

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 8TH DAY OF FEBRUARY, 2023

CRIMINAL APPEAL No. 5710 of 2017

BETWEEN:-

1. **MANSA @ MANSU S/O KAMAL SINGH
AGED ABOUT 30 YEARS, BORDA DHAKAD
DISTRIC UJJAIN (MADHYA PRADESH)**
2. **GOVIND SINGH S/O KAMAL SINGH
AGED ABOUT 27 YEARS, BORDA DHAKAD
DISTRICT UJJAIN (MADHYA PRADESH)**

.....APPELLANTS

(SHRI CHANDRA PRAKASH PUROHIT, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGH P.S. KAYETHA
DISTRICT UJJAIN (MADHYA PRADESH)**

.....RESPONDENT/STATE

(SHRI BHASKAR AGRAWAL GOVERNMENT ADVOCATE)

Reserved on : 30.01.2023

Pronounced on : 08.02.2023

*This appeal having been heard and reserved for judgement,
coming on for pronouncement this day, Hon'ble Shri Prakash Chandra*

Gupta pronounced the following:

J U D G E M E N T

Appellants have filed this appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the “Cr.P.C.”), against the judgement dated 16.11.2017 passed by the 10th Additional Sessions Judge, District-Ujjain (M.P.) in Sessions Trial No.379/2015, whereby learned Trial Court has convicted and sentenced the appellants as under :-

S. No.	Conviction	Sentence		
		Imprisonment	Fine amount	Additional imprisonment in default of payment of fine
Appellant – Mansa @ Mansu				
1	302 of IPC	Life imprisonment	Rs.5,000/-	RI for 04 months
Appellant – Govind Singh				
1	302/34 of IPC	Life imprisonment	Rs.5,000/-	RI for 04 months

2. Case of the prosecution in nutshell is that on 23.03.2015 at 9.00 PM, when complainant Ramu Bai (PW/1) and her son/deceased Devi Singh were sitting in *Otala (i.e. a platform)* present in front of the house of Dhapu Bai situated in front of the home of deceased, at village Borda Dhakad, Police Station Kayetha, District Ujjain (M.P.), the appellants came there by motorcycle. Appellant Govind Singh was riding the motorcycle and appellant Mansa @ Mansu was pillion rider. Appellant Mansa @ Mansu had fired gun three times on the deceased. Due to

gunshot injuries, the deceased fell down. The appellants fled away towards the house of Karan Singh. Ramu Bai (PW/1) raised alarm by shouting, hearing to which Anil Dhakad (PW/3) and other persons came there. The injured/deceased was taken to the hospital at Dewas. The doctor declared him dead. After receiving information, SHO Munni Parihar (PW/14) went to the house of the deceased and lodged a dehati nalisi (Ex.P/1), on the basis of the information given by Ramu Bai (PW/1). On the basis of dehati nalisi (Ex.P/1), an FIR was lodged at Police Station Kayetha on the same night. A merg intimation (Ex.P/25A) was also registered at Police Station Dewas on the basis of intimation (Ex.P/25) received from Dewas hospital. On the basis of merg intimation (Ex.P/25A), a merg (Ex.D/3) was lodged at Police Station Kayetha.

3. ASI Sanjay Saurashtre (PW/13), Police Station Dewas went to mortuary room of Dewas hospital. He issued notice (Ex.P/26) and prepared Lash Panchnama (Ex.P/27) in the presence of witnesses. ASI Sanjay Saurashtre (PW/13) has issued request letter (Ex.P/8) to the District Hospital, Dewas for post-mortem. Dr. Tariq Ahmad Sheikh (PW/8) conducted post-mortem on 23.02.2015 at 10:00 AM and prepared post-mortem report (Ex.P/9). During post-mortem, he preserved and sealed a bullet and 2 pellets which were found in the wounds present on the body of the deceased. He also preserved and sealed skin of both hands, head, chest, left leg and clothes of the deceased and handed over the same to the concerned constable. On 01.04.2015, HC Narendra Singh (PW/5) seized sealed packets produced by constable Ashok Dubey from

District Hospital, Dewas and prepared seizure memo (Ex.P/5).

4. During investigation SHO Munni Parihar (PW/14) on 23.02.2015 at about 08:00 AM inspected the place of incident in presence of Laxman (PW/4) and prepared a spot map (Ex.P/4). On the same day at 10:30 AM, she seized blood stained soil, simple soil and 3 empty cartridges from the spot and prepared seizure memo (Ex.P/24A). SHO Munni Parihar (PW/14) arrested appellant Mansa @ Mansu on 24.03.2015 at 10:10 PM and on 02.04.2015 at 09:00 AM accused Govind Singh vide arrest memo (Ex.P/18 and P/19, respectively). Disclosure memos (Ex.P/20, P/21 and P/2, respectively) of appellant Mansa @ Mansu were prepared. On the basis of disclosure memo (Ex.P/2), SHO Munni Parihar (PW/14) recovered a country-made pistol at the instance of accused Mansa @ Mansu on 01.04.2015 at 10:45 AM vide seizure memo (Ex.P/3). On 02.04.2015 at 08:40 AM, she seized a motorcycle bearing registration No.MP-41-MH-1603 from accused Govind Singh vide seizure memo (Ex.P/22).

5. On the request of SHO Police Station Kayetha and under direction of Tehsildar Tarana, Halka Patwari Sanjay Lalawat (PW/7) went to the place of incident and prepared a spot map (Ex.P/7) at the instance of constable Ashok Kumar. Armourer Santosh Chouhan (PW/15) on 29.04.2015 examined the seized country made pistol and gave a report (Ex.P/33) alongwith letter (Ex.P/34). Prosecution Sanction (Ex.P/6) against the appellant Mansa @ Mansu was taken from the District

Magistrate, Ujjain on 16.06.2015. Seized weapon and other articles were sent to FSL, Sagar for chemical examination. Where from FSL report (Ex.P/30) was received. Statement of witnesses were recorded u/S 161 of Cr.P.C. After completion of investigation, charge-sheet was filed before the concerning magistrate. The offence was exclusively triable by the Court of Sessions, therefore, the case was committed before the Court of Sessions.

6. Learned Trial Court framed charge against the appellant/accused persons. The appellant abjured guilt and sought trial.

7. In turn, the prosecution, in order to prove its case has examined 15 witnesses. After completion of prosecution evidence, appellants were examined u/S 313 of Cr.P.C. They have taken defence that there were prior dispute between both the parties. Their father Kamal Singh had lodged a report (Ex.D/1) against the deceased Devi Singh, therefore, the complainant party has lodged a false report against them. In the night the of incident, the appellants had gone to Police Station Kayetha to lodge report, at that time police had made false case against them. The appellants are innocent and they have not committed the offence. In defence, the appellants examined Santosh Singh Vaishya (DW/2) and appellant Mansa @ Mansu has examined himself as (DW/1).

8. Learned Trial Court after hearing the parties, convicted and sentenced the appellants for the offence as mentioned above.

9. Learned counsel for the appellants submits that there is only one eye-witness, Ramu Bai (PW/1) who is mother of the deceased, other witnesses Sunil (PW/2) is nephew and Anil Dhakad (PW/3), Laxman (PW/4) are sons of the deceased, are hearsay witnesses. There are material omissions and contradictions in the statement of Ramu Bai (PW/1) and being an interested witness, her statement is not reliable. Recovery of country-made pistol at the instance of appellant Mansa @ Mansu is not proved. It is also not proved that empty cartridge recovered from the spot, a bullet and 2 pellets found in the wound of the deceased were fired from the recovered pistol. There are also discrepancies in the statement of Ramu Bai (PW/1) and Dr. Tariq Ahmad Sheikh (PW/8) with regard to injuries caused to the deceased. Appellant has no motive to kill the deceased. Therefore, case of prosecution is not proved beyond reasonable doubt. Learned counsel for the appellants has placed reliance on the cases, *State of Uttar Pradesh V Satveer and Ors. [(2015) 9 SCC 44]*; *Vikramjit Singh alias Vicky V State of Punjab [(2006) 12 SCC 306]*; *Golbar Hussain and Ors. V State of Assam and Anr. [(2015) 11 SCC 242]* and *Sunil Kundu and Anr. V State of Jharkhand [(2013) 4 SCC 422]*.

10. Learned Government Advocate for the respondent/State has supported the impugned judgement and submits that though the learned Trial Court has not found proved that the pistol recovered at the instance of the appellant Mansa @ Mansu, it is also not found proved that the empty cartridge and bullet and pellets recovered from the wound of the

deceased were fired from the recovered pistol but the case depends upon statement of eye-witness Ramu Bai (PW/1), who is mother of the deceased but she is not interested to falsely implicate the appellants, her statement is supported by FIR and medical evidence. Hence, the learned Trial Court has rightly relied upon her. Her statement is further supported by Sunil (PW/2), Anil Dhakad (PW/3) and Laxman (PW/4) because they saw the deceased right after the occurrence of the incident in injured state and at that time Ramu Bai (PW/1) told them about the incident. Learned Government Advocate for the State has placed reliance on the cases, ***Bhajan Singh alias Harbhajan Singh and Ors. V State of Haryana [(2011) 7 SCC 421]; State Through The Inspector of Police V Laly alias Manikandan and Anr. [2022 SCC online SC 1424]*** and ***Bipin Kumar Mondal V State of West Bengal [(2010) 12 SCC 91]***.

11. Learned counsel for the parties confined their arguments to the extent indicated above.

12. We have heard learned counsel for both the parties and perused the record.

13. Firstly, it is apposite to consider that whether the death of deceased was homicidal in nature, or not?

14. As per statement of Ramu Bai (PW/1), Sunil (PW/2) and Anil Dhakad (PW/3), it appears that after the incident the deceased was taken to District Hospital, Dewas and after examination, the doctor had

declared him dead. The intimation (Ex.P/25) was sent by doctor to the concerning police station and on the basis of the intimation letter (Ex.P/25) a merg intimation (Ex.P/25A) was lodged at Police Station Dewas and a merg intimation (Ex.D/3) was registered at Police Station Kayetha on the basis of merg intimation (Ex.P/25A). ASI Sanjay Saurashtre (PW/13) went to mortuary room in the district hospital, Dewas, he issued notice (Ex.P/26) and prepared Lash Panchnama (Ex.P/27). Thereafter, he sent the body of the deceased with requisition letter (Ex.P/8) to the concerning doctor, District Hospital, Dewas for post-mortem. After receiving intimation of the incident, on 22.03.2015, SHO Police Station Kayetha, Munni Parihar (PW/14) went to the house of the deceased and she lodged dehati nalisi (Ex.P/1) on the same day at 10:00 PM, on the basis of intimation supplied by Ramu Bai (PW 1), HC Sunil Kumar (PW/11) had registered an FIR (Ex.P/23) at Police Station Kayetha on the basis of dehati nalisi (Ex.P/1), on 23.03.2015 at 12:00 AM. Counter copy of FIR (Ex.P/24) was sent to the concerning Magistrate.

15. Dr. Tariq Ahmad Sheikh (PW/8) conducted post-mortem on 23.03.2015 at 11:00 AM and he took X-ray of head, left hand, left leg and left elbow of the deceased through X-ray technician and examined X-ray plates (Ex.P/10 – P/16) and found that there were multiple fracture in skull with entry and exit wounds (fronto parietal region), fracture in left humerus. He gave X-ray report (Ex.P/17). In external examination, he found following injuries on the body of the deceased:-

1. *Bullet entry wound frontal bone region 1" above the left eyebrow, of around 1 inch, passing through and through the skull, cutting the brain, exit from occipital region of skull, leaving exit wound of around 1.5 inch.*
2. *Bullet entry wound on left elbow, 1 inch, exit from below the elbow, in the opposite side, leaving a 1.5 inch exit wound, cutting through muscle and bone.*
3. *Bullet enter and exit superficially, cutting the skin below the knee of left leg, injury approx 3.2" x 0.2" x 0.5".*
4. *Black colour tattoo near right nipple 1" x 0.5", burn mark generally occurs due to bullet injury.*
5. *Reddish bruise on left leg, above and below knee.*
6. *Bruise on left hand, above and below elbow.*
7. *Multiple bruises on chest.*

16. Dr. Tariq Ahmad Sheikh (PW/8) in internal examination found that there were multiple fracture in skull bone, membrane of brain was torn and brain was de-structured. There was fracture in humerus bone of left hand and femur bone of left leg. 1 bullet and 2 pellets were recovered from the injury present on the body of the deceased. He preserved and sealed them, he also preserved and sealed clothes of deceased which were worn by the deceased, skin present near the gunshot injury, and handed over to the concerning constable.

17. The witness has opined that cause of death was because of excessive bleeding occurring due to the gun shots leading to shock. Time

of death was within 12-20 hours from post-mortem. He proved post-mortem report (Ex.P/9).

18. Dr. Tariq Ahmad Sheikh (PW/8) in paragraph-7 of cross-examination has admitted that he has found a bullet in the wound but had not found pellets in the wound but had found two pieces of lead metal. In paragraph-8 of cross-examination, the witness stated that the gun was fired from a distance of 2-4 feet. In paragraph-9, he stated that injury Nos.1 to 4 were caused by firearm. Remaining injuries could have been caused by hard and blunt object. In paragraph-16, the witness has denied that injury No.3 could be caused by sharp object but he was not sure that the wound could have been caused just by bullet only. Statement of this witness appears to be reliable. It appears from the statement of the witness that there were multiple injuries on the body of the deceased including gunshot injuries. It also appears that the deceased had died because of excessive bleeding, leading to shock arising out of injuries. Therefore, it is certain that the deceased died due to gunshot injuries. It appears that the injuries present on the body of the deceased were ante-mortem in nature and his death was homicidal in nature.

19. Next question arises that whether the appellants Mansa @ Mansu and Govind Singh had a common intention to kill the deceased and in furtherance of their common intention, the appellants Mansa @ Mansu caused death of the deceased by gunfire.

20. In the case of *Sunil Kundu and Anr. (Supra)*, the Apex Court in

paragraph-24 has opined as under:-

“24. In Kapildeo Mandal V State of Bihar, (2008) 16 SCC 99, all the eye-witnesses had categorically stated that the deceased was injured by the use of firearm, whereas the medical evidence specifically indicated that no firearm injury was found on the deceased. This Court held that while appreciating variance between medical evidence and ocular evidence, oral evidence of eye-witnesses has to get priority as medical evidence is basically opinionative. But, when the evidence of the eye-witnesses is totally inconsistent with the evidence given by the medical experts then evidence is appreciated in a different perspective by the courts. It was observed that when medical evidence specifically rules out the injury claimed to have been inflicted as per the eye-witnesses’ version, then the court can draw adverse inference that the prosecution version is not trustworthy. This judgment is clearly attracted to the present case.”

21. In the case of **Satveer and Ors. (Supra)**, the Apex Court has opined in paragraph-12 as under:-

*“12. The last seen theory in the present case having dimensions in terms of time as well place, would certainly clinch the matter if the testimony of PW2 Mewa Ram is accepted. Everything hinges on his testimony. He is the sole witness. It was stated by this Court in **Joseph v. State of Kerala, (2005) 3 SCC 114** that where there is a sole witness his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. Further, in **State of Haryana v. Inder Singh, (2003) 1 SCC 465** it was laid down that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court. Noticing these two Judgments this Court in **Ramnaresh v. State of Chhattisgarh, (2002) 9 SCC 537** summed up the*

principles as under:

“27. The principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eye-witness to the crime. All that is needed is that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime.”

The evidence of the sole witness thus needs to be considered with caution and after testing it against other material and further, such evidence must inspire confidence and ought to be beyond suspicion.”

22. In the case of ***Golbar Hussain and Ors. (Supra)***, the Apex Court has opined in paragraph-11 as under:-

*“11. In the present case, however, the prosecution witnesses PW-4 and PW-5, contradict each other, and their statements are not corroborated by any independent witness in spite of the incident happening in the market place, with shops on both sides of the road. Therefore, in our view, as the testimonies of PW-4 and PW-5 are not completely reliable, this is a fit case where corroboration by an independent witness was required. The case of the prosecution also weakens on the ground that the only independent witness PW-8 turned hostile. A similar situation arose in *Shyamal Saha and Anr. v. State of West Bengal*, (2014) 12 SCC 321, where the only independent witness turned hostile. This Court decided to affirm the acquittal and granted benefit of doubt to the accused considering the factual background and circumstances involved*

in the case.”

23. In the case of **Vikramjit Singh alias Vicky (Supra)**, the Apex Court has opined in paragraph-15 as under:-

“15. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.”

24. The Apex Court in the case of **Bhajan Singh alias Harbhajan Singh and Ors. (Supra)**, in paragraph-38 has opined as under:-

“38. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. [Vide: Abdul Sayeed v. State of Madhya Pradesh (2010) 10 SCC 259.”

25. The Apex Court in the case of **Laly alias Manikandan and Anr. (Supra)** has held in paragraph-20 as under:-

“20. The submission on behalf of the accused that as the original informant – Mahendran has not been examined and

that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and that there is a serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW1. As observed hereinabove, PW1 is the eye witness to the occurrence at both the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness.”

26. In the case of ***Bipin Kumar Mondal (Supra)***, the Apex Court has opined in paragraphs-23 and 24 as under:-

“23. 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 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.

24. 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)."

27. It is apposite to examine the present case in the light of aforementioned principle of law laid down in the above judgements.

28. In the present case, Ramu Bai (PW/1) is eye-witness of the incident and she is mother of the deceased. Sunil (PW/2) is nephew of the deceased and Anil Dhakad (PW/3) and Laxman (PW/4) are sons of the deceased. Therefore, it appears that all the aforementioned witnesses are close relatives of the deceased.

29. Ramu Bai (PW/1) stated that at the time of incident at about 09:00 PM, she was sitting in *Otala* present in front of the house of Dhapu Bai situated in front of the her home alongwith her son/deceased Devi Singh. The appellants came there by motorcycle. Appellant Govind Singh was riding the motorcycle and appellant Mansa @ Mansu was pillion rider. The appellant Mansa @ Mansu fired pistol on Devi Singh. He sustained 3 injuries on head and body, thereafter he fell down. Blood was oozing out of the wound. She cried for help, Sunil (PW/2), Anil (PW/3), Laxman

(PW/4), and her daughter-in-law Heera Bai, wife of deceased Ahilya Bai came there. She told them that the appellants came by motorcycle and appellant Mansa @ Mansu fired the pistol on Devi Singh. Anil Dhakad (PW/3) and Bhagwan Singh took Devi Singh to District Hospital, Dewas, but the deceased died on the way.

30. Sunil (PW/2) and Anil Dhakad (PW/3) have stated that at the time of the incident, they were watching television in the house of the deceased. Laxman (PW/4) stated that at the time of incident he was standing near his home. The witnesses had heard the cry of Ramu Bai (PW/1) and they went to the spot and saw that Devi Singh was lying in a pool of blood. Ramu Bai (PW/1) told them that the appellants came on motorcycle, the appellant Govind Singh was riding the motorcycle and appellant Mansa @ Mansu was pillion rider. Appellant Mansa @ Mansu fired pistol on the deceased Devi Singh thereafter, Devi Singh was taken to the District Hospital, Dewas.

31. SHO Munni Parihar (PW/14) stated that on 22.03.2015 she received information about the incident and went to village Borda Dhakad alongwith her staff. Ramu Bai (PW/1) told her about the incident and she lodged a dehati nalisi (Ex.P/1) on the basis of information given by Ramu Bai (PW/1). Ramu Bai (PW/1) also stated that after the incident police had come on the spot and she informed the incident to the police and police had lodged dehati nalisi (Ex.P/1). It appears from dehati nalisi (Ex.P/1) that incident had taken place on 22.03.2015 at 09:00 PM and

dehati nalisi was written on the same day at 10:00 PM i.e. within an hour of the incident against the appellants. Therefore, statement of Ramu Bai (PW/1) is supported by dehati nalisi (Ex.P/1). SHO Munni Parihar (PW/14) stated that she had prepared a spot map (Ex.P/4) at the instance of Laxman (PW/4). Laxman (PW/4) stated that police had prepared spot map (Ex.P/4) in his presence. Halka Patwari Sanjay Lalawat (PW/7) stated that he inspected the place of incident and prepared spot map (Ex.P/7) at the instance of constable Ashok Kumar. Constable Ashok Kumar has not been examined by the prosecution. Constable Ashok Kumar is not even an eye-witness of the incident. Therefore, preparation of spot map (Ex.P/7) on his instance is meaningless.

32. From perusal of records, it appears that the place of incident as alleged in dehati nalisi (Ex.P/1) is near *Otala*, front of the house of Dhapu Bai, which is in front of the house of complainant Ramu Bai (PW/1). Halka Patwari Sanjay Lalawat (PW/7), in spot map (Ex.P/7) also showed the place of incident as alleged in dehati nalisi (Ex.P/1) but in spot map (Ex.P/4) house of Dhapu Bai is not shown and in this spot map alleged *Otala* is shown in front of the house of Teju Ben and the aforementioned *Otala* is also shown in front of the house of complainant. In this respect SHO Munni Parihar (PW/14) has admitted in paragraph-20 of cross-examination that she has not shown *Otala* of Dhapu Bai in spot map (Ex.P/4), as mentioned in dehati nalisi (Ex.P/1) and case diary statement (Ex.D/4) of Ramu Bai (PW/1). In paragraphs 38 and 39 of cross-examination, she stated that Dhapu Bai and Teju Ben are old aged

women and both are living alone in their house. She has not taken case diary statement of Dhapu Bai and Teju Ben. Apart from that in both the spot maps (Ex.P/4 & P/7) the place of incident is shown near *Otala* which is situated in front of the house of complainant. Ramu Bai (PW/1) clearly stated that she was sitting on *Otala* of Dhapu Bai, situated near the road and the aforementioned statement is not disputed by the appellants in her cross-examination therefore, aforementioned minor discrepancies does not cause any dent in the prosecution case.

33. As per statement of Dr. Tariq Ahmad Sheikh (PW/8), it appears that injury Nos.1 to 4 of deceased were caused by firearm and other injuries were caused by hard and blunt object. Ramu Bai (PW/1) stated that the appellant Mansa @ Mansu has fired pistol 3 times on the deceased and has not stated anything about other injuries caused by hard and blunt object but her statement is supported by statement of Dr. Tariq Ahmad Sheikh (PW/8) in respect of gunshot injuries on the body of the deceased. Therefore, on the aforementioned ground, her statement cannot be doubted.

34. It is clear that statement of Ramu Bai (PW/1) is supported by dehati nalisi (Ex.P/1) and also supported by Sunil (PW/2), Anil Dhakad (PW/3) and Laxman (PW/4). Her statement is further supported by Dr. Tariq Ahmad Sheikh (PW/8). There is no discrepancy or omission and contradiction in their statement. Though Ramu Bai (PW/1), Sunil (PW/2), Anil Dhakad (PW/3) and Laxman (PW/4) are close relatives of the

deceased but it does not show that they are interested to falsely implicate the appellants. Therefore, only on the ground that the witnesses are close relatives of the deceased, their statement cannot be discarded. From the statement of Ramu Bai (PW/1), it is clear that appellant Mansa @ Mansu has fired pistol on the deceased and the deceased had died due to gunshot injuries.

35. SHO Munni Parihar (PW/14) stated that she seized blood stained soil, simple soil and 3 empty cartridges (Article A1 to A3) from the spot and prepared seizure memo (Ex.P/24A), her statement is also supported by Babulal (PW/12) hence, her statement is reliable.

36. As per prosecution, 3 disclosure statement (Ex.P/ 20, P/21 and P/2) of appellant Mansa @ Mansu were taken on 25.03.2015, 30.03.2015 and 01.04.2015. Disclosure memo (Ex.P/21) was taken by SI Madhav Sharma and remaining two disclosure statement (Ex.P/20 & P/2) were taken by SHO Munni Parihar (PW/14). SI Madhav Sharma was not examined before the learned Trial Court. SHO Munni Parihar (PW/14) in paragraph-43 of cross-examination denied that she has prepared disclosure memo (Ex.P/20), therefore, her statement as stated in examination-in-chief in paragraph-6 that she has prepared disclosure memo (Ex.P/20) of appellant Mansa @ Mansu, is not reliable. Alleged pistol was recovered at the instance of appellant Mansa @ Mansu vide seizure memo (Ex.P/3) on the basis of his disclosure statement (Ex.P/2), but SHO Munni Parihar (PW/14) has not stated anything about

preparation of disclosure memo (Ex.P/2). Hence, recovery of pistol from appellant Mansa @ Mansu is not proved. In this situation, report (Ex.P/33) of Armourer Santosh Chouhan (PW/15) about working condition of seized pistol has lost its significance, therefore, learned Trial Court in paragraph-36 of the impugned judgement has rightly held that recovery of pistol at the instance of appellant Mansa @ Mansu is doubtful.

37. HC Narendra Singh (PW/5) stated that on 01.04.2015, he seized sealed packets from constable Ashok Dubey, produced by him from District Hospital, Dewas vide seizure memo (Ex.P/5). In paragraph-2 of cross-examination, this witness has denied that he has not seized the aforementioned articles. Therefore, his statement is reliable.

38. Seized articles were sent to FSL, Sagar for chemical examination. As per FSL report (Ex.P/30), it was found that three similar empty cartridges (Ex. EC₁, EC₂, EC₃) recovered from the spot are fired by same firearm, clothes of deceased i.e. shirt and pant were having gunshot marks and on the piece of skin, presence of copper substance was found. Therefore, the statement of Ramu Bai (PW/1) further supported by FSL report (Ex.P/30) that gun was fired on the deceased.

39. As per FSL report (Ex.P/30), it is not found that the bullet recovered from the wound of the deceased and empty cartridges recovered from the spot were fired by the pistol recovered from the appellants. Therefore, though it is not found proved that the pistol was

recovered from the instance of the appellants, but it is also clear from the FSL report (Ex.P/30) that it is not established that deceased was fired upon by the same pistol recovered from the appellant, but the instant case depends upon the statement of sole eye-witness Ramu Bai (PW/1), she has fully supported the case of prosecution and her statement is supported by other witnesses which has been discussed above and further supported by FSL report that the deceased was fired upon by pistol. Therefore, as observed by the Apex Court in the case of *Laly alias Manikandan and Anr. (Supra)*, non-seizure of alleged weapon i.e. pistol, which was used in commission of the offence does not adversely affect the case of prosecution.

40. The appellants have taken defence of alibi, in this respect Mansa @ Mansu (DW/1) has stated that he lives in village Borda Dhakad and runs a shop of light and sound in Maksi. On the date of incident at 06:30 PM, he came to his house from his shop. His agricultural land is situated near to his house and he saw that his crop of gram had caught fire. There was no means to extinguish the fire. So, on being asked by his father to report the same to Police Station Kayetha, he alongwith his brother appellant Govind Singh went there at around 08:00 – 08:30 PM. SHO Munni Parihar (PW/14) was not present at the police station. At 09:30 PM press reporter Santosh Singh Vaishya (DW/2) had also come to the Police Station Kayetha. The witness Mansa @ Mansu (DW/2) intimated Santosh Singh Vaishya (DW/2) about the arson. At about 12:00AM, SHO Munni Parihar (PW/14) returned to Police Station Kayetha, then he also

intimated her about the arson, but she did not lodge a report.

41. Santosh Singh Vaishya (DW/2) also supported the statement of Mansa @ Mansu (DW/1). Mansa @ Mansu (DW/1) stated in paragraph-2 of examination-in-chief that SHO Munni Parihar (PW/14) had come to the police station at 12:00 AM while, Santosh Singh Vaishya (DW/2) in paragraph-4 of cross-examination stated that he met SHO Munni Parihar (PW/14) at 09:00-09:45 PM and he further stated that SHO Munni Parihar (PW/14) did not come to the police station at 12:00 AM. Therefore, their statement is contradictory. Apart from that SHO Munni Parihar (PW/14) in paragraph-22 of cross-examination has denied that on 22.03.2015 appellants had come to Police Station Kayetha to lodge report in respect of arson. She further denied that she had stopped Mansa @ Mansu at police station. Therefore, statement of defence witnesses is not reliable and it does not appear that at the time of incident, the appellants were not present at the place of incident.

42. SHO Munni Parihar (PW/14) stated that she seized a Hero-Honda motorcycle from the appellant Govind Singh vide seizure memo (Ex.P/22). Vikram (PW/9) and Abid Hussain (PW/10) have not supported the statement of SHO Munni Parihar (PW/14). The prosecution has declared them hostile and cross examined them. In cross-examination both the witnesses have denied that the police has seized a Hero-Honda motorcycle from the appellant Govind Singh, but both the witnesses admitted their signature on seizure memo (Ex.P/22). Statement of SHO

Munni Parihar (PW/14) is supported by seizure memo (Ex.P/22), therefore, her statement is reliable and it appears that a motorcycle was seized from the appellant Govind Singh. Though, it does not appear that the seized motorcycle was used in the crime because it is not stated that there was any sign on the seized motorcycle.

43. So far as the question is related about commission of offence by appellants in furtherance of their common intention, from the statement of Ramu Bai (PW/1), it appears that at the time of incident, appellant Govind Singh was riding the motorcycle and appellant Mansa @ Mansu was pillion rider. The appellant Mansa @ Mansu fired pistol on the deceased. Ramu Bai (PW/1) has stated that after receiving injuries, the deceased fell down, she started to cry for help, thereafter the appellants fled away while saying that 'they had killed only one today and 3 are left'. Her statement is supported by dehati nalisi (Ex.P/1), hence, her statement is reliable. Therefore, it appears that the appellant had common intention to kill the deceased and in furtherance of which appellant Govind Singh took Mansa @ Mansu with him on his bike to the spot, appellant Mansa @ Mansu fired pistol on the deceased, thereafter both the appellants fled away together from the spot. Hence, learned Trial Court has rightly held both the appellants guilty for the offence.

44. Learned counsel for the appellants argued that the appellants had no motive to kill the deceased and complainant had falsely implicated the appellants due to old enmity.

45. From the statement of Mansa @ Mansu (DW/1) and FIR (Ex.D/1), it appears that father of appellants Kamal Singh had lodged an FIR against deceased and 3 others on 30.06.2014 u/S 341, 294, 506, 323 r/w 34 of IPC. Ramu Bai (PW/1) stated in paragraph-4 of cross-examination that there is no old enmity between both the parties and has expressed that she is unaware about the fact that there was old dispute between the deceased and Kamal Singh, she further denied about knowledge of FIR (Ex.D/1). therefore, on the basis of (Ex.D/1), it appears that they were not in good terms prior to the incident but on the basis of this ground it cannot be said that the appellants have falsely been implicated in the case.

46. Though from the statement of prosecution witnesses, it does not appear that appellants had motive to kill the deceased but the case depends upon statement of eye-witness, Ramu Bai (PW/1), therefore, as held by the Apex Court in the case of ***Bipin Kumar Mondal (Supra)***, motive is of no consequence and pales into insignificance when direct evidence establishes the crime.

47. On the basis of foregoing discussion, it is clear that the prosecution has succeeded to prove the offence against the appellants beyond reasonable doubt. Learned Trial Court has rightly assessed the evidence available on record and has not committed any error in convicting the appellants for the offence. Learned Trial Court has also given minimum sentence to the appellants for the offence, hence, the impugned judgment

does not require any interference.

48. Consequently, the appeal filed by the appellants is **dismissed**. The judgement of conviction and order of sentence passed by the learned Trial Court is hereby affirmed. The appellants are in jail, be intimated about the outcome of this appeal through the Jail Superintendent concerned.

49. A copy of this judgement alongwith the record of learned Trial Court also be sent back for intimation and compliance.

Certified copy, as per Rules.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

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