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**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**LUCKNOW BENCH, LUCKNOW**

**"A.F.R"**

**Reserved on 04.04.2022**

**Delivered on 07.07.2022**

**Court No. - 1**

**Case :- CRIMINAL APPEAL No. - 2702 of 2008**

**Appellant :- Smt. Reena Srivastava**

**Respondent :- State of U.P.**

**Counsel for Appellant :- Sri Indu Prakash Singh**

**Counsel for Respondent :- Sri Chandra Shekhar  
Pandey, Government Advocate**

***WITH***

**Case :- CRIMINAL APPEAL No. - 2786 of 2008**

**Appellant :- Ajai Prasad @ Ajai Kumar @  
Dhirendra Kumar Srivastava**

**Respondent :- State of U.P.**

**Counsel for Appellant :- Sri Pramod Kumar  
Singh**

**Counsel for Respondent :- Sri Chandra Shekhar  
Pandey, Government Advocate**

**Hon'ble Ramesh Sinha, J.**

**Hon'ble Mrs. Saroj Yadav, J.**

**(Per Mrs. Saroj Yadav, J. for the Bench)**

1. These two appeals have been filed by the convicts/appellants Smt. Reena Srivastava and Ajai Prasad @ Ajai Kumar @ Dhirendra Kumar Srivastava (herein-after referred to Ajai

(2)

Prasad, against the impugned judgment and order dated 18.11.2008 passed by Additional Sessions Judge, Court No. 4, Sultanpur in Sessions Trial No. 315 of 2005 arising out of Case Crime No. 391 of 2005 under Section 302/34 of the Indian Penal Code, 1860 (in short "I.P.C."), Police Station Musafirkhana, District Sultanpur, whereby convict/appellant Reena Srivastava has been held guilty for the offence punishable under Section 302/34 IPC and sentenced to imprisonment for life coupled with a fine of Rs.20,000/- and in default of payment of fine a further sentence for a period of one year and convict/appellant Ajai Prasad has been held guilty under Section 302 IPC and sentenced to life imprisonment coupled with a fine of Rs. 30,000/- and in default of payment of fine, further sentence for a period of one year and six months.

2. Necessary facts for disposal of these appeals in short are as under:-

A First Information Report (in short F.I.R.) was registered at Case Crime No. 391 of 2005, under Section 302 I.P.C. at Police Station Musafirkhana, District Sultanpur on the basis of a written report presented by the complainant Pankaj Kumar. In the written report it has been narrated that the complainant and his brother Satish and Vipin after having their meals in the

(3)

night, went to sleep in their rooms and rest of the family members went to sleep on the roof along with their mother. In the night the wife of his brother Vipin at about 1 O'clock went to sleep on the roof near his (complainant) mother. In the morning of 19.06.2005 at about 6 AM, his mother shouted loudly and told that Vipin was lying dead on his bed. He ran towards the room of his brother Vipin and found him lying dead on his bed. There were injuries on his body. Some unknown person had killed him in the night.

3.The F.I.R. was registered on 19.06.2005 at 8.20 AM. Investigation started, Panchayatnama of the body of the deceased was conducted. Body was sent for post-mortem examination and post-mortem examination was conducted on the cadaver of the deceased. During investigation, the Investigating Officer finding incriminating material against the convicts/appellants arrested them on 27.06.2005, whereafter they allegedly confessed the crime. On the same day i.e. 27.06.2005 the convict/appellant Ajai Prasad got recovered the knife, which was used for murdering the deceased and also the Vest (Baniyan), which he wore at the time of killing the deceased and on which blood spilled. The recovery of weapon of offence was made at the pointing out of the convict/appellant Ajai

(4)

Prasad in the presence of the witnesses and the recovery memo of the same was prepared, which is Exhibit Ka-26. At the time of recovery of weapon the convict/appellant Ajai Prasad confessed the crime and told that this is the knife which he used to kill the deceased Vipin and he killed him by stabbing the knife in his neck and the Vest, which he wore at the time of committing murder got stained with blood of the deceased, therefore, he hid the knife and Vest at the place of recovery.

4. After completing the investigation, the Investigating Officer found the involvement of both the convicts/appellants in the crime and submitted charge-sheet against them under Section 302/34 IPC. On the charge-sheet so submitted, learned Magistrate concerned took the cognizance and committed the case to the Court of Sessions for trial. The Court of Sessions framed the charges under Section 302 read with Section 34 IPC against the convict/appellant Reena Srivastava and under Section 302 IPC against the convict/appellant Ajai Prasad. Both the convicts/appellants denied the charges and claimed to be tried.

5. In order to prove its case the prosecution examined 10 witnesses, which are as under:-

(i) **P.W. 1-** Pankaj Kumar Srivastava, the complainant and the brother of the deceased;

(5)

(ii) **P.W. 2-** Prabhavati Srivastava, the mother of the deceased;

(iii) **P.W. 3-** Dr. Mahendra Maurya, Physician who conducted the post-mortem of the body of the deceased-Vipin Kumar Srivastava;

(iv) **P.W. 4-** Head Moharrir, Alok Kumar Singh, who registered the FIR and entered the same in the concerned General Diary (G.D.);

(v) **P.W. 5-** Daljeet Singh, Senior Sub-inspector, who accompanied the Officer-in-Charge Nirankar Singh at the time of recovery of weapon of offence and the Vest at the pointing out of the convict/appellant Ajai Prasad;

(vi) **P.W. 6-** Yaduraj Singh, an independent witness;

(vii) **P.W. 7-** Mamta Srivastava, sister of the deceased;

(viii) **P.W. 8-** Shailendra Kumar Srivastava, younger brother of the deceased;

(ix) **P.W. 9-** Chandra Prakash Tiwari, Officer-in-Charge of Police Station Musafirkhana and second I.O. of the case;

(x) **P.W. 10-** Nirankar Singh, Officer-in-Charge of Police Station, who initially conducted the investigation.

(6)

Apart from above witnesses, relevant documents have also been proved by the prosecution, which are as under:-

- (i) Exhibit Ka-1- Written report;
- (ii) Exhibit Ka-2- Inquest report;
- (iii) Exhibit Ka-3- Post-mortem-examination report;
- (iv) Exhibit Ka-4- Chik F.I.R.;
- (v) Exhibit Ka-5- Nakal Rapat No. 14, 8.20 hours dated 19.06.2005;
- (vi) Exhibit Ka-6- Recovery Memo of knife used in murder and the Vest stained with blood;
- (vii) Exhibit Ka-7- Site-plan of the place of recovery of knife;
- (viii) Exhibit Ka-8- Charge-sheet;
- (ix) Exhibit Ka-9- Site-plan of the place of occurrence;
- (x) Exhibit Ka-10- Specimen seal;
- (xi) Exhibit Ka-11- Police Form No. 13;
- (xii) Exhibit Ka-12- Police Form No. 379;
- (xiii) Exhibit Ka-13- Letter to Reserve Inspector (R.I.) for getting post-mortem done;
- (xiv) Exhibit Ka-14- Letter to Chief Medical Officer, Sultanpur for conducting the post-mortem;

(7)

(xv) Exhibit Ka-15- Recovery Memo of taking into custody the blood stained clothes from the place of occurrence;

(xvi) Paper No. 70 Ka, F.S.L. Report, Mahanagar, Lucknow.

6. After completion of evidence of prosecution, statements of convicts/appellants under Section 313 of the Code of Criminal Procedure, 1973, (in short Cr.P.C.) were recorded. The convict/appellant Reena Srivastava denied almost all the facts and shown ignorance about some facts. She has also stated that arrest was made wrongly and the recovery is also false. She has further stated that she has been implicated due to enmity and the witnesses have also deposed due to enmity. She has further stated that between her brother-in-law Pankaj Kumar Srivastava and the deceased Vipin Kumar Srivastava, there was a dispute regarding the supervision and post in School and also about Rs.5 Lacs, which their father got after retirement. For this reason, Vipin Kumar Srivastava was killed and she was implicated falsely in the crime. The convict/appellant Ajai Prasad in his statement recorded under Section 313 Cr.P.C. also denied the crime and other facts and stated that he was wrongly arrested and he was implicated in the crime due to enmity. The witnesses have

(8)

also deposed due to enmity. He has further stated that he came the house of complainant on asking of his cousin brother Ramesh, along with his daughter Alka and son Narendra and he was implicated falsely in the crime.

7. In defence the convicts/appellant examined D.W. 1- Narendra Kumar Srivastava, the brother of the convict Reena Srivastava and D.W. 2- Smt. Rani Devi, aunt of convict Reena Srivastava and sister-in-law of Prabhawati Devi (mother of the deceased).

8. After completion of evidence, learned trial Court heard the arguments of both the sides. After analyzing the evidence available on record, the trial Court relied upon on the evidence of witnesses of facts examined and found medical evidence consistent with the oral evidence and came to the conclusion that it is proved by circumstantial evidence that the convict/appellant Ajai Prasad killed the deceased Vipin Kumar Srivastava by knife along with convict/appellant Reena Srivastava in furtherance of common intention. Learned trial Court held the convict/appellant Ajai Prasad guilty under Section 302 IPC and convict/appellant Reena Srivastava under Section 302/34 IPC and punished them with sentence noted herein-above. Being aggrieved



(9)

of this conviction and sentence these two appeals have been preferred.

9. Heard Shri Indu Prakash Singh, learned counsel for the convict/appellant Smt. Reena Srivastava in Criminal Appeal No. 2702 of 2008, Shri Pramod Kumar Singh, learned counsel for the convict/appellant Ajai Prasad @ Ajai Kumar @ Dhirendra Kumar Srivastava in Criminal Appeal No. 2786 of 2008 and Shri Chandra Shekhar Pandey, learned Additional Government Advocate for the State respondent.

10. Learned counsel for the convicts/appellants submitted that convicts/appellants were not named in the F.I.R. The F.I.R. was registered against unknown persons and subsequently convicts/appellants were implicated falsely. All the witnesses of facts are relatives of the deceased. There is no eye witness of the crime. Learned trial Court has held the convicts/appellants guilty and sentenced them on the basis of suspicion alone. Learned trial Court has paid no attention to the evidence of defence witnesses. The whole story of the prosecution is an afterthought. In fact, the complainant was annoyed with the deceased as their father ousted the complainant from the management of the School and handed over to the deceased, so the complainant was angry and he killed the deceased and implicated the

(10)

convicts-appellants falsely in the crime in a planned manner, hence the impugned judgment and order should be set aside.

11. To the contrary, learned Additional Government Advocate appearing on behalf of the State respondent submitted that prosecution has proved its case beyond all reasonable doubts and the circumstances related to the crime have been proved. The recovery of knife used to kill the deceased was recovered at the pointing out of the convict/appellant Ajai Prasad and he confessed the crime at the time of recovery. The blood stained Vest which he wore at the time of murder of the deceased was also recovered at the pointing out of the convict/appellant Ajai Prasad. The motive has also been proved as there was illicit relation between the convicts/appellants Reena Srivastava and Ajai Prasad and for that reason, the deceased was killed. All the links of chain of circumstances have been proved by the prosecution and the prosecution has proved its case beyond all reasonable doubts. The circumstances so proved manifestly evince that the deceased was killed by the convicts/appellants in furtherance of common intention of both and convict/appellant Ajai Prasad killed the deceased with knife. There is no error in the impugned judgment and order, therefore, these appeals should be dismissed.

(11)

12. Considered the rival submissions and perused the original record as well as the records of the appeals.

13. The evidence available on record as well as the perusal of impugned judgment shows that there is no dispute regarding date and place of occurrence. The time and date of lodging the FIR has also not been disputed. The F.I.R. of the case was lodged against the unknown persons alleging that the complainant, deceased and their younger brother Satish all went to sleep in their rooms after having meals and rest of the family members went to sleep on the roof along with their mother. In the night at about 1 O'clock the wife of Vipin i.e. Reena Srivastava went to sleep on the roof where mother of the complainant was sleeping with other family members. In the morning of 19.06.2005 at about 6 AM when the mother of the complainant shouted loudly that Vipin was lying dead on his bed, then the complainant rushed to the room of the deceased Vipin and found him lying dead on his bed. He also found injuries on his body and guessed that some unknown person had killed him in the night. During the course of investigation, the name of the convicts/appellants Reena Srivastava and Ajai Prasad surfaced. It came to light, that Reena Srivastava, the wife of the deceased and Ajai Prasad, who happens to be the uncle of

Reena Srivastava had killed the deceased-Vipin. The motive was that Ajai Prasad and Reena Srivastava had illicit relations with each other. P.W. 1-the complainant in this regard in his examination-in-chief has stated that Ajay Prasad happens to be the uncle of Reena Srivastava and Reena Srivastava is the wife of his brother Vipin. Narendra Srivastava is brother-in-law of the deceased Vipin. Ajai Prasad and Reena Srivastava had illicit relations. This fact came to knowledge just some days ahead of the incident when Reena Srivastava conversed with Ajai Prasad on telephone and that conversation was heard by the mother of this witness. He has further stated that incident occurred in the night of 18/19-06.2005. About one week ahead of the incident Narendra Srivastava, Alka (brother and sister of Reena Srivastava) and convict/appellant Ajai Prasad came to his house. On the night of incident, his mother Prabhavati Devi closed the main door of the house. In the night, after having meals his wife Shyama Devi slept on the roof where his mother went to sleep along with his child Ashish. He slept in his own room. His brother Vipin and his wife Reena Srivastava slept in their room. His younger brother Satish was also slept in his own room situated in the south of his (P.W. 1's) room. Narendra Kumar, Alka and the

convict/appellant Ajai Prasad slept in the mid portion of the school situated in the west of the house. His mother requested all these three persons to sleep inside the house but they did not agree and slept in the school. They all took meals at about 10-11 PM in the night. In the morning when his mother woke up, then she saw that Reena Srivastava had already taken bath and Vipin did not come out of his room. Reena Srivastava was preparing breakfast in the Kitchen for convict/appellant Ajai Prasad, and her brother and sister as they had to go back to their home in Chitrakoot. His mother found that main door of the house was open, so she asked Reena Srivastava and others to check the goods in their rooms but Reena Srivastava did not go in her room. No articles/goods were found missing from the house. His mother went in the room of his brother Vipin and found him lying dead on his bed. She shouted and told to everybody about the situation. When Reena was asked about the death of Vipin, then she showed her ignorance about the incident and said that she went to sleep on the roof at about 1 O'clock in the night. This witness has proved written report as Exhibit Ka-1 in his handwriting and signature. This witness has further stated that the bed on which his brother Vipin was slept on the day of incident, the pillow, bed-sheet, mattress and towel on that bed

(14)

were found blood stained. The loincloth of the convict/appellant Ajai Prasad, which he wore on that day was also blood stained. Dead body of his brother Vipin was covered by that loincloth. The saree which Reena Srivastava wore in the night of the incident was also blood stained and that was lying near the water tap, where she took bath. All these clothes were taken into custody by the Investigating Officer. He has further stated that dead body of his brother was sealed in a white cloth after conducting 'Panchayatnama', and the same was sent for post-mortem-examination. He was made one 'Panch' of Panchayatnama. This witness recognized his signature on 'Panchayatnama', which is Exhibit Ka-2 on the record. Lengthy cross-examination has been made by the defence counsel but no adverse fact or major contradiction could be brought in the cross-examination of this witness.

14. P.W. 2- Smt. Prabhavati Srivastava (mother of the deceased) has stated that when Reena Srivastava used to live as daughter-in-law in her house, the convict/appellant Ajai Prasad used to talk her regularly on telephone. Reena Srivastava also used to talk him on telephone secretly. This fact was not relished by Vipin (deceased). They all used to placate Reena Srivastava that, that was not good as she was married. The convict/appellant Reena

Srivastava invited convict/appellant Ajai Prasad to her home by making telephone call. The convict/appellant Ajai Prasad came along with Narendra and Alka, who were brother and sister of the convict/appellant Reena Srivastava. Her son Vipin used to ask Reena not to call Ajai Prasad, if there is a need make a call to her own parental home. Reena Srivastava invited Ajai Prasad as Marriage Anniversary of Vipin and Reena was to be celebrated on the date 16th. In the night of the incident, she slept on the roof along with her children Vivek, Shailendra, Reeta and her husband Vishambhar Dayal Srivastava. On that night her husband was not feeling well. Her son Vipin and Reena and another son Pankaj and his wife Shyama Devi and third son Satish were slept in their rooms on the ground floor. On the day of incident, main door of the house and the door towards the school were closed by her at the time when she went to sleep. The convict/appellant Ajai Prasad slept in the compound of school on that day, while on the previous days, he slept on the roof of the house. In the mid-night, she heard the noise of falling of water from the water-tap, then she asked Reena about the same, then her daughter-in-law Reena answered that her cousin was asking for water and she is giving the same. After some time, her daughter-in-law Reena came on the roof to

sleep. When she asked about her coming on the roof, she told that there was hot on the ground floor, so she had come there. This witness has further stated that on the roof Reena was restless and it was appearing that she was puzzled, restless and nervous. At about quarter to 5 or 5.30 AM her daughter-in-law Reena told her that main gate of the house was open and she felt scared. Then, she (witness) asked her (Reena) how the gate was opened, then she showed ignorance about the same. Knowing it, she came down and found that main gate was open and she asked Reena about Vipin, then she told that he was sleeping. She has further stated that on the night of incident she herself closed the main door of the house and that door could not be opened without opening from inside or without breaking. She checked the goods/articles of the house and also her own box and asked the family members to check the goods/articles but Reena did not go to check her room in-spite of her asking. Reena brought her toothpaste, toothbrush and clothes from her room and took bath and dipped clothes which she wore in the night in a bucket. By that time she (witness) was not aware about the incident. Reena went into the Kitchen and started preparing breakfast for going to her maternal home. She asked Reena to awake Vipin but she did not go to wake Vipin up. In



the morning at about 6 or 6.30 AM a mason (Mistri) namely Mumtaj came there as some construction work in the school was to be done. Mason asked to call Vipin, then she called Vipin from the door but no response was received. Then she went inside the room and found that Vipin was lying dead on the bed and blood was also there on the bed. She raised cry, then other family members reached there and saw blood soaked dead body of Vipin. Thereafter his son went to inform at the Police Station. Reena was puzzled after this incident. This witness has also been cross-examined in detail by the defence counsel but no major contradiction could be brought in the cross-examination.

15. P.W. 7-Mamta Srivastava is the sister of the deceased. She has also supported the case of the prosecution. She has stated in her examination in chief that she came to her parental home as her father was not feeling well. The incident occurred on 18.06.2005. On 13.06.2005 Narendra (brother in law of Vipin) and their uncle Ajai Prasad came there. In the morning of 18.06.2005, they had to go to their home but Reena asked Vipin to ask these persons to stay more. In the night at about 10 O'clock all the persons took meals and went to sleep. Vipin and his wife Reena went to sleep in their room. Elder brother Pankaj Kumar Srivastava and his wife Shyama Devi went to

sleep in their room and brother Satish went to sleep in his own room. She, her husband Ajay Srivastava, sister Reeta, mother Prabha Devi, father Vishambhar, brother Vivek and Sonu went to sleep on the roof. Narendra Srivastava, Alka and Ajai Prasad, who came there from the parental home of Reena went to sleep in the School. All these three persons used to sleep on the roof along with them since the day they had come but on that day they went to sleep in the school on the pretext of inconvenience on the roof and on asking by Reena they slept in the school. Her mother asked them to sleep in the ground in front of the house but Reena Srivastava said that it is not good to sleep in the open and they all slept in the School. On the day of incident, her younger sister-in-law also came to sleep on the roof due to hot weather. When the noise of opening of water tap was heard by her she got awake. She also heard some noise of whispering at that time. After sometime, Reena Srivastava came on the roof and lay-down near her mother. At about 6.30 AM she heard the cry of her mother then she along with others went downward and saw that her brother Vipin was lying dead on his bed. There was injury on his neck and blood was there on the bed. She and her brother Sonu picked Vipin up and brought outside the house and saw that he was dead. She has

(19)

further stated that Reena Srivastava had taken bath before they came down from the roof and started to work in the Kitchen. Mason namely Mumtaj came and he asked to call Vipin, then her mother asked Reena to wake Vipin up, but Reena ignored that, then her mother sent her younger sister Reeta to wake Vipin up and she called Vipin but received no answer. Then she asked her mother to go to Vipin's room, her mother went to the room of Vipin and cried. Then they all rushed downward. She has further stated that Ajai Prasad used to sit with Reena alone in her room for 2-3 hours in the absence of Vipin. This conduct of Reena Srivastava was not liked by them. Her father did not like it and asked Reena to talk with Ajai Prasad sitting outside the room. On it Reena felt annoyed. Vipin also objected to this conduct of Reena Srivastava.

16. P.W. 8 is Shailendra Kumar @ Sonu, the younger brother of the deceased. This witness has stated that on 18.06.2005 his elder brother Vipin was getting some construction work done in the school situated adjacent to his home. In the evening at about 7 O'clock his brother after taking bath became ready to go on motorcycle. On asking he told that he was going outside. On it he (P.W. 8) asked his brother that he also wish to accompany him. On it, his brother Vipin said he was going on being asked by Reena

Srivastava for entertainment of Ajai Prasad as he wished for some outing. His brother Vipin agreed to take him along. Therefore, he along with his brother and Ajai Prasad went on motorcycle to Aliganj. They all ate ice-cream. From that place, Ajai Prasad started driving motorcycle and drove the same to a shop of cannabis (Bhaang). There Ajai Prasad along-with his brother Vipin went inside the shop and he remained outside near the motorcycle. About 20-25 minutes after, they both came out. Vipin asked Ajai Prasad that you have made me to eat 3-4 tablets of cannabis, now your niece (Reena) will be angry with him (Vipin) but Ajai Prasad said that Reena Srivastava would say nothing. This witness has further stated that he heard all this but said nothing. In the night they all took meals and went to sleep on the roof near his parents. Reena and Vipin went to sleep in their room. Ajai Prasad and Narendra went to sleep in the campus of School adjacent to the house. In the morning at about 6 or 6.30 AM, he woke up, hearing the cry of her mother and rushed downward and found that his brother Vipin was murdered on his bed. He has further stated that in the morning the main door of house was found open. His sister-in-law Reena Srivastava took out her toothbrush, toothpaste and clothes etc from her room and took bath and changed the clothes but she did not tell

anything about the murder of his brother Vipin to anyone and started to work in the Kitchen. In the morning when labourers came and asked to call Vipin then his mother asked Reena Srivastava to call Vipin but she ignored, then his mother herself went to wake Vipin up, then found that Vipin was killed by some one and she cried. This witness has further stated that before this incident Reena and Ajai Prasad used to sit alone in the room for a long time and this conduct of Reena and Ajai Prasad was not liked by the family members. His father also objected to it. He has further stated that for these reasons he and his family members have full belief that his brother was killed by Ajai Prasad along with his sister-in-law Reena Srivastava.

17. All the witnesses of facts have been cross-examined at length but no major contradiction could be brought in the evidence of these witnesses. These all witnesses of facts have proved that Ajai Prasad and Reena Srivastava used to talk on telephone for a long time and whenever Ajai Prasad used to visit their house, Reena Srivastava and Ajai Prasad used to sit in the room alone for a long time and that was not liked by the family members or even by the deceased Vipin. The father of the deceased objected to it. On it, Reena Srivastava felt annoyed. The incident occurred

inside the bed-room of Vipin and Reena Srivastava where in the night initially they both went to sleep together but about 1 O'clock in the night Reena left the room and went to sleep on the roof where her mother-in-law was sleeping along with other family members. It has also been proved by these witnesses that so called uncle of Reena along with Narendra and Alka (brother and sister of Reena) slept on that night in the campus of the School adjacent to their house on the pretext of inconvenience in sleeping on the roof. During investigation, the Investigating Officer observed the conduct of both the convicts/appellants and asked the family members to keep an eye on these two persons as they are prime suspects, as has been stated by P.W. 10-Nirankar Singh, Officer in Charge of Police Station, who initially made investigation.

18. P.W. 10 has stated that he conducted 'Panchayatnama' of the body of the deceased, which is exhibit Ka-9. He sent the body of the deceased for post-mortem examination along with relevant papers, which have been proved by him as Exhibit Ka 10 to 14. Thereafter, he recovered from the bed, one blood stained pillow, towel, loincloth, bed-sheet and one corner of mattress by cutting out of the blood stained mattress, on which the deceased had slept at the time of incident and the same were

(23)

taken into custody and recovery memo was prepared on the spot by him under his own hand-writing and signature. This witness has proved recovery memo as Exhibit Ka-15. He has further stated that he recorded the statement of Satish and Shailendra on 19.06.2005. On 20.06.2005, he received the carbon copy of post-mortem-examination report and noted the same in the case diary and recorded the statements of other witnesses including the statement of mother of the deceased Prabhavati, Ramesh Babu Srivastava, Shobha Devi, Shyama Devi, Reena (wife of the deceased), Smt. Kailash Devi, Hari Prasad Gupta, Narendra Srivastava, Ajay Srivastava, Mamta Srivastava and Reeta. On 25.06.2005 he recorded the statement of Vinay Kumar and on 26.06.2005 he recorded the statement of Shailendra @ Sonu. Thereafter, he alerted the family members of the deceased to keep a vigil on Reena as the investigation is on its crucial stage. Thereafter he recorded the statement of Vishambhar Dayal, Ajay Srivastava (son of Pyare Lal), Prabhavati and Mamta again. On 27.06.2005 he arrested Reena and Ajai Prasad at 14.15 hours as accused persons and went back to Police Station and entry of the same was made in the General Diary (G.D.) at Rapat No. 21, time 14.40 hours, dated 27.06.2005 on his own dictation by Constable Ashok Singh and

he signed the same. The carbon copy of this entry has been proved as Exhibit Ka-16. This witness has further stated that statement of Reena and Ajai Prasad were recorded and both of them confessed their crime. The convict/appellant Ajai Prasad said that he would get recovered the knife used in the murder and also the Vest, which he wore at the time of committing murder. Thereafter, on 27.06.2005 itself he along with S.S.I. Daljeet Singh and fellow Constable Shiv Kumar, in a Government Vehicle driven by Driver Kesh Bahadur Singh along with accused Ajai Prasad with the expectation of recovery of knife, the weapon of crime, started from the police station to village Daudpur, the house of the deceased Vipin, when they reached there, the witnesses Ajay Srivastava son of Pyare Lal and Satish were there, then accused Ajai Prasad got down from the Jeep and started walking towards Prabhavati City Montessori Junior High School, Daudpur and entered inside the gate of that and came out of the north gate and at a distance of about 9 paces from the gate, he took out a knife from Moonj (a sort of grass) present inside the bushes on which the blood was there. He also took out a Vest of white colour, on that also blood stains were there and told that this is the knife by which he killed Vipin stabbing in his neck and this is the Vest



which he wore at that time and blood stains were printed on it. He further stated that he hid the same here at this place. This witness has further stated that knife and Vest were taken into police custody in front of the witnesses and recovered articles i.e. knife and Vest were sealed in a cloth and the recovery memo was prepared at the spot upon his dictation by SSI Daljeet Singh and the copy of the same was given to the accused. The recovery memo was signed by the police personnel who accompanied him to the spot. Recovery memo was proved by this witness as Exhibit Ka-6. Recovered knife and the Vest were also summoned in the Court and shown to the witness and he identified as recovered at the pointing out of the accused Ajai Prasad. That knife was exhibited as material exhibit 1 and Vest as material exhibit 2. The articles which were recovered from the room where the deceased was murdered were also summoned in the Court and shown to this witness. He identified the articles as blood soaked pillow, towel, loincloth, bed-sheet, a piece of mattress and the specimen seal. These all exhibited as material Exhibit 3 to 7. S.S.I. Daljeet Singh, who accompanied the Investigating Officer at the time of recovery of knife and Vest at the pointing out of the convict/appellant Ajai Prasad has been examined as P.W. 5. He has

also proved the recovery of knife and Vest at the pointing out of the accused Ajai Prasad.

19. Hon'ble Apex Court in the case of **Kishore Bhadke Versus State of Maharashtra (2017) 3 Supreme Court Cases 760** has held that "[Section 27](#) of the Evidence Act is an exception to [Section 25](#) of the Act. [Section 25](#) mandates that no confession to a Police Officer while in police custody shall be proved as against a person accused of any offence. [Section 27](#), however, provides that any fact deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

20. In **Mehboob Ali and another Versus State of Rajasthan (2016) 14 Supreme Court Cases 640**, the Hon'ble Apex Court in this regard has held as under:-

"12. [Section 25](#) of the Evidence Act provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. [Section 26](#) provides that no confession made by any person while he is in the

(27)

*custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. [Section 27](#) is in the form of a proviso, it lays down how much of an information received from accused may be proved. 13. For application of [section 27](#) of Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the Police before disclosure statement of the accused is recorded, is admissible in the evidence."*

21. Hon'ble Apex Court further held in the above case as under:-

*"16. This Court in [State \(NCT of Delhi\) v. Navjot Sandhu](#) alias Afsan Guru [(2005) 11 SCC 600] has considered the question of*

*discovery of a fact referred to in [section 27](#). This Court has considered plethora of decisions and explained the decision in [Pulukuri Kottaya & Ors. V. Emperor](#) [AIR 1947 PC 67] and held thus :*

*“125. We are of the view that Kottaya case [AIR 1947 PC 67] is an authority for the proposition that “discovery of fact” cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.*

*126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case. The ratio of the decision in Kottaya case reflected in the underlined passage extracted supra was*

(29)

*highlighted in several decisions of this Court.*

*127. The crux of the ratio in Kottaya case was explained by this Court in [State of Maharashtra v. Damu](#). Thomas J. observed that: (SCC p. 283, para 35)*

*'35. ...The decision of the Privy Council in [Pulukuri Kottaya v. Emperor](#) (supra) is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.*

22. In [Raju Manjhi Versus State of Bihar \(2019\) 12 Supreme Court Cases 784](#), the Hon'ble Apex Court has held as under:-

*"13. The other ground urged on behalf of the appellant is that the so called confessional statement of the appellant has no evidentiary value under law*

(30)

*for the reason that it was extracted from the accused under duress by the police. It is true, no confession made by any person while he was in the custody of police shall be proved against him. But, the Evidence Act provides that even when an accused being in the custody of police makes a statement that reveals some information leading to the recovery of incriminating material or discovery of any fact concerning to the alleged offence, such statement can be proved against him. It is worthwhile at this stage to have a look at Section 27 of the Evidence Act.*

*27. How much of information received from accused may be proved.-Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it*

(31)

*amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.*

*14. In the case on hand, before looking at the confessional statement made by the accused-appellant in the light of Section 27 of the Evidence Act, may be taken into fold for limited purposes. From the aforesaid statement of the appellant, it is clear that he had explained the way in which the accused committed the crime and shared the spoils. He disclosed the fact that Munna Manjhi was the Chief/Head of the team of assailants and the crime was executed as per the plan made by him. It is also came into light by his confession that the accused broke the doors of the house of informant with the aid of heavy stones and assaulted the inmates with pieces of wood (sticks). He categorically stated that he and Rampati Manjhi*

(32)

*were guarding at the outside while other accused were committing the theft. The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act."*

23. In the present matter the convict/appellant Ajai Prasad confessed his crime and got recovered knife used for murdering the deceased Vipin and also got recovered the Vest, which he wore at the time of committing the murder and on that Vest got blood stains due to stabbing of knife to the deceased. The knife and Vest recovered at the pointing out of the convict/appellant Ajai Prasad were sent for forensic examination and the report is Paper No. 70 Ka on the record. This report shows that the knife and Vest have been shown at Serial No. 12 and 13. On all the articles from Serial Nos. 1 to 13 blood was found but origin could not be ascertained as the blood got



disintegrated. According to the statement of Investigating Officer and witness Daljeet Singh has proved that blood stains were there on the knife as well as on the Vest.

24. P.W. 9- Chandra Prakash Tiwari, Officer-in-Charge of Police Station Musafirkhana and second I.O. of the case. He took over investigation as the previous I.O. Nirankar Singh was transferred and he (P.W. 9) was posted as Officer-in-Charge of the Police Station Musafirkhana. He has proved the part of investigation made by him. He inspected the place of recovery of knife and Vest and prepared the site-plan of the place of recovery in his own hand-writing and signature. He has proved the site-plan as Ext. Ka-7. The case property was sent by him for chemical examination on 12.07.2005. On 27.07.2005 he recorded the statements of some other witnesses and on 28.07.2005 he submitted the Charge-sheet No. 73 of 2005 against the convicts/appellants Reena Srivastava and Ajai Prasad under Section 302 IPC. This witness has proved the charge-sheet as Ext Ka-8. The Doctor, who conducted the post-mortem has been examined as P.W. 3. He has proved the post-mortem examination report as Ext. Ka-3. According to the post-mortem-examination-report following injuries were found on the body of the deceased:-

(34)

*"(i) Incised wound 4 cm X 3 cm X 3 cm over left side neck 4 cm below from left ear lobule margins are clear and underlies, major vessels, muscle and nerve are cut.*

*(ii) Abrasion 3 cm X 5 cm over left side of face 4 cm below from left ear tragus.*

*(iii) Incised wound 3 cm X 1 cm X skin deep over right side of scrotum right testicular sac is bulging from injuries. "*

This witness has stated that death of the deceased resulted due to shock and hemorrhage as a result of ante-mortem injuries. According to this witness, death of the deceased might be possible on 18/19-06-2005 in the night by an assault of knife. The injuries found on the body of the deceased are in consonance with what have been told by other witnesses of facts as well as Investigating Officer. The weapon of offence which was recovered at the pointing out of the accused Ajai Prasad, is a knife.

25. Learned counsel for the convicts/appellants contended that all the witnesses are relative witnesses, hence they should not be relied on. This contention of the learned counsel is not tenable as it is settled law that the testimony of the related witness cannot be discarded only for the reason that they are relatives of the deceased.

26. In Kartik Malhar Vs. State of Bihar: (1996) 1 SCC 614, the Hon'ble Apex Court has held as under:-

*"We may also observe that the ground that the witness being a close relative and consequently, being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh's case (supra) in which this Court expressed its surprise 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., the Court observed :*

*"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses 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 rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan, [1952] SCR 377 = AIR 1952 SC 54. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any*

(36)

*rate in the arguments of counsel."*

*In this case, this Court further observed as under :*

*"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."*

27. In another case of **Mohd. Rojali Versus State of Assam: (2019) 19 SCC 567**, the Hon'ble Apex Court in this regard has held as under:-

*"As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by*

(37)

*now wellsettled that a related witness cannot be said to be an 'interested' witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between 'interested' and 'related' witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see State of Rajasthan v. Kalki, (1981) 2 SCC 752; Amit v. State of Uttar Pradesh, (2012) 4 SCC 107; and Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC*

*298). Recently, this difference was reiterated in [Ganapathi v. State of Tamil Nadu](#), (2018) 5 SCC 549, in the following terms, by referring to the three Judge*

bench decision in [State of Rajasthan v. Kalki](#) (supra): “14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be “interested”...”

11. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in [Dalip Singh v. State of Punjab](#), 1954 SCR 145, wherein this Court observed:

*“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person...”*

*12. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in [Jayabalan v. Union Territory of Pondicherry](#), (2010) 1 SCC 199:*

*“23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the*

*evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”*

28. Thus to sum up from the above discussion it is clear that prosecution has proved the motive of the crime i.e. accused Ajai Prasad had illicit relations with the accused Reena Srivastava (wife of the deceased). The prosecution has also proved the conduct of the wife of the deceased after the incident. The deceased and the accused Reena Srivastava went to sleep in their room after having meals but after midnight at about 1 O'clock all of sudden, she went to sleep on the roof where her mother-in-law was sleeping along with other family members. No plausible explanation in this regard has been given from the side of the accused Reena Srivastava. The incident had occurred inside



the bed-room where husband and wife went to sleep. It is heavy duty of the wife to explain how the incident occurred or in what state she left the room, where her husband was found murdered. In the morning itself when her mother-in-law asked her to wake her husband up, she ignored and she was busy in preparing the breakfast in the kitchen. These all facts and circumstances have been corroborated by the recovery of knife used in the crime and Vest of the accused Ajai Prasad, which he wore at the time of committing the murder of the deceased Vipin at the pointing out of accused Ajai Prasad. The witnesses examined in defence D.W.1 and D.W. 2 have tried to prove the fact that deceased Vipin was killed by Pankaj Srivastava. All the witnesses of facts, who are family members of the deceased denied the fact of any kind of bickering or dispute between two brothers Pankaj Srivastava and Vipin Srivastava. Hence, it is clear and well established that the murder of the deceased was committed by the convict/appellant Ajai Prasad in connivance with convict/appellant Reena Srivastava in furtherance of a common intention. Therefore, the trial Court has rightly held the accused persons guilty and sentenced them accordingly with imprisonment for life coupled with fine. There appears no ground or

(42)

reason for interference in the conviction and sentence recorded by the trial Court.

29. In the result, these two appeals are *dismissed*.

30. The convicts/appellants Smt. Reena Srivastava & Ajai Prasad @ Ajai Kumar @ Dharendra Kumar Srivastava are stated to be in jail, accordingly they shall serve out the sentence awarded by the trial Court.

31. Office is directed to send a copy of this order along with lower Court record to the trial Court concerned for necessary information and compliance forthwith.

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date:- 07.07.2022

Arun