

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 317/2001**

% *Judgment reserved on: July, 24, 2009*
Judgment delivered on: October, 30, 2009

RAVINDER @ BABLI & ANR. Appellants
Through : Mr. Anurag Jain, Advocate

VERSUS

STATE Respondent
Through : Ms.Richa Kapoor, APP

CORAM :-
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- | | |
|--|------|
| (1) Whether reporters of local paper may be allowed to see the judgment? | Yes. |
| (2) To be referred to the reporter or not? | Yes. |
| (3) Whether the judgment should be reported in the Digest ? | Yes. |

ARUNA SURESH, J.

1. Appellants Ravinder @ Babli and Yogesh @ Sardar have impugned the judgment of conviction and order on sentence dated 11.4.2001 vide which they were convicted for offence under Section 302 of the Indian Penal Code (IPC) read with Section 27 of the Arms Act for having committed murder of Madan Lal and were sentenced to suffer life imprisonment and fine of

Rs.10,000/- each; in default of payment of fine to undergo simple imprisonment (SI) for a period of five months for offence under Section 302 IPC and further to undergo rigorous imprisonment for seven years and fine of Rs.1,000/- each; in default of payment of fine to undergo SI for 15 days each for the offence punishable under Section 27 of the Arms Act. Both the sentences were ordered to run concurrently.

2. In brief, the prosecution story is that on 27.9.1991 HC Madhu Nayyar was returning from his duty at about 6.00 P.M. when he received information that in Block No.12 an incident of stabbing was going on. After directing the informant to go back to the spot HC Madhu Nayyar went to the Police Station and informed wireless operator HC Narayan Dutt about the incident with a request to transmit the information to the SHO. He alongwith HC Ishwar Singh, Const. Dharam Singh, Const. Yogender and Const. Kiran Pal reached in between Block No.12 and 18, Kalyanpuri. He saw two boys; one of whom was holding a knife and the other holding a daab (*Gandasa*), were assaulting a person lying in front of House No.18/319, Aggarwal General Store, Kalyanpuri and were addressing the injured as Madan Lal and were

saying that they were taking the revenge of their mothers' murder. Both the boys namely, Yogesh armed with knife and Ravinder armed with Daab were overpowered and were apprehended along with their weapons of offence. Sushil Kumar Bharti (the informant) removed the injured to JPN Hospital in a TSR.

3. On receipt of information about the incident, Inspector R.S. Nehra (PW-21) reached the spot and arrested both the accused persons. He took into possession the weapons of offence, recorded the statement of HC Madhu Nayyar; Ex.PW-21/A, received a copy of report No.57-B dated 27.9.1991 of JPN hospital wherein the injured Madan Lal had been declared brought dead at 6.35 P.M. He made his endorsement on the statement of Madhu Nayyar and got the FIR of this case registered and proceeded with the investigation of the case.
4. The trial court framed charges under Section 302 read with Section 27 of the Arms Act against the accused persons. Prosecution examined 22 witnesses in support of its case. Relevant for the purpose of the present appeal are the eye witnesses and the other circumstantial evidence gathered by the prosecution

during the investigation of the case.

5. We find it of foremost importance to first consider the testimony of eye witnesses to the incident.
6. Hukam Singh (PW-2) is the father of deceased Madan Lal. His examination in chief was recorded on 9.12.1994 i.e. after about three years of the incident. He has testified that :-

“About three years ago in the evening at 5.00 P.M. I was sitting on a Pulia near my house. Babli (accd. Babli @ Ravinder pointed towards him) had churra in his hand. He was with his brother Sardar. Sardar had also a churra. Kanhaiya who is in police, came on motor-cycle. He (Kanhiya) was in uniform. Babli and Sardar's father also came. Kanhiya and his father gave a bottle to Babli @ Ravinder. I cannot say what was in the bottle. Bottle was given by Kanhiya. Babli had thrown bottle on my son Madan. Madan (He) burnt. Sardar had given churra blows all over the body of Madan, till he died, Sardar did not leave him. At that time, none was present at my house, except me. No one came to save my son.

Babli and Sardar's mother had died in a fight. My son Madan was also named as one of the attacker. Madan was released on bail when that incident had occurred.

When Madan became unconscious, Sushil a TSR driver took

him but I did not know where he was taken. I did not accompany him.

Police came when Madan had already died. Madan had gone inside kirayana shop of Aggarwal while running. Both Babli and Sardar forcibly took out Madan from the shop. (To Court: Madan had run after he was thrown something from the bottle. Churra was (churra blow) given before he ran. After taking him out from the shop, both the brother stabbed Madan with churra. Mohalla people came but I cannot tell their names.....")

7. He was declared hostile on behest of the Additional Public Prosecutor.
8. It is urged by the learned counsel for the appellants that Hukam Singh has turned hostile and in his cross-examination he had made contradictory statements which discredit his testimony and, therefore, his testimony cannot be accepted in evidence to implicate the accused persons in this case. True that, Hukam Singh has made contradictory statements in his cross examination, when he deposed that there was no enmity between his family and accused persons and also that he did not know deceased Madan was involved in a case under Section 302/34 IPC. However, later on

he did admit that his son Madan was involved in the murder of mother of the accused persons. He did not remember whether he had given the time of incident as 4.45 P.M. or 5.45 P.M and if he had given the name of the accused persons in his statement made to the police. However, he has explained failure of his remembrance of the accurate details of the incident including the name of the accused persons due to his failing memory. True that, he denied that police had conducted any proceedings in his presence. It is relevant that his cross examination was recorded on 2nd March, 1996 i.e. after about five years of the incident. Besides, Hukam Singh is an illiterate person and has thumb marked his statement. Being father of the deceased having witnessed the murder of his own son in front of his eyes found himself helpless because of disability and just watched the incident. To expect complete accuracy of details of the incident to be given by him in such circumstances is not warranted, especially when in his examination-in-chief he has corroborated the prosecution case that his son was stabbed by Babli and later on he was dragged from the shop by accused Sardar. Hence, complete testimony of

Hukam Singh cannot be discarded as untrustworthy.

9. Mr. Anurag Jain, learned counsel for the appellants has argued that Hukam Singh's testimony cannot be believed as according to him, he was sitting on a Pulia, which as per the site plan is at some distance from the place of the incident and therefore he could not have witnessed the incident.
10. The incident took place at the crossing of main road of Block No. 12-18 in gali of Block No.12. Aggarwal General Store falls in Block No.18 and as per the site plan is in front of the park. Block No.12 falls diagonally opposite Block No.18 where Aggarwal General Store is situate. Hukam Singh is shown at Point 3 on the Pulia opposite Aggarwal General Store. Distance between the place where he was sitting and the place of incident is about 10 meters, according to the site plan on being roughly measured by foot scale. Site plan does not indicate any house falling in between the place where Hukam Singh was sitting and the place of incident, it being a road. Under these circumstances, the place of occurrence was clearly visible to Hukam Singh. As per the statement of Hukam Singh, Madan Lal ran inside

Aggarwal General Store but, was dragged out by the appellants and was killed in front of the said shop which was very near to the place, where Hukam Singh was sitting. Therefore, analysis of the site plan Ex.PW-15/A demolishes the defense of the appellants that Hukam Singh had not witnessed the incident of stabbing and had deposed falsely.

11. Testimony of Hukam Singh finds corroboration from the statement of Smt. Bhagwati (PW-3). She testified that accused Ravinder was having a daab in his hand, whereas accused Yogesh was carrying a churra with him and they both stabbed deceased Madan Lal with daab and churra respectively. Smt. Bhagwati (PW-3) corroborated the prosecution story in all material particulars including Hukam Singh having raised an alarm and also arrival of the police at the spot and apprehension of the accused persons at the spot itself. She is also a witness to the proceedings conducted by the police at the spot like lifting of blood with the help of cotton from the spot, seizure of daab and churra from the hands of the accused persons, lifting of bloodstained clothes of Madan from the spot. True that she mentioned the name of one Prakash who, according to

her, had taken the deceased to the hospital. This is in contradiction to the prosecution case, according to which it was Sushil Bharti who had taken the deceased to the hospital. However, wrong mentioning of name of the person who took the deceased to the hospital is not fatal to the prosecution case.

12. At one stage she identified churra Ex.P-1 as the same which was recovered but changed her statement and deposed that it was not the same churra and again that, she could not say whether it was the same churra which was taken into possession by the police. However, she identified daab Ex.P-2 as the same which was seized by the police at the spot. She identified her signatures on the seizure memo Ex.PW-3-A. Thus, she fully supported the case of the prosecution.
13. There are minor variations in the statement made by Smt. Bhagwati under Section 161 Cr.P.C. to the police and the statement made in the court and also her cross examination. The fact remains, she was examined after about 3½ years of the incident as PW-3 and was cross examined on 11.12.1998 i.e. after about seven years of the incident and after four years of her examination-in-

chief. With the lapse of time, such like variations including the name of some of the witnesses or the role played by anyone of them are natural as a witness cannot be expected to remember all the details of the incident minutely. There is always lapse of memory with the passage of time and a person is bound to forget minute details if, asked about them after number of years. We do not find any material contradictions appearing in the examination-in-chief or cross examination of this witness which could adversely affect the prosecution case.

14. Smt. Chandro (PW-6) happened to be mother of the deceased. She has supported the prosecution case, when she deposed that the accused persons had given beatings to her son deceased Madan about six years back. (As her statement was recorded on 13.3.1997). They laid him on a cot and assaulted him with daab and knife. Since she did not support the prosecution case in totality regarding the other part of the incident, the trial court declared her hostile on behest of the learned APP for the State. She did admit in her cross examination by the accused persons that, deceased Madan was facing trial for an offence under Section 302 IPC for having

alleged murder of Maina Devi; mother of the accused persons.

15. The star witness of the incident is Sushil Kumar (PW-12) he was also partially examined as PW-1. However, since he has been examined as PW-12, his statement as PW-1 has not been taken into consideration as it does not reflect on the incident in question. Sushil Kumar was running a parchoon shop at 12/16, Kalyan Puri. He has testified that on 27.9.1991 he was present at his shop when he heard the noise of Hukam Singh, his uncle (Tau), who was crying and therefore he came out of his shop. He saw the deceased sitting on the cot outside the house and accused Ravinder armed with daab and accused Yogesh armed with churri were stabbing Madan Lal. He ran towards Police Station Kalyanpuri and he spotted a police Jeep. He told the driver of the Jeep about the incident and he was instructed by the driver to go to the spot with the assurance that he would be coming soon with other police staff. He has deposed that when he reached the spot, he saw Madan Lal lying in an injured condition near gate of Aggarwal General Store and Ravinder and Yogesh were still stabbing Madan Lal. Within few minutes police reached there and

apprehended the accused persons. Since Madan Lal was fighting for life, he stopped a three wheeler scooter and took him to JPN hospital with the help of police where the doctor declared him dead. In the cross examination he deposed that he did not find Hukam Singh at the spot but had seen him sitting on a nearby pulia and was crying. According to him the pulia must be at a distance of 30-35 ft. This witness has stood the test of examination and cross examination.

16. Sushil Kumar Bharti was not present at the spot when the rukka was sent to the Police Station for registration of the case as he had already removed the injured to the hospital and had reached JPN hospital, where the doctor declared Madan Lal '*brought dead*' vide MLC No.90648/91 (Ex.PW-20-A) at 6.35 P.M. i.e. before the arrival of the police party at the spot. Rukka was sent to the Police Station at about 8.00 P.M. Rukka finds mention of the said MLC. Naturally, therefore, he was silent about the rukka having been sent to the Police Station for registration of the case.
17. Contradictions highlighted by the learned counsel for the accused persons in the cross examination of this witness

are trivial in nature. In fact, we do not find any contradictions appearing in the cross examination of this witness on material particulars. Insignificant contradictions or variations are of no consequence as they cannot come to the rescue of the accused persons.

18. Om Pakash (PW-16) is completely hostile.
19. Besides, these public witnesses, some of the police officers, namely, Constable Dharam Singh (PW-9), Constable Kiran Pal (PW-11), Head Constable Ishwar Singh (PW-13) and Const. Yoginder Singh (PW-14) who happened to reach the spot along with Constable Madhu Nayyar and had witnessed the stabbing of the deceased by the accused persons, have fully corroborated the prosecution case. Unfortunately, Head Constable Madhu Nayyar who is the complainant could not be examined because he had expired before he could be summoned as prosecution witness.
20. Learned defence counsel has argued that Constable Dharam Singh did not go to the spot as he is not a witness to the seizure memos of knife and Daab Ex. PW-13/B and Ex.PW-13/C. In his cross examination, he deposed that statement of Hukam Singh was recorded in

his presence. He was confronted with the memo of seizure of daab which did not bear his signatures. Simply because the memo did not bear the signatures of Const. Dharam Singh, does not discredit his testimony that he was present at the spot and had witnessed the incident. It is not necessary that all the witnesses to the incident must also sign the seizure memo prepared at the spot. Similarly, because Const. Dharam Singh did not speak of Sushil Kumar (PW-12) or his removing the deceased in TSR to the hospital does not in any manner demolishes his testimony.

21. Learned counsel for the accused persons has highlighted certain discrepancies which have appeared in the cross examination of HC Ishwar Singh (PW-13) like:-

“.....Driver of his own proceeded to the spot. Driver did not tell anything to me why he was proceeding to the spot. No information was received by driver Madhu Nair, H. Constable regarding the incident. Madhu Nair the driver also did not inform other staff in front of me as to where he was proceeding and why he was proceeding. We reached the spot in five seven minutes from 5:40 P.M.
.....”

And also that :-

“.....The incident continued for four-five hours in our presence. The signatures of deceased were taken on the recovery memo of the daw and dagger but I do not know the name of that.....”

22. What can be inferred from his cross examination is that Madhu Nayyar did not tell him as to why they were proceeding to the spot but it does not demolish his testimony that he had gone to the spot along with Madhu Nayyar and other police officials. It has come in evidence that HC Ishwar Singh was working as Moharrar Malkhana at the relevant time but had joined the police party because of scarcity of staff in the Police Station.
23. Learned counsel for the accused persons has argued that Hukam Singh (PW-2), Smt. Bhagwati (PW-3), Smt. Chandro (PW-6), Om Prakash (PW-16) are hostile and are unworthy of credit, therefore, their testimony cannot be read against the accused persons to bring home their guilt.
24. It is no longer res integra that part of the testimony of a hostile witness, which corroborates the prosecution story, is admissible in evidence and can be considered by the trial court, provided it inspires confidence. However, the testimony of such a witness is subject to

close scrutiny and a portion thereof which is consistent with the case of the prosecution or defence can be accepted. Simply because the witness is partially hostile, his testimony cannot be discarded as unworthy of credit. The principle '*falsus in uno, falsus in omnibus*' is not applicable in India.

25. In '**JodhrajSingh vs. State of Rajasthan, 2007 Crl.L.J. 2942**', it was observed:-

".....Moreover, while recording a judgment of conviction, the court may consider a part of the deposition of a witness who had been permitted to be cross-examined by prosecution having regard to the fact situation obtaining in the said case. How the evidence adduced before it shall be appreciated by the court would depend on the facts and circumstances of each case."

26. In '**State of U.P. v. Ramesh Prasad Misra & Anr., 1996 Crl.LJ 4002**', it was observed:-

"7. The question is whether the first respondent was present at the time of death or was away in the village of DW 1, his brother-in-law. It is rather most unfortunate that these witnesses, one of whom was an advocate, having given the statements about the facts within their special knowledge, under

Section 161 recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.....”

Reliance is also placed on ***‘Balu Sonba Shinde vs. State of Maharashtra, 2002 (7) SCC 543’***.

27. In the present case PWs Hukam Singh (PW-2), Smt. Bhagwati (PW-3) and Smt. Chandro (PW-6) are in unison in their testimonies when they deposed that accused Ravinder @ Babli and Yogesh @ Sardar brutally and indiscriminately stabbed deceased Madan Lal outside his house after dragging him out from the shop of Aggarwal General Store, where he had ran away to save himself. They are also consistent with each other regarding the seizure of weapons of offence at the spot from the hands of the accused persons by the Investigating Officer. Some of the police officials, namely, Head

Constable Ishwar Singh, Constable Dharam Singh, Constable Yogender and Constable Kiran Pal, other eye witnesses have in unequivocal terms corroborated the independent witnesses.

28. In the present case, the eye witnesses though declared hostile at the instance of Public Prosecutor, have supported the prosecution case. Out of these witnesses two also received injuries, namely, Bhagwati and Chandro. Their presence at the spot, under the circumstances, cannot be doubted. Besides, the testimony of all the abovesaid witnesses finds full corroboration from the testimony of Sushil Kumar Bharti (PW-12).

29. Declaration of the witnesses as hostile at the instance of Public Prosecutor does not ipso facto reject their evidence. On assessment of creditworthiness of the witnesses and the other evidence on record, we find no force in the submissions of the learned counsel for the accused persons that the trial court should not have accepted the evidence of eye witnesses, who are hostile witnesses.

30. Under the circumstances, part of evidence of the above

said witnesses which is advantageous to the prosecution, has been rightly accepted by the trial court. Reliance has been placed in an extreme cautious and circumspect manner. On analysis of the evidence, we do not find ourselves in dis-agreement with the trial court.

31. In a murder case based on direct eye witnesses account it is necessary for the court to thoroughly examine the testimony of eye witnesses in order to ascertain whether they had actually seen the occurrence and whether the statement given by them appears to be natural and truthful and finds corroboration from the medical evidence on record. The testimony of eye witnesses also finds corroboration from the medical as well as forensic evidence on record.
32. Dr. P.C. Dixit (PW-19) found 39 injuries on the person of the deceased. As per his postmortem report Ex.PW-19/A following injuries were found fatal:-

“..... Injury No.1: Chopped wound 7x2x1.05 cm obliquely placed over right parietal region 4 cm behind right ear and 5 cm right to midline underneath bone was cut.

Injury No.2: Chopped wound 9.5 x 2.5

x 1.8 over right pirayatal region obliquely placed 1.5 cm in front of injury no.1. Underneath the bone was cut.

Injury No.3: Chopped wound 3 in numbers arranged in 'Z' shaped of the size front 8.1 x 1.5 cm underneath bone was cut oblique one 10.2 x 2 cm bone deep and the back one 5.5. x 2x bone deep centimeters. Override front of pirayatal region 1.5 cm above the right eye brow just right to midline end 1 cm in front of injury No.2.

Injury No.36: Incised stabbed wound 2.5 cm x 1 cm obliquely placed over upper outer part of left side chest 6.5 cm above and outer to left nipple, 4 cm below and inner to anterior axillary fold. The inner angle is acute and outer one was obtuse. The wound was chest cavity deep. The lower angle was 131 cm above left heel.

Injury No.38: Incised stabbed wound 3.5 x 2cm obliquely placed over right side lower part of chest 5.5 cm below and outer to right nipple and 12 cm below the anterior axillary fold. Upper angle was acute and lower angle was obtuse. The wound was chest cavity and going up abdominal cavity. The lower angle was 110 cm above the right heel.

Injury No.39: Incised stabbed wound 3.1 x 1.5 cm obliquely placed over right side upper abdomen 11 cm just below the right nipple and 11 cm right to midline. The upper angle was acute and the lower angle was obtuse. The wound was abdominal cavity deep. The lower angle was 108 cm above right heel....."

33. After examination of the injuries, he further opined:-

“.....As regards the opinion regarding cause of death is concerned, it was due to haemorrhage and shock as a result of stab injury to left lung via injury No.36 and right lung and liver via injury No.38 and right kidney as well as adrenal gland via injury No.39 alongwith head injury via injury No.1 to 3. All the injuries were ante-mortem and recent in duration and injuries No.1,2,3,6,7,9,10,21,22,31 could be caused by heavy sharp cutting edged weapon. As regards injury No. 25,26,36,38,39 are concerned these can be caused by a sharp cutting single edged stabbing weapon. Injury No.4,8,13,14,15 to 19 and 20,23,24, 27,28,29,30 & 32 could be caused by a heavy cutting weapon or by a cutting stabbing weapon and injury No.11,12,33,34,37 could be caused by a pointed end of cutting/stabbing weapon; injury No.5 & 35 could be caused by blunt force impact. Injuries No.1,2,3,36,38,39 were sufficient to cause death in the ordinary course of nature individually as well as collectively. As regards the weapon of offence is concerned, it seems that two weapons were used.....”

34. I find the report of Dr. Dixit also containing the detailed diagram of injuries (Ex.PW-19/B). He has testified his signatures on the report as well as on the diagram. Thus, from his report, it is clear that two weapons were

used for stabbing the deceased.

35. The Investigating Officer also obtained the opinion of Dr. Dixit, after producing the weapons of offence and clothes of the deceased, to ascertain if the injuries found on the person of the deceased can be caused by the said two weapons. Dr. Dixit was of the opinion that Injuries No.18,19,20,23 & 24, 25,26,27, 36 & 38 could be caused by weapons of offence Ex.P-1 and P-2. He also prepared the sketch of these two weapons in his report Ex.PW-19/C. He also found corresponding cut marks on the clothes of the deceased, which could be possible with the said weapons Ex.P-1 and P-2.
36. Dr. Bhupinder Kumar (PW-20) had prepared the MLC on 27.9.1991 after examination of deceased Madan Lal. His report fully corroborates the postmortem report Ex.PW-19/A. The weapons of offence, clothes of the deceased and that of the accused persons were sent to CFSL alongwith blood sample, blood lifted from the spot with the help of cotton, hair of the deceased recovered from the spot for forensic opinion. The report of Mr. C.M. Patel, Senior Scientific Officer, CFSL indicate that human blood was found on all the articles as above except hair.

The blood was found to be of 'A' group. Weapons of offence Churra Ex.P-1 and Dab Ex.P-2 were also found to have human blood of 'A' group, so were the clothes of the deceased and that of the accused persons. The forensic expert opinion, therefore, fully corroborates the prosecution case. Pertinently, the weapons of offence were seized from the accused persons by Insp. R.S. Nehra (PW-21) at the spot.

37. Thus, from the medical evidence also it is proved that accused persons had brutally and indiscriminately stabbed deceased Madan Lal with Churra and daab. Naturally, therefore, none of the witnesses could have deposed as to which accused inflicted which injuries on which part of the body of the deceased causing as many as 39 injuries.
38. Learned counsel for the accused persons has argued that the witnesses have given different timings of the incident. As per PW-12 it was 5.45 P.M. whereas PW-12 met Madhu Nayyar at 6.00 P.M. According to Const. Dharam Singh (PW-9) Madhu Nayyar had reached Police Station at 6.14 P.M. whereas Const. Yoginder Singh (PW-14) reached the spot at 6.20 P.M.

39. Undoubtedly, there are variations regarding the timing of the incident, the time of receipt of information, arrival of the police staff at the spot including the Investigating Officer. In DD No.55-B Ex.PW-7/B it is recorded that HC Narayan Dutt operator had informed at Police Station Kalyan Puri at 6.14 P.M. about the information received by him from HC Madhu Nayyar. Thus, it is clear that HC Narayan Dutt himself had received information from Madhu Nayyar before 6.14 P.M. The time given by Const. Dharam Singh (PW-9) in his statement as 6.14 P.M. seems to have been made on the basis of DD No.55-B recorded at 6.20 P.M.
40. DD No.56-B indicate that a woman named Chandro wife of Hukam Singh had reached Police Station and was nervous, and was screaming having injuries on her face. She was sent to SDN hospital. Chandro happened to be the mother of the deceased. This explains why Chandro was not found to be present at the spot when police reached there as she had left for the Police Station to lodge her complaint. Variations in the timings, as recorded in the statement of PW-12, PW-9 and PW-14 are insignificant. None of these witnesses had seen the wrist watch or any other clock to know the time of

incident. Timing has been given by them on the basis of their personal perception and assessment.

41. Learned counsel for the accused persons has emphasized that nobody came to the rescue of the deceased and none of the family members went to the hospital. It has come in the statement of Hukam Singh that no family member was present in the house at that time. It has come in the testimony of Sushil Kumar (PW-12) that no family member was available in the house of the deceased and he himself was nervous and therefore he ran towards the Police Station. Hukam Singh, in his cross examination has deposed that he is handicapped by one hand and one leg and cannot run. Being handicapped and traumatized seeing his son being stabbed by accused persons, he started crying but could not go to rescue him.

42. It is urged that PW-2, PW-3, PW-6 do not refer to PW-12 or PW-16. However, again this is insignificant. Hukam Singh (PW-2) did state in his statement that when Madan Lal became unconscious Sushil took him in a TSR. PW-3 due to lapse of time has incorrectly given the name of PW-12 in her statement as Prakash. Smt.

Chandro (PW-6) did not fully support the prosecution case because she herself was injured and traumatized and had run towards the Police Station before the deceased could be removed to the hospital.

43. As regards non mentioning of name of Om Prakash (PW-16) suffice would be to say that he is totally hostile and his testimony cannot be considered for any purpose. Therefore, non-mentioning of his name by other witnesses is insignificant under the circumstances of this case.

44. It is urged by the learned counsel for the accused persons that the clothes of Madhu Nayyar and that of Sushil Kumar (PW-12) were not seized by the police and therefore non-seizure of their clothes creates a doubt, if at all these two persons were present at the spot and had witnessed the incident. Since the police had seized the clothes of the accused persons at the spot and also of the deceased from CMO after his postmortem was conducted, there was hardly any need for the Investigating Officer to seize the clothes of Madhu Nayyar or Sushil Kumar Bharti, especially when the presence of these two witnesses at the spot having

witnessed the incident is fully proved on record from the testimony of other witnesses, who were also present there and who are also the eye witnesses to the incident.

45. Undisputedly, none of the police officers accompanied the deceased and Sushil Bharti to the hospital. Under the circumstances, naturally so, as two of the police officers had apprehended one accused and other two had apprehended the other accused. Insp. R.S. Nehra reached the spot at about 6.30 P.M. The deceased had already been removed to the hospital before his arrival. Only officers available at the spot were four Constables and HC Madhu Nayyar. On analysis of the circumstances, it is obvious that none of the police officers could have accompanied Sushil Kumar Bharti to the hospital lest any of the accused persons succeeded in running away.
46. The trial court found the following established facts against the accused persons:-

“.....Thus there are the following established facts. In the first place the two accused were arrested at the spot. Secondly, their clothes with blood stains were seized by police.

Thirdly, the blood stains are found to be of human origin of group A i.e. same as that of the deceased. Fourthly, the weapons viz the CHURRI and the DAO were seized from the accused. Fifthly, the weapons had stains of human blood of group A. Sixthly, the medical evidence is that the injuries on the person of the deceased were possible by the two weapons.....”

47. We find ourselves in agreement with the findings of the trial court as above.
48. Learned counsel for the accused persons has made futile efforts to demolish the prosecution case when he submitted that DD No.55-B Ex.PW-7/B does not find mention of names of the accused. The information received by Constable Madhu Nayyar was regarding a stabbing incident taking place in between Block No.12-18, Kalyanpuri. At that time Sushil Bharti (PW-12) the informant had not disclosed the name of the accused persons and also of the deceased. Obviously, under the circumstances DD does not find mention of the name of the accused persons. Non-disclosure of name of the informant by PW-2, PW-3 and PW-6 does not in any manner dent the prosecution case fully established on the record.

49. Accused Ravinder has tried to set up a plea of alibi. He has produced Kanwar Pal (DW-1) to support his case. This defence was raised by the accused only in his statement recorded under Section 313 Cr.P.C. and thereafter while producing his evidence. It is of importance that accused Ravinder never took this plea during examination and cross examination of the prosecution witnesses. Therefore, the trial court was right when it observed that plea of alibi appeared to have been taken by the accused as an afterthought. The court rightly discarded the statement of Kanwar Pal (DW-1) when it observed that the entries Ex.DW-1/DA and DW-1/DB are not signed by anyone and the scribe of the entries was not examined and therefore, the handwriting of the entry was not proved in evidence.
50. The prosecution has been successful in establishing that eye witnesses, namely, Hukam Singh (PW-2) and Smt. Chandro (PW-6), Sushil Kumar Bharti (PW-12) had actually witnessed the incident. They identified the accused persons as the assailants. The circumstantial evidence also proves that weapons of offence Ex.P-1 and P-2 were used by the accused persons in assaulting the deceased brutally. The motive behind the crime is

obvious, as the deceased was one of the accused persons facing trial for the murder of mother of the accused persons. The prosecution has not left any loophole which could be used as an escape route by the accused persons to warrant an acquittal.

51. In view of our discussion as above, we conclude that the trial court rightly convicted the accused persons for having committed the offence under Section 302/34 IPC read with Section 27 of the Arms Act. The appeal under the circumstances being without any merits is hereby dismissed.

ARUNA SURESH, J.

PRADEEP NANDRAJOG, J.

OCTOBER 30, 2009
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