

Sl. No.6

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 122 of 2015

CRAN 3 of 2019 (Old CRAN 3118/19)

Sk. Alam & Ors.

Vs.

State Of West Bengal

For the Appellants : Mr. Subhrojyoti Bhowmick
Mr. Anirban Banerjee
Mr. Pradipta Siddhanta

For the State : Md. Anwar Hossain
Ms. Sreyashee Biswas

Heard on : 17.08.2022

Judgment on : 14.11.2022

Ananya Bandyopadhyay, J.:-

The appeal is directed against the judgment and order of conviction dated 29.01.2015 and 30.01.2015 passed by the Ld. District and Sessions Judge, Bolpur, Birbhum in Sessions Trial No. 1 (August) of 2014, arising out of Sessions Case No. 67 of 2013 convicting the appellants under Section 302 of the Indian Penal Code and sentencing them to suffer imprisonment for life and to pay fine of Rs. 5,000/- each.

Prosecution case alleged against the appellants is to the effect that on 20.09.2009 at about 1 pm, residents of Lalpool, Line Par namely Sk Alam, his wife Afroza Bibi, his elder daughter-in-law Sakina Bibi, son Nayeem Sk and Nazir Molla, son of Late Raghu Molla, Bapi Sk, Sk Tinku and others called the victim Sk Asif alias Babunia, to the house of the aforesaid Sk Alam intending to murder him out of grudge and malice. The complainant's wife, sister and mother-in-law hastened to the house of Sk Alam as a result of the clamour and saw Sk Alam and others as aforesaid assaulting his son with deadly weapons screaming to kill him vociferating that the victim cannot be allowed to live. The complainant's wife, sister and mother-in-law implored for his son's life but in vain. They too were hurt and in their presence the victim was killed. The complainant learnt about the incident on his return to home. He prayed for the punishment of the miscreants who had brutally murdered his son in presence of his mother, sister and grandmother. The complaint was scribed by Sk Selim dictated by the complainant Sk Abul duly signed by Sk Selim and Sk Nazrul.

Based on the aforesaid written complaint Bolpur PS case No.163/09 dated 20.09.2009 was registered under Sections 302/34 against Sk Alam, son of Late Khudu Sk, Afroza wife of Sk Alam , Sakina Bibi, Nayeem Sk son of Sk Alam, Nazir Molla son of Late Raghu Molla, Bapi Sk son of Karim Sk, Sk Tinku Son of Sk Sattar and others. Investigation ended in the submission of the chargesheet on 18.12.2009. Charge was framed against Sk Alam, Nayeem Sk, Sakina Bibi, Sk Tinku, Sk Sabir and Afroza

Bibi to which they pleaded not guilty and claimed to be tried on 11th August, 2014.

The Ld. Advocate for the appellants submitted that the prosecution failed to establish the place of occurrence of the offence. Proper evidence was not adduced to identify the place of occurrence. It was discriminatory to hold 3 out of 6 accused persons to be guilty in exclusion of others. The prosecution evidence was entirely based on the deposition of PW 2, PW 3, PW 4 and PW 6 being the close relatives of the victim exacerbated with exaggerations liable to be disbelieved.

The prosecution evidence was impacted with contradictions and embellishments to be discredited. The seized offending weapons were not examined through the fingerprint expert to ascertain the involvement of the appellants in the alleged offence. The motive to commit the crime was not proved by the prosecution, neither any independent witness or passerby was brought forth to depose in the case as the offence was committed in the broad day light.

The prosecution failed to establish its case beyond reasonable doubt and therefore, the appeal is liable to be allowed.

The Ld. Advocate for the State submitted that the prosecution witnesses in unison narrated the ghastly incident and identified the place of occurrence of the offence and the manner in which the crime was committed. The offending weapons were recovered, the wearing apparels were seized. The medical report confirmed the injuries inflicted on the victim involving the offending weapon. The evidence of prosecution

witnesses majorly being the close relatives of the victim cannot be disregarded. The prosecution has been successful to establish its case and, therefore, the appeal is liable to be dismissed.

PW 1 Sk Abul the father of the victim stated that on 20th September, 2009 at about 1 pm he was informed that his son was murdered by someone in the house of Alam Sk. He retreated from his field and near Lalpool he learnt that his son was taken to the hospital. The police had visited the house of Sk Alam where he was summoned. He thereafter found Sk Alam, Nayeem, his nephew and his daughter-in-law arrested at the Police Station. He filed a written complaint in the police station scribed by Sk Selim who read over the contents to him. He, thereafter, signed it and the said complaint was marked as Ext. 1.

During his cross-examination he stated that two of his sons namely Safique and Rabi had criminal antecedents. The police arrested Alam, Nayeem, Sakina and Tinku on the date of the incident. He further stated the victim was arrested by Police on earlier occasion on distinct allegations and denied his son to be an antisocial. Afroza one of the accused persons had filed a case against him and his family members after a month of his son's death.

PW 2 Laili Bibi stated that her son was murdered 5 years ago. At 1 pm, she reached the house of Sk Alam situated on the other side of the railway track on hearing commotion. She found Alam, Nayeem, Afroza, Sakina and 10 to 12 other persons assaulting her son with Lathi, bamboo sticks and wooden plank. The victim collapsed on the ground near the

bathroom. PW 2 and the victim's wife pleaded the assailants to leave her son but in vain. The victim's child was placed on his chest to save him but the child was removed by Alam. Afroza brought two axes. Alam and Nayeem inflicted blows with those axes on the head of the victim. Thereafter, they left the place. She took her son to the hospital at Bolpur where the Doctor declared him dead.

During her cross-examination she stated that she was examined by the Investigating Officer on the date of the incident at the police station. She along with her mother and daughter-in-law Sahana Bibi were in the house when she heard the hue and cry. Her mother sustained injury on her left hand in her endeavour to save the victim from the assailants along with herself and her daughter-in-law who were eventually overpowered by the miscreants. She stated to have told the police that the victim was assaulted near the bathroom of Alam and stressed on the fact that the courtyard and the bathroom were at the same place. She volunteered to have witnessed the entire incident and mentioned the names of real culprits.

PW 3 the wife of the victim stated to have reached the place of occurrence along with her child and found Sk Alam, Nayeem Sk, Sakina Bibi, Karim, Afroza, Bapi, Tinku, Nujibar assaulting her husband with a lathi. Her request to leave her husband was denied. She placed her ten months old baby on the chest of her husband to save him, who was eventually thrown away by Sk Alam. Afroza brought two axes with which Sk Alam and Nayeem assaulted her husband on his head claiming that he

should not remain alive. The assailants left the place. The victim was taken to the hospital where the doctor declared him dead. She was accompanied by her mother-in-law, grandmother and aunt.

During her cross-examination she stated that she went to the house of Alam over Lalpool bridge along with her brother-in-law, parents-in-law, aunt and grandmother. About 6 to 7 persons were also present. She was examined by the Investigating Officer near the bridge on the date of the incident. Her husband was arrested by police on false allegation earlier. Her grandmother sustained injury to save her husband and her baby incurred injury on her lip after she was thrown away by Alam and was treated by a quack Doctor. Her father-in-law was in the house when she received the information of the incident.

PW 4 Hasina Bibi stated that the victim was his nephew who was murdered at the courtyard of the house of Sk Alam. The house of Sk Alam was visible from her house with a railway track running in between the two houses. The commotion made her rush to the house of Sk Alam where she found the victim being assaulted near the bathroom of Sk Alam with lathi resulting in his fall. He was assaulted by Alam and Nayeem by two axes given to them by Afroza. The victim's wife had placed the child on the chest of her husband, who was thrown away by Alam. He continued to assault the victim by the axes on his head along with Nayeem. The nephew and son-in-law of Alam Sk also assaulted the victim. Nobody came to rescue and the assailants left the place. The victim was taken to

the hospital by his mother while PW 4 returned home. She was examined by the Investigating Officer.

PW 5, Jay Pal was declared hostile by the prosecution.

PW 6, Amina Biwi, the grandmother of the victim stated to have reached the place of occurrence at the house of Alam where the victim was being assaulted. They tried to save the victim by placing his child on his chest who was thrown away by Alam. The wife of Alam had given two axes to Nayeem and Alam with which they assaulted the victim on his neck. She was assaulted on her left hand sustaining bleeding injury. She stated that the incident took place in the house of Alam near the lavatory by the side of railway line. The victim was taken to the hospital and died subsequently. She stated that the victim had been arrested by the Police on several occasions.

PW 7, Sk Selim stated on being informed by his sister Sahana Bibi about the murder of the victim he rushed to the house of Sk Alam and found the victim lying near the bathroom by the side of the courtyard of Sk Alam. He along with Safique, mother and wife of the victim took him to the hospital where he was declared dead. Police held inquest over the deadbody in his presence along with other witnesses and his signature on the inquest report was marked as Exhibit 2.

PW 8 Dr. Dipanjan Bagchi stated he had been a Medical Officer attached to Bolpur BPHC and was a witness to the inquest on the deadbody of the victim and his signature was marked as Ext. 2/1.

PW 9 Chandra Majhi stated to have been a witness to the seizure of wearing apparels of the victim and his signature on the seizure list was marked as Ext. 3.

PW 10 Tapan Kumar Banerjee stated he had accompanied SI Partha Sakha Mondal and SI Kamakshya Charan Mondal near Lalpool, Bolpur concerning seizure of two bamboo sticks and two axes and his signature to the seizure list was marked as Ext.4 and the said articles seized on 20.09.2009 were marked as Mat Ext I collectively. His signature as witness to seizure of control earth and blood stained earth by the Investigating Officer vide a seizure list was marked as Ext. 5.

PW 11 Sk Safique stated the victim was his brother and being informed about the murder he rushed to the house of Alam and took his brother to the hospital by a Rickshaw where the Doctor declared him dead.

PW 12 Partha Sakha Mondal stated on 20.09.2009 he was the S.I. of Police attached to Bolpur PS. and had prepared two seizure lists along with the Investigating Officer of the instant case. His signatures on the said seizure list were marked as Ext. 4/1 and 5/1. One axe, two bamboo sticks, control earth, blood stained earth seized under the aforesaid seizure list were identified as MAT Ext. I and II.

During his cross-examination he stated that the axes and bamboo sticks were recovered *“from near the courtyard of accused persons by the side of railway line. Alam was present when the articles were seized.”*

PW 13 Dr. Bhabaranjan Sikdar held the postmortem examination over the deadbody of the victim on 20.09.2009 brought and identified by Constable 138, Chandra Majhee in connection with Bolpur PS UD Case No. 154 of 2009. He found the following injuries.

“I found deep cut injury to scalp (Rt.)-4 inch X ½ inch X ½ inch (Left)-2 inch X ½ inch X ½ inch. I also found haematoma left parietal and frontal region of cerebral cortex. Both parietal bones were fractured. There was laceration on frontal lobe of cerebral cortex. I found heart empty condition and both lung were congested. Stomach and bladder were empty. Liver, spleen and kidneys were congested.”

He did not find any defence injury and opined to the Court that the injuries had been caused by the blow of axe.

PW 14 Kamakshya Charan Mondal was the Investigating Officer at the relevant time on 20.09.2009. Inspector Sachindranath Poriya registered Bolpur PS case No.163 of 2009 treating the information of PW 1 as a part of the FIR whose handwriting and signature were known to him and the said FIR was marked as Ext. 1/1. He was endorsed to conduct the investigation. He visited the place of occurrence within the compound of the house of the Alam by the side of courtyard and prepared a rough sketch map with index marked as Ext. 7. He recorded the statements of the available witnesses, seized the blood stained earth, controlled earth from the place of occurrence in presence of the witnesses vide a seizure list marked as Ext. 5/2. He also seized the wearing apparel of the deceased from Constable Chandra Majhi in the presence of witnesses on

20.09.2009 at about 16.15 hours. He arrested Sk Alam, Nayeem Sk, Sakina Bibi, Tinku Sk , Sk Sabir. He had seized two axes and two bamboo sticks on 20.09.2009 from Sk Alam under a seizure list marked as Ext.4/2 and identified the seizure articles marked as MAT Ext. I. He held the inquest of the dead body of the victim in presence of the witnesses and the inquest report was marked as Ext. 2/2. He had not sent the axes, bamboo sticks, blood stained earth for forensic examination. He collected the post mortem report and submitted chargesheet. He had arrested the accused persons from their respective houses at Lalpool and Darjipatty. He further stated that the witness Laili Bibi did not tell him that the victim was assaulted near the bathroom of Sk Alam. The witness Sahana Bibi did not tell him that Alam and Nayeem assaulted her husband.

Assailing the evidence as aforesaid it appears that the Ld. Advocate for the appellant argued that the place of occurrence of the offence could not be substantiated through evidence. The rough sketch map of the place of occurrence marked as Ext. 7 denoted the house of appellant Sk Alam and kathgola situated on the railway line marked as "F" in the index. The kitchen room was marked as "G" in the index. The courtyard of the house of Sk Alam on the railway line was marked as "H" in the index and the place of occurrence was marked as "I", in the area adjacent to the courtyard of the house (H) of Sk Alam (F). At the time of adducing evidence of the Investigating Officer Kamakshya Charan Mondal i.e. PW 14, the rough sketch map with index was marked as Ext. 7. PW 14 as aforesaid was not controverted during the cross examination with regard to the

validity and authenticity of the rough sketch map along with index denoting the place of occurrence. PW 14 during his cross examination stated that “the place of occurrence was shown to him by the informant.”

PW 14 stated that the *“incident took place within the compound of the house of Alam by the side of his courtyard.”* PW 2 Laila Bibi had deposed that her son was assaulted by the assailants who thereafter fell on the ground near the bathroom. During her cross examination she stated that the courtyard and the bathroom were at the same place.

PW 3 Sahana Bibi also stated that her husband the victim was assaulted at the house of Sk. Alam.

PW 4 Hasina Bibi stated to have rushed to the house of Alam Sk where the victim was assaulted near the bathroom of Alam Sk. During her cross examination PW 4 stated one Girish resided on the east of the house of the appellant Sk Alam but not by the side of his house. This particular statement of PW 4 is corroborated by the rough sketch map marked as Ext. 7 wherein the house of Girish is shown to be situated at the point “D” in the index on the eastern side with the house of Ramesh Bhakat in between marked as “E” which finds corroboration with the evidence of PW 4 where she stated that the house of Ramesh Bhakat is situated *“to the contiguous east of the house of Alam.”*

PW 5 stated in his deposition that he rushed to the house of Alam Sk hearing an untoward incident to have taken place and found Babunia, the victim lying there who might have been dead. During his cross examination PW 5 stated the deadbody of Babunia was not lying by the

side of railway track. The deadbody was not lying to the west of the house of Alam. It was lying by the side of the Lalpool road. From the rough sketch map marked as Ext. 7 Lalpool Road is marked as "B, B1" and the Lalpool is marked as "M" which is adjacent to the place of occurrence marked as "I".

PW 6 Amina stated the incident took place in the house of Alam, near the lavatory by the side of the railway line.

PW 7 Sk Selim stated he found that the victim lying near the bathroom by the side of the courtyard by the Alam.

PW 11 Sk Safique stated that he rushed to the house of Alam being informed that his brother was murdered wherefrom he took his brother to hospital. The evidence of the prosecution witnesses as stated above unequivocally establishes the incident to have occurred within the compound of the house of Sk. Alam, aptly corroborated by the rough sketch map of the place of occurrence marked as Ext. 7. Accordingly, in my opinion the prosecution had successfully established the place of occurrence of the incident. The lapse on the part of the prosecution to specifically identify the placement of the 'bathroom' or 'lavatory' in the rough sketch map is negligible.

The document marked as Ext 4/2 pertains to the seizure list regarding seizure of two sharp axes and two bamboo sticks. The seizure of the aforesaid articles took place on the date of the incident i.e. 20.09.2009 between 4.25 to 4.30 pm at Lalpool near the railway track on the western side of the dwelling house of the Sk Alam. The articles were seized from Sk

Alam in the presence of SI Partha Sakha Mondal and SI Tapan Kumar Banerjee marked as Ext. 4/1 and Ext. 4. He further stated that “*the four above-noted articles as Alamat of the case on being produced by Sk Alam at place of occurrence on 20.09.2009.*”

PW 14 in his deposition had stated that on 20.09.2009 at 4.15 pm he had arrested Sk Alam, Nayeem Sk, Sakina Bibi, Tinku Sk and Sk Sabir. He had seized two axes and two bamboo sticks on 20.09.2009 from Sk Alam and had identified the aforesaid articles seized by him which was produced in the Court as MAT Ext I.

PW 10 Tapan Kumar Banerjee deposed that on 20.09.2009, he had accompanied the SI Partha Sakha Mondal (PW 12) and SI Kamakshya Charan Mondal (PW 14) to Lalpool, Bolpur in connection with the seizure of two bamboo sticks and two axes. He identified his signature marked as Ext. 4 on the seizure list marked as Ext. 4/2. He further identified the articles seized on that day marked as MAT Ext I collectively.

PW 12 Partha Sakha Mondal stated that on 20.09.2009, PW 14 i.e. Kamakshya Charan Mondal had prepared a seizure list in connection with the seizure of one axe and two bamboo sticks wherein his signature was marked as Ext. 4/1. He further identified the articles marked as MAT Ext. I.

During his cross examination PW 12 stated that the axes and bamboo sticks were recovered from the place “*near the courtyard of the accused persons by side of the railway line*”. Sk Alam was present when the articles were seized.

The prosecution has aptly proved the recovery of the offending weapons in presence of the appellant Sk Alam.

The inquest report marked as Ext. 2/2 mentioned the nature of head injury sustained by the victim which might have been caused by sharp/blunt weapon.

The inquest report was signed by Sk Safique, Sk Selim and Dr. Dipanjan Bagchi being PW11, PW 7 and PW 8 respectively.

PW 13 Dr. Bhabaranjan Sikdar had conducted postmortem examination of the deceased on 20.09.2009 and found the following injuries.

He found deep cut injury to scalp (Rt.)-4inch X ½ inch X ½ inch (left) -2 inch X ½ inch. He also found haematoma left parietal and frontal region of cerebral cortex. Both parietal bones were fractured. There was laceration on frontal lobe of cerebral cortex. He found heart empty condition and both lungs were congested. Stomach and bladder were empty. Liver, spleen and kidneys were congested. He further opined that the cause of death was intracerebral haemorrhage due to blow over head with hard object over parietal and frontal bones. The postmortem report prepared and signed by him was marked as Ext. 6. During his cross examination he stated that he did not find any defence injury and to the court he stated that the injuries found by him could have been caused by the blow of axes.

The statements delineated in the inquest report and the evidence of PW 13 the postmortem doctor corroborated the fact of the head injury sustained by the victim Babunia resulting in his death. The offending weapons seized by Investigating Officer in the presence of the witnesses namely PW 10 and PW 12 viz. the axes and bamboo sticks correspond to the characteristics of sharp and blunt weapons as seized. The index report further clarified the presence of Sk Safique the brother of the deceased who identified the deadbody of his brother at the Bolpur Block Primary Health Centre. PW 7 Sk Selim had been a witness to the inquest of the deadbody of the victim. The prosecution, therefore, had substantively evinced the fact of the victim being taken to the hospital after his assault by PW 7 and PW 11.

PW 2, PW 3, PW 4 and PW 5 had been eyewitnesses who in unison had stated to have seen the victim being assaulted by the appellants. To save his life, the wife of the victim had placed his child on his chest to restrain the appellants on plea of mercy and compassion. However, the child was thrown away and the victim was further assaulted by Alam and Nayeem with two axes given by Afroza. Corroborative inculpatory evidence against the other 3 chargesheeted accused namely Sakina Bibi, Tinku Sk, Sk Sabir are absent on record and rightly had been acquitted.

The Ld. Advocate of the appellant stated that the aforesaid witnesses namely Sk Alam, Nayeem Sk, Sakina Bibi, Tinku Sk and Sk Sabir were the relatives of the victim and their evidence should be discredited. In the instant case the defence could not bring forth an

instance whereby the aforesaid prosecution witnesses had any intention to falsely implicate the appellants with such heinous and grievous crime. The prosecution witnesses as aforesaid narrated the mode and manner in which the victim was assaulted. They even tried to save the victim imploring mercy to consider the fate of his child but the assailants involved in such gruesome act continued with their notoriety which was unbridled and cruel.

In **2021 SCC Online SC 660**, The Hon'ble Apex Court said that, *"The evidentiary value of the close relatives/interested witness is not liable to be rejected on the ground of being a relative of the deceased."*

In the case of **State of Uttar Pradesh vs. Kishanpal and others**¹, the Hon'ble Apex Court observed that,

17. "The plea of "interested witness", "related witness" have been succinctly explained by this Court in [State of Rajasthan vs. Smt. Kalki & Anr.](#), (1981) 2 SCC 752. The following conclusion in paragraph 7 is relevant:

"7. As mentioned above the High Court has declined to rely on the evidence of PW 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 eyewitness in the circumstances of a case cannot be said to be "interested"."

¹ (2008) 16 SCC 73

From the above it is clear that "related" is not equivalent to "interested". The witness may be called "interested" only when he or she has derived 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 eyewitness in the circumstances of a case cannot be said to be 'interested'.

18. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded.

19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness.

20. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible.

21. *In Kulesh Mondal vs. State of West Bengal*, (2007) 8 SCC 578, this Court considered the reliability of interested/related witnesses and has reiterated the earlier rulings and it is worthwhile to refer the same which reads as under:

"11. "10. We may also observe that the ground that the [witnesses being close relatives and consequently being partisan witnesses,] should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh v. State of Punjab*, AIR 1953 SC 364 in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366, para 25)

"25. 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. State of Rajasthan* (AIR 1952 SC 54 at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.'

11. Again in *Masalti v. State of U.P.* (AIR 1965 SC 202) this Court observed: (AIR pp. 209-10, para 14)

‘14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.’

The relative witnesses in the instant case could not prevent the perpetrators from assaulting the victim. They failed to seek the assistance of rescuers despite their effort to cry aloud. The child was placed on the chest of the father to induce compassion, however, the assailants disregarding the misery embroiled into the act of brutality. The evidence reveals helplessness and despair on the part of PW 2, PW 3, PW 4 and PW 5 failing to save the life of their near and dear one. They had no reason to concoct or fabricate the incident to implicate the offenders. The defence could not indicate any instance of personal rivalry between the parties.

The Ld. Advocate for the appellants stated that the prosecution evidence was exaggerated with contradictions.

In **State of Rajasthan v. Kalki**² the Hon’ble Supreme Court observed that,

“ normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to

² (1981) 2 SCC 752

mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in [Krishna Mochi v. State of Bihar](#), (2002) 6 SCC 81”

It is absolutely normal for the prosecution witnesses PW 2 to PW 5 to be devastated with intense surge of emotions at the plight of the defenceless impuissant victim surrendering himself to the wrath of the miscreants. It cannot be expected of them to remember each and every minute detail in sequence. Moreover, its natural to be susceptible to the fade of memory with time. The Hon’ble Supreme Court in **(2022) SCC Online SC 887** observed that, “*if the testimony of an eyewitness is otherwise found trustworthy and reliable the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.*”

“*The testimony of a witness in a criminal trial cannot be discarded merely because of minor contradictions or omission as observed by this Court in Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra⁵, wherein while considering the issue of contradictions in the testimony, while appreciating the evidence in a criminal trial, it was held that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. In paragraph 42 of the judgment, it has been held as under:-*

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.”

It was further contended by the Ld. Advocate for the appellant that the motive to commit the crime was not proved by the prosecution. In the case of **Bipin Kumar Mondal vs. State of West Bengal** ³the Hon’ble Supreme Court observed that,

“18. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. In Shivji Genu Mohite Vs. State of Maharashtra, AIR 1973 SC 55, this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye- witnesses of credibility, though even in such cases if a motive is properly proved, such proof would

³ (2010)12 SCC 91

strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy.

19. *It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shankar Vs. State of U.P., (1996) 9 SCC 40; Bikau Pandey & Ors. Vs. State of Bihar, (2003) 12 SCC 616; and Abu Thakir & Ors. Vs. State of Tamil Nadu, (2010) 5 SCC 91).*

20. *In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide Ujagar Singh Vs. State of Punjab, (2007) 13 SCC 90).*

21. *While dealing with a similar issue, this Court in State of U.P. Vs. Kishanpal & Ors., (2008) 16 SCC 73 held as under:*

"The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same

way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

The Investigating Officer i.e. PW 14 had collected the controlled earth and blood stained earth vide the seizure list marked as Ext 5/2 in the presence of PW 10 and PW 12 whose signatures were marked as Ext. 5/1 and Ext. 5.

The Ld. Advocate for the appellant stated that the offending weapons as well as the controlled earth and blood stained earth were not sent for the opinion of the finger print expert and also for FSL examination respectively. Any lapse on the part of the Investigating Agency to such effect in presence of strong credible evidence would not make the prosecution case fatal. The place of occurrence of the incident to be the compound of the house of appellant Sk. Alam had been established. The bathroom or the lavatory near which the victim was found to lie had not been mentioned in the rough sketch map, however, the majority of the prosecution witnesses stated that the bathroom or the lavatory was situated within the courtyard of the house of appellant Sk. Alam. The nature of the offending weapons as described by the prosecution witnesses including post mortem doctor PW 13 corroborated with the articles seized by the Investigating Officers identified by the witnesses to the seizure list in the Court marked as MAT Exhibits. PW 13, the doctor described the nature of injuries sustained by the victim on the head which corroborated with the evidence of other prosecution witnesses who stated that the victim was hit on his head by the axes. It appears that the

Investigating Officer did not try to examine any independent witness. However, in presence of strong incriminating materials failure on the part of the Investigating Officer to cite independent witnesses or to send the controlled earth and blood stained earth for FSL examination or the offending weapons to be sent for the opinion of the Fingerprint expert do not adversely affect the prosecution case. Prosecution has been able to produce credible and trustworthy evidence to establish its case. In my opinion, the prosecution has successfully proved its case beyond reasonable doubts.

The appeal is, accordingly, dismissed.

Connected applications, if any, also disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)