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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1147-DB-2010 (O&M)

Date of decision:- 11.05.2023

Balwan Singh

.... Appellant

Vs.

State of Haryana

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Naresh Kaushik, Advocate for the appellant.

Mr. Pawan Girdhar, Addl. A.G. Haryana.

Manisha Batra, J.

The present appeal has been preferred against the judgment of conviction and order on quantum of sentence both dated 05.10.2010 passed in Sessions case No. 27 of 2008, titled as ***State Vs. Balwan Singh***, registered under FIR No.201, dated 13.08.2008 at Police Station Meham, District Rohtak whereby the appellant-accused, Balwan Singh, had been held guilty for commission of offence punishable under Section 302 of IPC and had been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/-. In default of payment of fine, he was further sentenced to undergo rigorous imprisonment for one year.

2. Broad contours of the case as set up by the prosecution are that on 13.08.2008 at about 3:30 pm, the complainant, Kartar Singh, reached at police Station Meham and recorded his statement alleging

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therein that he had four sons. His eldest son Balwan was married to Babita. Balwan, Babita, their children and his younger son, Ajmer used to live in the house constructed in the plot outside the village whereas the complainant along with his other sons used to live in old house in the village. Ajmer had taken a truck on finance basis for which a sum of Rs.50,000/- had been paid by Balwan and the latter had become a partner in the truck with Ajmer. He informed that Ajmer had sold the truck about 3 months back but had not returned the money borrowed from Balwan. Balwan had demanded his money and about 4-5 days ago, Ajmer had extended beatings to him due to that reason, but the matter was patched up. He alleged that on the intervening night of 12/13.08.2008 at about 2 am, Babita wife of Balwan came to his house and informed him that under the influence of liquor, Balwan had murdered Ajmer by giving him blows with spade and had fled away from the spot. On the basis of this statement, a case under Section 302 of IPC was registered. Investigation proceedings were initiated. The police party rushed at the spot and found the dead body of the victim lying on a cot. Postmortem examination of the dead body and inquest proceedings were conducted. Statement of Babita wife of accused Balwan had been recorded. During investigation, the accused was arrested. He was interrogated and suffered disclosure statement admitting his involvement in the subject crime. He demarcated the place of occurrence and recovered the weapon of offence i.e. spade in pursuance of his disclosure statement. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused.

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3. Copies of the challan were supplied to the accused free of costs. The case was committed to the court of Sessions. On finding a *prima facie* case for commission of offence punishable under Section 302 of IPC, the accused had been charge-sheeted accordingly. He pleaded not guilty to the charge and claimed trial.

4. To substantiate its case, the prosecution examined 12 witnesses in all. **PW-1**, Surinder Singh, Constable was a formal witness who deposed about delivering special reports, **PW-2**, Dr. Mukesh Chander, deposed about conducting postmortem examination of deadbody of the victim Balwan and proved postmortem report Ex.P-5 and identified his signatures on inquest report Ex.P-4. He also identified clothing of the deceased Ex.P-6 to P-9. He also proved Ex.P-10, application moved by the police for seeking his opinion as to whether the spade recovered from the accused could be used for causing injuries to the victim, Ex.PW10/A, opinion given by him on this application and identified the spade Ex.P-11. **PW-3**, Sumit Kumar proved Ex.P12, Scale site plan of the place of occurrence. **PW-4** ASI Taqdir Singh, proved Ex.P-16. FIR and ruka Ex.P-15. **PW-5-ASI** Kulbir Singh was Moharrar Malkhana PS Meham, who deposed about deposition of the case property in the Malkhana under his charge and handing over the same for the purpose of forensic examination on different dates. **PW-6**, Ram Phal Photographer, proved photographs of the dead body, Ex.P-18 to P-20 and negatives Ex.P-21 to P-23, **PW-7**, Kartar Singh, complainant deposed in support of the allegations in the FIR and proved his statement Ex.P-15. He also identified his signatures on Ex.P-24, memo of disclosure

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statement of the accused, P-25 memo of recovery of spade, Ex.P-26, sketch of spade and identified the spade Ex.P-11. **PW-8**, Ramras deposed about attesting Ex.P-27 memo qua lifting of blood stained jute ropes and earth from the place of occurrence and about identifying the dead body of the victim. He also stated that on one occasion, he had intervened in the dispute which had taken place between the victim and the accused on issue of repayment of amount of Rs.50,000/- by the victim to the accused and had got the matter compromised. He also identified Ex.P-28 jute rope, produced in the Court. **PW-9** Sub Inspector Om Parkash deposed about joining the investigation on 18.08.2018, about arrest of the accused and about attesting memos Ex.P-24 to P-26. **PW-10** Babita was wife of the accused and an eye witness to the occurrence whose statement shall be discussed in the later part of this judgment. **PW-11** Inspector Prithvi Singh, deposed about conducting investigation and about various steps taken by him during the course of investigation leading to collection of entire incriminating evidence and justifying the prosecution of the accused for committing murder of the victim. **PW12-** Mahabir deposed that he had sold his truck bearing registration No. HR46-C-8733 to the deceased Ajmer Singh on 20.02.2018. He proved mark A photocopy of agreement to sell the truck as entered into between him and the victim and Mark B photocopy of registration certificate of that truck.

5. Statement of accused was recorded under Section 313 of Cr.P.C. wherein he pleaded false implication and claimed himself to be innocent by saying that his wife and father had strained relations with

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him and to get rid of him as well as to deprive him from ancestral property, they had falsely implicated him in this case. He was given opportunity to produce evidence in defence but did not lead any.

6. The learned trial court after appraising the evidence produced on record and considering the contentions raised by the prosecution and the accused, held the appellant guilty for commission of offence punishable under Section 302 of IPC and sentenced him in the manner as indicated above.

7. Feeling aggrieved, the instant appeal has been preferred by the appellant-accused.

8. Learned counsel for the appellant has vehemently argued that the impugned judgment and order dated 05.10.2010 were liable to be set aside as the findings as given by learned trial Court were suffering from several material infirmities and were not sustainable in the eyes of law. He argued that the learned trial Court did not apply its judicious mind. It had placed unwarranted reliance upon the testimony of PW10 Babita, who was the only eye-witness to the alleged occurrence but who had made statement which was contradictory in material particulars with prosecution version as well as self contradictory. PW-7 Kartar Singh was not an eye-witness to the occurrence and therefore, his statement being hear-say was not worthy of any credence. The medical evidence was in deviation with the evidence of PW-7 and PW-10. It was proved on record that PW-7 and PW-10 had motive to falsely implicate the appellant-accused but this fact had not been taken into consideration. While concluding, it was argued that the findings given by learned trial Court in

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the impugned judgment were liable to be reversed, the appeal deserved to be accepted and that the appellant deserved to be acquitted.

9. Per contra, learned counsel for the respondent-State argued that the findings as given by learned trial court were well reasoned. There was over-whelming evidence on record to prove that it was the appellant and none else who had committed the murder of the appellant. The testimony of PW-7 was relevant under the principle of *res gestae* and was sufficient to connect the appellant with the crime. The testimony of PW-10 Babita was also worthy of reliance to the extent to which she had supported the prosecution version and was sufficient to connect the appellant with the subject crime. The motive on the part of the appellant to kill the victim had also been established. Hence, it was urged that the appeal being devoid of any merits, was liable to be dismissed.

10. We have heard learned counsel for the appellant and learned State counsel at considerable length and with their able assistance, have minutely scrutinized the material placed on record. In our opinion, the main question which is required to be considered in this case is as to whether the prosecution had produced sufficient, cogent, convincing and reliable evidence on record to prove that the victim had died a homicidal death and that the appellant was the person who had murdered him. The medical evidence produced on record in the form of testimony of PW2, Dr. Mukesh Chander, coupled with the post mortem examination report Ex.P-5, in our opinion, is sufficient to prove that the victim had died a homicidal death. As many as 4 number of incised wounds were found on the person of the dead body which were caused by some sharp edged

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weapon. According to PW-2, the injuries so sustained were antemortem in nature and sufficient to cause death in the ordinary course of nature. These injuries obviously could not be self suffered or accidental. As such, there can be no doubt that the victim had died a homicidal death.

11. Now it is to be seen as to whether it was the appellant, who had killed the victim? It may be mentioned here that the victim was none other than the real brother of the present appellant-accused, brother-in-law of PW-10 Babita and son of PW-7 Kartar Singh, complainant. It is not in dispute that victim had been residing jointly with the appellant, PW-10 and their children in a separate house outside the vicinity of his village whereas PW-7 was residing within the village. The case of the prosecution was that the appellant had given a sum of Rs.50,000/- to the victim Ajmer in the past for purchasing some truck. Ajmer had sold that truck but had failed to give back the money taken by him from the appellant and further that on account of demand of the said money as raised by the appellant some days prior to the occurrence, the victim had even extended beatings to the appellant and feeling offended, the appellant had eliminated the victim by striking blows with a spade. The case of the prosecution mainly rested upon the testimonies of PW-10 Babita and PW-7 Kartar Singh.

12. Learned counsel for the appellant laid much stress on the point that PW-10, who was the only eye-witness to the occurrence had not supported the version of the prosecution and had deviated from the same in material particulars to that extent that she was even allowed to be cross-examined by the learned public prosecutor. He argued that her

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statement was not worthy of any credit. Undoubtedly, on a perusal of sworn deposition of PW10, Babita, it is revealed that she has not entirely supported the version as given to the police at the time of recording her statement under Section 161 Cr.P.C. and has also taken shifting and contradictory stands. In her examination-in-chief, she deposed that on the night of occurrence, she had reached home at about 9 pm and had found the victim Ajmer lying dead and smeared with blood and also stated that her husband Balwan was not present there, when she had reached home. However, learned public prosecutor had sought permission from the trial Court for allowing him to cross-examine this witness on the ground that she was suppressing the truth. Though she was not formally got declared to be a hostile witness but allowing her to be cross-examined by learned public prosecutor amounts to her being declared so. She is shown to have stated during her cross-examination that on the night of occurrence, firstly her brother-in-law, Ajmer had come to his house in a drunken condition and after having meals, he had slept and then the appellant had also reached home after consuming liquor at about 9 pm and had been watching TV when she had gone to her room. She also stated that on hearing noises from the compound, she had peeped through the window and had found her husband while hurling abuses and saying that the victim would receive beatings. She denied at that juncture that her husband had struck blows with a spade on the person of Ajmer. But at the same time, admitted that she had told the police that her husband had given blows with spade to Ajmer and had left their house. She again admitted that the appellant had inflicted blows to the victim Ajmer in her

presence. Then, while being cross-examined further by learned counsel for the appellant, she again stated that she had seen the dead body of Ajmer at about 9:30 pm, when she had come back from her father-in-law's house and had not seen any person while causing injuries to Ajmer. She stated that she had only told her father-in-law that she had seen the victim lying injured. It is revealed from her statement that she had been taking self contradictory stands during the course of her examination as a witness on the question of her being an eye-witness to the occurrence and thereby it can be reasonably inferred that she has made false deposition qua some particular facts. In view of the discussion as made above, it is to be seen as to whether evidence of this witness who was claimed to be the only eye-witness can be relied upon or not due to the reason that some part of her statement is apparently false being contradictory to her previous version. In this context, position of law may be discussed in reference to the judgments cited below.

13. In ***Ugar Ahir and others Vs. State of Bihar***, AIR 1965 SC 277, the Hon'ble Apex Court had held that, 'the maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. The court held that, hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embellishments or embroideries. It is, therefore, the duty of the court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. In ***Kulwinder Singh Vs. State of Punjab***, it was held that the 'maxim falsus in uno falsus in omnibus' does not apply to criminal cases in India as a

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witness may be partly truthful and partly false in the evidence, he gives to the Court. In ***Ranjit Singh Vs. State of Madhya Pradesh***, similar view was expressed by Hon'ble Apex Court by holding that the legal maxim 'falsus in uno falsus in omnibus' is not applicable in India and the Court has to assess to what extent the deposition of a witness can be relied upon. The court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded.

14. Reference can also be made to ***Shakila Abdul Gafar vs. Vasant Raghunath Dhoble***, reported in (2003)7 SCC 749 wherein it was held by Hon'ble Supreme Court that it is the duty of the court to separate the grain from the chaff. Falsity of a particular material witness or a material particular will not ruin it from the beginning to end. The maxim 'falsus in uno falsus in omnibus' has no application in India and the witnesses cannot be branded as liars. This principle is merely a rule of caution. It was also observed that the witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects, the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. Reference can also be made to ***Bhagwan Jagannath Markad Vs. State of Maharashtra***, reported in (2016)10 SCC 537, wherein the

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Hon'ble Supreme Court observed that while appreciating the evidence of a witness, the Court has to assess whether read as whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, draw backs and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant detail. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, that the court may reject the evidence. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Want of independent witness or unusual behaviour of witnesses of a crime is not enough to reject evidence. Mechanical rejection of evidence even of interested witness may lead to failure of justice. It is equally well settled that even the testimony of a hostile witness cannot be discarded in toto and the same can be accepted to the extent to which it supports the prosecution version. Applying the principle of law as discussed above upon the testimony of PW-10, we are of the opinion that her statement though being deviated on certain points can still be acted and relied upon and can be considered to be sufficient to prove that it was the appellant who had killed the victim Ajmer. This witness was wife of the appellant and obviously must be having some soft corner for him and that is why she clearly appears to have made efforts to shield him though in the process, she made self contradictory statement. On assessing her statement, it is quite evident that while trying to save her husband from the clutches of law, she was well aware of the responsibility which was

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on her shoulder to make a true deposition about the occurrence which had taken place in her presence and that is why some part of examination of this witness was in support of the version of the prosecution and some of it deviated. However, on separating the chaff from the grain from her statement, her deposition can certainly be relied upon to prove that the victim had been assailed by the appellant by striking blows with a spade in the presence of this witness. The truth can easily be extracted from her statement. Hence, this Court has no hesitation to hold that the part of the testimony of this witness which supported the prosecution version could certainly be relied upon and the same proves that she had seen the appellant while killing the victim.

15. The next submission of learned counsel for the appellant was that PW7 was not an eye witness to the occurrence. His statement was hearsay in nature only and hence could not be acted upon at all to prove that the appellant had committed the murder of the victim. Undisputedly, PW7 was not a direct eye-witness to the occurrence. It is also correct that hearsay evidence is not admissible in evidence. However, Section 6 of the Act, is an exception to the general rule under which hearsay evidence becomes admissible and for that purpose it is necessary that the information is conveyed to such witness before there is any lapse of time so as to develop or to cook-up a story. The statement sought to be admitted, therefore, as forming part of *res gestae* must have been made contemporaneous with the acts or immediately thereafter. For bringing hearsay evidence within the provisions of Section 6, it is required to be established that it must be contemporaneous with the acts and there

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should not be an interval which would allow any fabrication. Reliance in this regard can be placed on ***Bhaskaran Vs. State of Kerala***, 1985 Criminal Law Journal 1711, if the identity of a person as an accused of murder or any other offence is recorded simultaneously with the incident or soon thereafter, such statement is admissible as *res gestae*. In the instant case, it is proved from the record that PW-7 Kartar Singh had reported the matter to the police immediately after PW-10, Babita, his daughter-in-law had given information about the murder of his son Ajmer by his another son Balwan i.e. the appellant. His statement though not being of an eye-witness is still relevant under the principles of *res gestae* and can certainly be acted and relied upon especially in the circumstance that the same un rebutted and unchallenged.

16. The next ground of challenge as made by learned counsel for the appellant was that the trial Court did not consider the fact that the medical evidence was in deviance with the oral evidence of the witnesses with regard to the type of the weapon used for causing injuries to the victim and therefore, he strenuously argued that a dent had been created in the prosecution story. As pointed out by him, PW2 Dr. Mukesh Chander had deposed that four incised wounds which were found on the dead body of the victim could be caused by the some sharp edged weapon but the remaining injuries i.e. one abrasion and one contusion which were found on his person were caused by some other weapon. In our considered opinion, the statement of PW2 to this effect cannot be stated to be a deviance from the ocular evidence. Several incised wounds were found on the dead body of the victim which were obviously caused

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by some sharp edged weapon. As one abrasion and one contusion was also noticed on the dead body, therefore, PW-2 Dr. Mukesh Chander had stated that the same could have been caused with some other weapon. It is common knowledge that abrasions can be sustained during scuffle also. Some scuffle must have taken place between the appellant and the victim when the latter was being assaulted by the appellant and no use of weapon was required for such purpose. Therefore, only on the basis of testimony of PW-2, it cannot be stated that the weapon of offence was not one i.e. a sharp edged weapon in this regard. More so, the statement of PW-2 Dr. Mukesh Chander, was an evidence of information only and the well settled proposition of law is that if there is some variation between the medical evidence and ocular evidence, the ocular evidence shall prevail as medical evidence is basically opinionative only. In this regard reliance can be placed upon the judgment titled as ***CBI Vs. Mohd. Parvez Abdul Kayuum*** (2019)12 SCC 1, ***Sunil Kundu and another Vs. State of Jharkhand***, (2013)4 SCC 422 and ***Bastiram Vs. State of Rajasthan***, AIR 1975 SCC 1962, wherein similar observations were made. Therefore, the argument raised by learned counsel for the appellant on this point does not merit any acceptance.

17. One more point needs discussion. In the present case, the offence of murder of victim was committed in a house wherein he had been residing together with appellant and PW10 Babita. As such, the burden under Section 106 of the act was heavy upon the appellant to explain as to how the victim sustained so many incised wounds and died because of that. No doubt, Section 106 of the Act does not absolve the

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prosecution of discharging the primary burden of proving the guilt of the accused beyond doubt, but once said burden is discharged, then it becomes the duty of an accused to explain the circumstances in which death of the victim had taken place. Section 106 of the Act certainly applies to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the knowledge of the accused and when the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference and non-offering the same certainly provides an additional link in the chain of circumstances. The testimony of PW-10 Babita that shortly before the victim was murdered, both the appellant and the victim were present in the house wherein they had been residing together, has remained uncontroverted. The appellant-accused however, failed to offer any explanation about the manner in which the homicidal death of the victim had been caused. It was not his version that some stranger had entered into their house and had killed the victim. Nor it was his case that some other occupant of their house had eliminated the victim. As such, the appellant certainly failed to discharge the burden of proving the fact which was presumed to be within his knowledge within the meaning of Section 106 of the Act and this circumstance also goes against him and proves his complicity in the crime.

18. The next limb of argument raised by learned counsel for the appellant was that since the evidence as to recovery of weapon of offence was resting upon the statements of police official witnesses and had not

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been supported by the only independent witness namely, PW-7 Kartar Singh, therefore, this evidence could not be acted and relied upon. He also argued that even otherwise, the disclosure statement of accused being confessional in nature could not be considered to be admissible in evidence. However this court is not convinced with this argument. Undoubtedly, as per Section 25 of the Act inculpatory part of a disclosure statement stated to be suffered by the accused is not admissible in evidence being suffered in the custody of the police and being confessional in nature. However, Section 27 of the Act is in the form of an exception to this rule as per which, discovery of a fact not within the knowledge of the police officer as a consequence of information received from the accused is admissible in evidence. In this case, the prosecution relied upon evidence of PW-7 Kartar Singh, PW-9 SI Om Parkash and PW-11 Inspector Prithvi Singh, Investigating Officer to prove that a spade Ex.P-11 which was claimed to be used as a weapon of offence, had been recovered at the instance of the appellant. PW-7 though supported the factum of suffering of disclosure statement by the appellant in his presence and consequent recovery of the spade Ex.P-11 vide memo Ex.P-25 but during cross-examination, he denied that the appellant had suffered any disclosure statement or spade Ex.P-11 was recovered in pursuance of the same. Statements of PW-9 SI Om Parkash and PW-11 Inspector Prithvi Singh, however, on this point have remained unshattered. They were cross-examined in detail however, the credit of their statements could not be shaken. The question which arises is whether the statements of PW-9 and PW-11 cannot be relied upon due to

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the reason that they were not corroborated by the testimony of any independent evidence. In our opinion, the answer should be in the negative. It is well recognized principle of law that *prime facie* public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on this intrinsic worth and cannot be discarded merely on account of their official status and on the ground that they are interested in the success of the case. In this regard, reliance can be placed upon ***Inder Singh Versus State***, AIR 1978 SC 1971, wherein similar observations were made. In view of the above legal and factual position of law, it is held that the factum of recovery of spade Ex.P-11 at the instance of the appellant stood proved from the statements of PW-9 and PW-11 and it could not be believed that the police had planted this weapon from its own source just to falsely implicate the accused.

19. Lastly coming to the motive part. Though it was a case of direct evidence about the murder of the victim forthcoming on record. However, since it was the appellant, who had tried to attribute motive to PW-7 and PW-10 for falsely implicating him, therefore, this point is to be discussed. The plea which had been taken by the appellant in his defence to show that there was motive on the part of the witnesses to implicate him falsely in this case was that they wanted to deprive him from ancestral property and were having strained relations with him. However, he failed to produce any evidence in that regard. On the other hand, motive on his part to eliminate the victim stands established from the testimonies of PW-7 and PW-10. PW-7 had informed the police at the time of lodging FIR and also deposed that the appellant had given a sum

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of Rs.50,000/- to the victim for the purpose of purchasing a truck and the victim had subsequently sold the same but had refused to give back the above said amount to the appellant due to which he was offended. Even PW-10 also stated so and admitted that a quarrel had also taken place between the appellant and the accused prior to the occurrence due to that reason. All these acts show that the appellant was offended with the victim and hence he had a motive to kill him and it was with this motive and with the intention of causing his death that he had struck several blows on the person of the victim with a spade on the intervening night of 12/13.08.2008 while having full knowledge that thereby the death of the victim would be caused and hence, he was proved to have committed the murder of the victim. The motive is a double edged weapon. It can be used as a ground for false implication and can also be used as a ground for assault. The appellant has failed to prove that the witnesses PW-7 and PW-11 had motive to implicate him falsely but on the contrary, it is established from the testimonies of these witnesses that he had a motive to kill the victim. Therefore, the plea as taken by the appellant on this point cannot be held to be tenable and is accordingly rejected.

20. Keeping in view the above discussion, coupled with totality of the facts and circumstances emanating from the evidence available on the record, as discussed hereinabove if put together, then irresistible and inescapable conclusion that can be drawn is that it was the appellant, who committed the heinous crime in the manner as projected by the evidence produced on record. The learned trial Court after considering all these circumstances had recorded a well reasoned findings of conviction of the

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appellant and due to the discussion as made above, we see no reason as to why the same should not be upheld. Accordingly, the findings given by learned trial court are affirmed and appeal being devoid of any merit is dismissed.

22. Miscellaneous application(s), if any, also stand disposed of.

	(RITU BAHRI)	(MANISHA BATRA)
	JUDGE	JUDGE
11.05.2023		
pooja saini		
Whether speaking/reasoned		: Yes/No
Whether reportable		: Yes/No