem Chand would have thought thousands times before falsely implicating the appellant for commission of murder of his wife. If someone else would have caused the said injuries, PW1 Tarsem Chand would have been the last person to falsely implicate the appellant for causing such injuries by sparing the actual perpetrator. The appellant was apprehended from the spot and was handed-over to the police therefrom. No other person except PW1 Tarsem Chand and Pushpa Devi were present in the house when the appellant caused the said injuries. In view thereof, plea of false implication taken by the appellant is nothing but a ploy to falsely defend himself. Such plea, therefore, cannot be accepted. Through the impugned judgment, the appellant has firstly been convicted by the Learned Sessions Judge for a charge under Section 302 of the 1860 Code. The finding/s given by it to render such conviction is/are in consonance with the observations made in the present judgment and therefore deserve to be confirmed.

17. Through the said judgment, the appellant has also been convicted under Sections 323 and 324 of the 1860 Code. An offence of hurt is defined under Section 319 thereof. Section 321 of the said Code talks of voluntarily causing hurt, whereas, Section 323 thereof punishes an act of voluntarily causing hurt. Section 324 of the said Code punishes voluntarily causing hurt by dangerous weapons. The above summarized deposition of PW1 Tarsem Chand establishes categorically that when he intervened in the matter and raised an alarm, the appellant scuffled with him and during the said scuffle, PW2 Uggar Sain reached the spot. Deposition of PW2 Uggar Sain also establishes that when he entered the house in question, the appellant was armed with a blood-stained kirch and was scuffling with his father-in-law Tarsem Chand. Despite put to lengthy cross-examinations, defence could not cull out anything from them so as to discredit them in respect of their depositions in examination-in-chief. Deposition of PW5 Inspector Palvinder Singh establishes that after the occurrence in question, PW1 Tarsem Chand was taken to Civil Hospital, Sangrur and was got medico-legally examined there on 01.08.2015. Deposition of PW4 Dr. Baljeet Singh has established such examination of the said witness in the said hospital and detection of one incised wound on frontal aspect of middle phalynx of middle finger of his left hand and one lacerated wound on frontal aspect of his middle finger of such hand. The said witness has proved medico-legal examination report Ex.PJ of PW1 Tarsem

Chand. A perusal of the said document shows that PW1 Tarsem Chand was examined by the said witness in the said hospital on 01.08.2015. Pictorial diagram Ex.PJ/1 establishes location of the injuries detected on the person of PW1 Tarsem Chand. There is no evidence on record to hold or prove that from the place of occurrence, PW1 Tarsem Chand was taken to any other place or that he went somewhere else in the interregnum. Deposition of PW5 Inspector Palvinder Singh and PW8 SI Satnam Singh, rather, establish that from the place of occurrence, PW1 Tarsem Chand was directly taken to Civil Hospital Sangrur and was medico-legally examined there by PW4 Dr.Baljeet Singh. The said witnesses, therefore, establish that the injuries referred to in MLR Ex.PJ were caused by the appellant in the above-stated manner on the above-stated date and time. There is no other evidence on record to conclude or hold that the same were not caused by the appellant or were caused by someone else. Once it is so, it comes out that the prosecution has also proved charges under Sections 323 and 324 of the 1860 Code against the appellant beyond a shadow of reasonable doubt.

18. Before proceeding further, it is necessary to notice the star argument of learned counsel for the appellant that depositions of the material prosecution witnesses i.e. PW1 Tarsem Chand, PW2 Uggar Sain and PW5 Palvinder Singh are materially discrepant. No doubt the said argument appears to be attractive in the first go. However, if one goes deep into it, it comes out that it deserves

rejection. In fact, in respect of material aspects of the prosecution case that the appellant caused above-mentioned injuries to Pushpa Devi and PW1 Tarsem Chand, there are no discrepancies at all in the depositions of the said three prosecution witnesses. No doubt if one peruses deposition of PW5 Inspector Palvinder Singh minutely, it is found that he has inter-alia deposed that he did not record the DDR about receipt of information in the present case; that when he reached the spot some persons were inside the house; that he does not know as to what demand was raised by the appellant; that there was no endorsement in the ruqa to transmit copy of FIR but copy of the FIR was brought; that endorsement Ex.PA/1 contains overwriting about time and designation; that he did not notice blood on clothes of PW1 Tarsem Chand and the appellant; that he did not touch weapon of offence and waited for the expert to collect fingerprints therefrom; that name of owner of the recovered motorcycle was not known till investigation remained with him; that blood lying on the floor was semi-liquid and on body of Pushpa Devi had clotted; that he did not conduct investigation in respect of mobile or SIM lying in the bag; and that he did not record any separate DDR for interrogating the appellant. At the same time, his such depositions are not at all in material contradiction to the set-forth and proved material prosecution case. His such depositions, therefore, cannot at all be treated materially discrepant in the present case going to the root thereof so as to create a doubt in the same. PW1 Tarsem Chand is

categoric that gate of the house was bolted but was opened by Pushpa Devi when the appellant knocked the same. Prosecution case since beginning is that public had entered the house of PW1 Tarsem Chand before arrival of the police. Therefore deposition of PW1 Tarsem Chand and PW2 Uggar Sain that public had come inside the house after arrival of the police appears to be by inadvertence and cannot be treated as a material discrepancy. PW5 Inspector Palvinder Singh himself admits that daughter-in-law Komal of PW1 Tarsem Chand and her husband were not present at the time of occurrence and in fact they did not come to the house in question on the date in question. In view of his such deposition, no question of he recording their statements could have arisen in the matter in question. Therefore, the said depositions of PW5 Palvinder Singh are inconsequential and have no strength to create a doubt in the above-stated prosecution case and evidence. Furthermore, at the most, the said depositions will bring the investigation conducted by the said witness to the level of a defective investigation. It may also be said that he failed to conduct proper investigation. At the same time, the Hon'ble Supreme Court, in respect of consequences of such an investigation, in "**Dhanraj Singh @ Shera Vs. State**" 2004 SCC (Criminal) 851 observed as under:-

"5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of

*the investigating officer if the investigation is designedly defective. (See **Karnel Singh vs State of M.P.:1995CriLJ 4173**).*

6. In **Paras Yadav and Ors. v. State of Bihar: 1999CriLJ1122** it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined *dehors* such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in **Ram Bihari Yadav v. State of Bihar and Ors. : 1998CriLJ2515** if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view as again re-iterated in **Amar Singh v. Balwinder Singh and Ors., : 2003CriLJ1282**. As noted in **Amar Singh's case** (*supra*) it would have been certainly better if the fire arms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version failure or omission or negligence on part of the IO cannot affect credibility of the prosecution version.

8. The stand of the appellants relate essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. ”

19. The alleged defective investigation, if any, further, cannot be treated to have prejudiced right to fair defence of the appellant and therefore, is inconsequential in the present case. Dehors the said investigation, the prosecution and its witnesses have proved the said offences against the appellant to the hilt.

20. True it is that the learned counsel for the appellant have also vehemently contended that no independent witness was examined by the prosecution in the present case and therefore, the appellant deserves to be acquitted on the said ground and further that PW1 Tarsem Chand and PW2 Uggar Sain are interested witnesses, they being relatives of the said Pushpa Devi. At the same time, as is evident from the contents of Ex.PA leading to the FIR in question and deposition of PW1 Tarsem Chand, when the occurrence in question took place there was no one else than the appellant, PW1 Tarsem Chand and the said Pushpa Devi present in the house in question. All including the police are stated to have reached the spot after the occurrence had taken place and the said Pushpa Devi had died at the spot. Even daughter-in-law Komal of PW1 Tarsem Chand as well as step-son Subhash Kumar were not present in the house at such time. In view thereof, it comes out that when the murder of Pushpa Devi was committed, it was not witnessed by anyone else than PW1 Tarsem Chand and when the above-mentioned injuries were caused to PW1 Tarsem Chand, the occurrence in question was not witnessed

by anyone else than PW1 Tarsem Chand and PW3 Uggar Sain. In the absence of anyone else witnessing the commission of the said offences, it was impossible for the prosecution to produce any other witness of the same. If it would have done so, the same would have falsified its case and version. Therefore, once no one else witnessed the occurrence in question, plea of non-examination of any other person in support of the prosecution case has no legs to stand not to talk of weakening it and its evidence. It is also equally true that PW1 Tarsem Chand and PW2 Uggar Sain were close relatives of Pushpa Devi. However, the above-referred to facts/evidence establish that they were the only witnesses of the occurrence in question. In view thereof, they cannot at all be treated as interested witnesses. They in fact were the true witnesses of the occurrence and have deposed about the facts constituting the same. In respect of testimony of a related or interested witness, a three Judge Bench of the Hon'ble Supreme Court in "**Dalip Singh Vs. State of Punjab**", AIR 1953 SC 364, observed as under:-

*"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this court endeavoured to dispel in **Rameshwar v. The State of Rajasthan**. We find, however,*

that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel.

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

This is not to say that in a given case a Judge for reasons special to that case and to that witness cannot say that he is not prepared to believe the witness because of his general unreliability, or for other reasons, unless he is corroborated. Of course, that can be done. But the basis for such a conclusion must rest on facts special to the particular instance and cannot be grounded on a supposedly general rule of prudence enjoined by law as in the case of accomplices."

21. Again in **“Masalti Vs. State of U.P.”, AIR 1955 SC 202**, the Hon’ble Supreme Court, in respect of argument raised about a partisan or interested witness, observed as under:-

“Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to

belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. 51 S.C.-IO Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

22. To the same effect are the decisions in “**State of Punjab Vs. Jagir Singh**”, (1973) SCC (Crl.) 886; and **Lehna Vs. State of Haryana**, (2002) SCC (Crl.) 526. In “**State of Rajasthan Vs. Kalki**”, (1981) SCC (Crl.) 593, a three Judge Bench of the Hon’ble Supreme Court, while differentiating between an interested witness and a related witness, observed as under:-

“5. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the

deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents."

23. The said observations hold the field till date and have been reiterated by the Hon'ble Supreme Court in its later decisions time and again.

24. If the said observations are applied to the present case, it comes out presence of PW1 Tarsem Chand and PW2 Uggar Sain where occurrence in question took place is natural. In surrounding circumstances and probability of the present case, on scrutinizing their depositions, it is found that the same are true, credible, cogent and worth credence. There is nothing on record to hold their depositions as interested. Plea raised by the learned counsel for the appellant that depositions of the said two witnesses should be discarded as they are related witnesses, therefore, has no substance and therefore, cannot be accepted. Motorcycle, bag, currency note,

purse and mobile have been deposed to be belonging to the appellant and have duly been proved to have been recovered from the place of occurrence. Therefore argument on behalf of the appellant in respect thereof has also no substance. The decision relied upon by the learned counsel for the appellant is of no help in the present case. Further, in that decision there was a delay in lodging the FIR and it was an appeal against acquittal. Deposition of wife of the deceased in the said matter was not found truthful. Such are not the circumstances in the present case.

25. A perusal of the impugned judgment of conviction establishes that it is as per evidence on record as well as the law applicable to the facts and circumstances of the case. It has dealt with the evidence in minute details. Reasoning given and findings rendered in it are as per evidence. Sentence imposed on the appellant is also as per Section 302 of the 1860 Code. Therefore the impugned judgment of conviction and order of sentence do not call for interference under Section 386(b) of the 1973 Code. The same are accordingly confirmed. The present appeal is therefore dismissed.

26. No other argument was addressed.

27. Pending applications, if any, are disposed off.

(ALKA SARIN)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

May 29, 2026

sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	