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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on 13th April, 2009.

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+ CRL. Appeal No.152/2004

ISHTKAR & ANR Appellant
Through : Mr. K.B. Andley, Sr. Adv. with
Mr. M.L. Yadav and Mr. C.L. Dhawan,
Advocate for the petitioners

Versus

STATE OF DELHI Respondents
Through : Mr. Sunil Sharma, APP for the State.

CORAM:

HON'BLE MR. JUSTICE B.N. CHATURVEDI
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers 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**

G.S. SISTANI, J.

1. This appeal has been filed against the Judgment dated 24.01.2004 and the Order on Sentence dated 29.01.2004, passed by the learned Additional Sessions Judge, Delhi in the Session's case No. 74/2000, FIR No. 103/2000 of Police Station Moti Nagar. The Trial Court had held Ishtkhar, s/o Mohd. Hussain and Miraj @ Mehraj s/o Mohd. Daud, guilty of the offence under section 302/34 of the Indian Penal Code, 1860 (hereinafter, IPC) and were sentenced to Rigorous Imprisonment (hereinafter, RI) for life and a fine of Rs. 10,000/- under section 302/34 of the IPC. In default of the payment of fine, the appellants were directed to

further undergo RI for a period of one (1) year. The appellants were also sentenced to RI for a period of five years and a fine of Rs. 5,000/- under sections 27/54/59 of the Arms Act. In default whereof the appellants were to undergo a further RI for a period of six months. Appellant Miraj was further sentenced to RI for a period of three years and fine of Rs. 5,000/- under section 25 of the Arms Act. In default whereof, the appellant was directed to undergo RI for a further period of six months. All the sentences were to run concurrently and the period already undergone by the appellants during the trial was to be set off under section 428 of the Code of Criminal Procedure, 1973 (hereinafter, CrPC).

2. The brief facts of the case as noticed by the Learned Trial Court are. On 08.03.2000 at about 8:00 PM, opposite Jhuggi No. 482, Rakhi Market under Zakhira Flyover and within the jurisdiction of PS Moti Nagar, the appellants, namely, Ishtkhar; and Miraj @ Mehraj in furtherance of their common intention alongwith their associates namely Mohd. Ladoo @ Nishad; Chottu @ Sadar E Alam; and Irfan (since Proclaimed Offenders) committed murder of Rattan Lal s/o Sh. Ram Lakhan by causing injuries on his person with knives. On the statement of Smt. Munni Devi (mother of the deceased) a case was registered under section 302/34 of the IPC.
3. The case was investigated by Gurdip Singh, Inspector. During investigation the IO got the scene of the crime photographed and a site plan was prepared at the instance of Smt. Meena Devi. One broken watch, blood stained earth, earth control, a chappal,

pieces of blood stained bench were also taken into possession by the IO. The appellants Ishtkhar and Miraj were apprehended on 15.03.2000, who made disclosure statements regarding the commission of crime. Appellant Miraj also got recovered one knife from a Railway Cabin. Since the remaining accused persons were untraceable, Ishtkhar; and Miraj @ Mehraj were tried for the alleged commission of the killing of Rattan Lal and were found guilty of the said offence.

4. The prosecution in support of its case examined 23 witnesses. Three witnesses were examined by the defence. It would be useful to discuss the evidence of some of the material witnesses in detail.
5. PW 2, Jagjit Singh, Inspector has deposed that on 08.03.2000 on receipt of D.D. No.21, he alongwith SI Ram Avtar reached Jeewan Mala Hospital, New Rohtak Road, where Sunder (brother) and Ram Lakhan (father) of the deceased told him that the incident had taken place in the area of P.S. Moti Nagar and accordingly District Control Room, North was informed. Thereafter, SHO of Police Station Moti Nagar along with the staff reached the hospital and then all of them went to the spot of the incident at Rakhi Market, Zakhira Flyover.
6. PW 4, Smt. Meena Devi (mother of the deceased) has deposed that she had been running a dhaba by the name of "Meena" at jhuggi No. 482, Rakhi Market under Zakhira Bridge, Delhi. On 08.03.2000 at about 8.00 p.m., she along with her husband and her son Rattan Lal were present at the dhaba, when appellants

Ishtkhar; Miraj; Mohd. Ladoo; Chottu; and Irfan arrived at the dhaba. PW 4 deposed that at that time her son, Rattan Lal was standing at the shop of Bhola, who sells Masale opposite to her Dhaba. All the accused persons were in an angry mood and asked about the whereabouts of her elder son, Sunder Lal. And to which Meena Devi responded that Sunder Lal had gone to attend a marriage party. Thereafter they asked about her younger son, Rattan Lal and after that the accused persons and their associates started stabbing Rattan Lal with knives. She raised an alarm and after which all the assailants ran away towards Inderlok through the jhuggis.

7. Thereafter PW-4 deposed that she; her husband; Abdul Rubb; Bhola masale wala and some others took Rattan Lal to Jiwan Hospital in a tempo. After about half an hour, Rattan Lal was declared dead. PW 4 deposed that the Police met her in the hospital and where her statement Ex.PW3/B was recorded. Thereafter she came back to the spot of the crime along with the police and from where the police took into possession sample-blood, earth control, a blood stained chappal, pieces of wood of the bench that were stained with blood and one watch. PW 4 further deposed that she knew the assailants prior to the incident and that on 15.03.2000, the police had brought the two appellants, Ishtkhar and Miraj at her dhabha and where she identified them. Further that on 03.05.2000, at her instance/ pointing out the draftsman took rough notes and the measurement of the place of occurrence.

8. In her cross-examination by the learned counsel for the appellants, PW 4 deposed that three days prior to the incident, she had lodged a report with the police against the assailants as there had been a quarrel between her son Rattan Lal (deceased) and the assailants. The police officials did not write the complaint but had met the assailants and reprimanded them, however no further action was taken in this regard. This witness also deposed that it was correct that there were three shops of doctors if one moves from her dhaba towards the small railway line. PW 4 further deposed that the shop of Abdul Rubb is opposite to her hotel at a distance of two-three hands. The shop of Munna meat wala was at a distance of about 15-20 yards from her hotel. The shop of Munna Meetwala was closed on that day. And deposed that it was correct to say that there was a shop of a subziwala, Alludin in between her dhaba and Munna meatwala and that the shop of Alludin subziwala was open at the time of the incident. However PW 4 could not tell whether Alludin had witnessed the incident or not. PW 4 further deposed that it was correct to say that doctor is available in the area to any person who is injured and for giving treatment/ medical facilities/ first aid facilities of glucose drip are also available with the doctors in that area. PW-4, further deposed that she did not receive any injuries on 08.03.2000. She had also tried to intervene and threw a stone at the assailants, whereafter they fled away as they were hit by the stone. That when she along with her husband picked up their son, then their clothes were smeared with blood, but the police did not ask them to deposit the clothes. She did not take

her injured son to the doctor in the locality as he was in a critical condition. PW-4 stated that it was wrong to suggest that her son Sunder Lal had a meat shop in the market or that he was in possession of any cutting instruments.

9. PW 4 further deposed in her cross-examination that at the hospital Rattan Lal had a chat with the doctor for about 7-8 minutes and after his talk to the doctor, he was declared dead by the doctor. Bhola had not accompanied her to the hospital but Abdul Rubb had. PW-4 further deposed that although the shop of Alluddin was open but he was not present there and some of his relations were sitting whose names she did not know. She stated that it was wrong to suggest that there was no electricity on the day of the incident. She stated that there was light at the shop of Bhola, Abdul Rubb and Alluddin. PW-4 deposed that Sunder Lal reached Jeewan Mala Hospital later on and that he was not with them. She and her husband had taken Rattan Lal to the hospital in a tempo and none else had gone with them in the tempo. PW-4 also deposed that Alluddin and Sabir had also witnessed the incident.

10. PW 5 Sunder Lal (brother of the deceased), s/o Ram Lakhan deposed that on 08.03.2000 he had gone to attend a marriage party and after attending the party, when he came back to his house he found a crowd gathered outside his house and was informed by the crowd that his brother Rattan Lal had been stabbed and had been taken to Jeewan Mala hospital. After that he went to the hospital and where the doctor informed him that

his brother, Rattan Lal had expired. This witness also deposed that the same day/night he went along with the police officials and identified one of the assailants Ishtkhar and whereafter the said assailant was arrested and also got recovered one knife from the bushes near railway lines in the area of Inderlok.

11. PW 5 further deposed that on 03.03.2000, his maternal-uncle Ram Chander (mama) was beaten by four/five boys under the Zakhira Bridge. His younger brother, Rattan Lal reached there and tried to rescue his maternal uncle. The names of those four/five boys were Laddu, Irfan, Chhotu, Miraj and Ishtkhar. On 05.03.2000 there was an altercation between Chhotu and Rattan Lal. Yet again at around 9:00 AM, in the morning of 08.03.2000 there was an altercation between Rattan Lal and Chhotu and the latter had threatened the former that he would kill him within 12 hours.

12. Learned APP objected and stated that PW 5 is resiling from his statement made to the police and was cross-examined by the learned APP. In his cross-examination PW 5 stated that it was incorrect to suggest that after returning from the marriage he saw that his parents were attending to Rattan Lal and along with Abdul Rubb were making him sit in the tempo and that he had not stated so before the police.

13. PW-5 further deposed that it was incorrect to suggest that on the way to the hospital his mother/father told him that the assailants had stabbed Rattan Lal with knives. On being cross-examined by the learned APP, PW-5 denied the suggestion that appellants

Ishtkhar and Miraj were arrested by the police from the bus stand near Inderlok opposite Masjid. In cross-examination by the learned counsel for the appellants, PW-5 deposed that on 08.03.2000 he was not present at the place when the altercation took place between his brother and the assailants at the Zakhira Market. And further that the police had never met him after 08.03.2000 and never obtained his signatures on any paper.

14. PW 6, Abdul Rubb, s/o Abdul Subhan, r/o JJ Colony, Wazir Pur, B 271 deposed that he also has a jhuggi where he is running a shop of selling tea at Zakhira Bridge. On 08.03.2000 after coming from his business of selling cloth as a hawker, he saw a large crowd gathered near the shop of Bhola Masalewala. On enquiry he came to know that the son of Meena had been stabbed by someone. This witness deposed that apart from this he did not know anything. The witness was cross-examined by the learned APP. In his cross-examination by the learned APP, PW 6 denied to have known anything with regard to the case. He denied the suggestion that he was the one who took Rattan Lal to the hospital along with others. This witness denied having made any statement to the police with regard to this case.

15. PW 7, Bhola Singh, s/o Chandrika, r/o B- 1/312, Nehru Nagar, Delhi deposed that he sells Masale under Zakhira Bridge and that the hotel of "Meena" was just opposite to the place from where he sells Masale. PW 7 deposed that on 08.03.200, which was a Wednesday, he was present at his shop and had customers to attend to. There was no electricity on that day and

he was working under candle light. At some distance from his shop, a stabbing incident took place and Rattan Lal, s/o Meena sustained stab injuries. However this witness stated that he did not know as to who caused the stab injuries. Thereafter he got so scared that he left his shop and went to his home and sent his brother to wrap up the shop. In his cross-examination by the learned APP, PW 7 denied having seen anything.

16. PW 8, Dr. Ashok Jaiswal, CMO Subzi Mandi, Delhi deposed that on 09.03.2000 while working as CMO in Subzi Mandi mortuary he conducted examination on the body of Rattan Lal. PW 8 opined that all the injuries were ante-mortem in nature and were caused by a sharp edged weapon and that the death was due to hemorrhagic shock consequent to the injuries. He further opined that the injuries were possible by the alleged weapon of offence, a knife. Also that the injuries on the body were consonant with the cuts and tears on the clothes brought as those which were worn by the deceased before the incident of stabbing.

17. PW 9, Dr. Rakesh Sharma, Jiwan Hospital, New Rohtak Road, deposed that on 08.03.2000 he was attending as a doctor at the said hospital. On that day, patient Rattan Lal, s/o Ram Rattan was brought by Ram Rattan and Abdul Rubb, with the alleged history of sustaining multiple stab injuries. The patient was brought in gasping condition; BP and pulse were not recordable; pupil of both sides were dilated at the time of arrival of the patient. Pulmonary resuscitation was done but the patient could not be revived and was declared dead at 8:40 PM. On being

cross-examined by the learned counsel for the appellants, PW 9 deposed that he had examined the patient at about 8:30 PM. PW-9 further deposed that Ram Lakhan and Abdul Rubb had brought the injured to the hospital and who had told him that the injured had been assaulted by five persons with knives. However, they did not disclose the names of the assailants. And further that it was not to his notice that any lady had come at the hospital in connection with the injured.

18. PW 10, SI Babu Lal, PS Moti Nagar deposed that on 08.03.2000 he was posted at P.S. Moti Nagar and on that day on receipt of D.D.No.35-A through Constable M. Oran and on receipt of this D.D., he reached the Zakhira Flyover. The D.D. was regarding an accident but on reaching the spot he did not find any accident or the accident site. Thereafter he along with HC Ranbir and Const. M. Oran came to Jeevan Mala Hospital and where PW Meena Devi met him. On 15.03.2000 he joined the SHO and other staff in the investigation of the case and reached Zakhira Jhuggis in search of the appellants. During this search operation, a secret informer and also Sunder Lal, brother of the deceased were with them. The secret informer apprised the police officials that Ishtkhar and Miraj wanted in connection with a case were sitting at that time at a bus stand in front of the Inder Lok Masjid and could be apprehended. On receipt of this information, the SHO along with Sunder Lal immediately proceeded to the informed place. The SHO left his vehicle at some distance from the informed place. On reaching there the appellants were identified by the secret

informer as well as by Sunder Lal and thereafter both were apprehended. During interrogation the appellant Ishtkhar besides giving other details also gave information regarding his companions namely, Miraj, Ladoo, Chhotu and Irfan. He also disclosed that he had given his knife to Ladoo and that Ladoo resides in Meerut. The disclosure statement of appellant Ishtkhar is marked as Ex-PW-5/C. Appellant Miraj was also interrogated and he disclosed that he had thrown his knife in the bushes near the railway line in Inder Lok and that he could get the same recovered. Thereafter they all proceeded to the said place and from where appellant Miraj got recovered a knife. The knife was taken into possession vide memo Ex. PW-5/F. Both the appellants also pointed out the place of occurrence. PWs Meena and Ram Lakhan also identified the two appellants, Ishtkhar and Miraj.

19. PW 10 was cross-examined by the learned counsel for the appellants and he deposed that at the hospital Smt. Meena Devi, her son Sunder Lal and some persons from the locality of the deceased were found present. Meena Devi had come to know about the death of the son. PW 10 also deposed to have recorded the statement of Meena Devi at the hospital and of nobody else. Further he met the father of the deceased for the first time at the spot of the incident around 12:05 A.M.

20. PW 11, Ram Lakhan (father of the deceased) deposed that he has a jhuggi under Zakhira bridge, Delhi, from where he was running a hotel in the name of "Meena Hotel" along with his wife Meena and two sons Sunder Lal and Rattan Lal (deceased). PW-

11 deposed that on 08.03.2000 at about 8:00 PM he was sitting alongwith his wife at the above said hotel, five persons came and asked about the whereabouts of his elder son Sunder Lal, and at which he told them that Sunder Lal had gone to attend some marriage function. They said that if Sunder Lal was unavailable then they would teach a lesson to his younger son, Rattan Lal, who was standing at the shop of Bhola Masale wala opposite their hotel. The five persons who had come to the shop were Ishtkhar; Miraj; Laddoo; Irfan; and Chhotu. All these persons asked his son about his elder brother and saying so, all those persons started stabbing his son with knives in their hands and by the time they could reach near their son, all the five persons ran away towards Western Side Jhuggis. Thereafter he alongwith Abdul Rubb and 3/4 persons lifted Rattan Lal in an injured condition and took him near the chhoti lines from where they hired a 'Matador' and took Rattan Lal to the Jiwan Mala hospital. After some time Rattan Lal was declared dead. In cross-examination by the learned counsel for the appellants, PW 11 deposed that *"(t)he accused persons never had business dealings with us nor we had any quarrel with each other prior to this incident. We had never moved any application against the accused persons prior to this occurrence. This market remains open for all the seven days of the week....Abdul Rub was running a tea shop at that time and he was running the shop himself. At that time of incident, Abdul Rub had not come but he came to the spot thereafter. The incident took place in the presence of Bhola masalewala. There was one Alludin vegetable vendor at*

the spot, he was present on his shop at the time of incident. Alludin did not come to the spot after incident or at the time of incident.” “There was light on the hotel on that day. Light had gone off in the day after the incident....There are shops of doctor in that market.” PW 13 further deposed in his cross-examination that he did not throw any stone or brick on the persons who came at his hotel nor did he make any efforts to intervene in the said incident nor did his wife (Meena) intervene. He also deposed that Alluddin was present at his shop when the incident took place but he did come to the spot at the time of the incident or after the incident. His wife had accompanied him at the time of taking their injured son, Rattan Lal to the hospital. His wife also did not raise any alarm. They did not pick up any palta, or mirchi, nor hurled any stone or brick at the assailants as they had immediately ran away after the incident and by the time they reached the spot, the assailants had already fled.

21. PW 13, HC Rajinder Singh, deposed that on 08.03.2000 at about 8:50 PM, he received a telephonic call from Dr. Rakesh from JiwanMala Nursing Home that one Rattan Lal, s/o Ram Lakhan, had been admitted to the hospital by his brother Sunder Lal in injured condition having stab injuries and had expired. This information was recorded by him in the roznamcha vide D.D. No.21-A.

22. PW 14, Constable M. Oram deposed that on 08.03.2000, he was posted at PS Moti Nagar. In his cross-examination by the learned counsel for the appellants he deposed that he received DD

no.25-A at PS Moti Nagar at 8:50 PM and reached at the spot within 15 minutes by bus. He stated that he found 40-50 persons present there. SI did not interrogate any person out of those persons. PW-14 deposed that he did not find any close relatives of the deceased nor his parents. PW-14 further deposed that he reached the hospital but could not tell the time. It might have been 12 or 12:30 in the night and that only Smt. Meena had met the IO in the hospital.

23. PW 21, HC Sunil Kumar deposed that on 22.04.2000 he went to the house of Ladoo, s/o Mayudin, r/o Pandolwala, PS Shakri, to the house of Chhotu r/o village Pathan Kaval, to the house of Irfan, but they were not found at the given addresses. On 29.04.2000 he returned back and handed over the NBWs with his report. He alongwith IO and the complainant Meena Devi went to Budh Vihar to see Irfan s/o Jaffrul-Haq, r/o Kachoi colony, Mange Ram Park, however the complainant Meena Devi on seeing him refused and stated that he was not the person involved in this case as according to her Irfan/accused had a cut on his cheek and the person to whom they had gone to meet did not have the said cut on his cheek and thus he was not the assailant.

24. PW 22, HC Ranbir Singh, PS Rajouri garden deposed that on 08.03.2000 he alongwith SI babu Lal were present at Zakhira Picket. In the hospital Smt. Meena Devi, mother of the deceased met them and gave her statement to the IO. SI prepared the rukka and sent the same to the Police Station for registration of the case.

25. PW 23, Inspector Gurdip Singh deposed that on the night of 8/9.03.2000 he was posted as SHO at Police Station Moti Nagar. On the receipt of information on wireless set, he went to the spot of the crime and came to know that the injured had been taken to the Jeewan Mala Hospital. Thereafter he went to the said hospital and where he met the father of the deceased Ram Lakhan. He recorded the statements of Abdul Rubb and thereafter he along with the parents of the deceased came back to the spot of the crime and got the spot photographed, prepared the site plan at the instance of PW 4. Thereafter PW 23 deposed that on 15.03.2000 on the basis of secret information, the appellants Ishtkhar and Miraj were arrested from a bus stand opposite Inderlok Mazjid. Both these appellants made disclosure statements and pointed out the place of occurrence. In pursuance of the disclosure statement, appellant Miraj led them to the bushes near the railway station and got recovered a knife from the railway cabin. Thereafter, PW 23 stated that he recorded the statements of PWs Sunder Lal and SI Babu Lal, on the point of investigation having been done in their presence.

26. In cross-examination by the learned counsel for the appellants PW 23 deposed that he had recorded the statements of Ram Lakhan and Abdul Rubb at the hospital itself and of no other person. And after coming back to the spot of the crime he had made enquiries from public persons including Abdul Rubb and Bhola. He denied the suggestion that Sunder Lal did not meet him after 08.03.2000. And further denied that Alluddin and Sabir

were the eye-witnesses of the incident and that he had deliberately not examined them.

27. Learned counsel for the appellants has argued that the prosecution has not been able to prove its case beyond shadow of doubt. Learned counsel has adduced three witnesses on his behalf.

28. DW 1, Kanwal Singh, s/o Sh. Ram Dhan Singh, r/o House no. 260/1, Gali no. 7, Nehrunagar, Delhi has deposed that he knew Meena and her family for the past 5-6 years. On 08.03.2000 there was marriage of one Bhagatji and who resides in gali no. 6. He along with Meena had gone to attend the marriage and the programme for the same was fixed on 07.03.2000. DW 1 deposed that while going to the house of Meena on 08.03.2000, at around 8:00 PM he met Meena on the way and Meena informed him that that her son had a quarrel with someone and requested him to accompany her to her hotel. They reached there about 8-8:20/8:25 PM and where they were informed that her son had already been removed to the hospital. They stayed at the place for about 30 minutes and thereafter DW 1 stated to have come back to his house and where after which he proceeded to the marriage party. DW 1 further deposed that he was a summoned witness and that he did not know the assailants.

29. DW 2, Alludin, s/o Sh. Mohd. Nasibul, r/o under Zakhira Bridge Delhi deposed that he has a vegetable shop under the Zakhira Bridge for the past 9-10 years and that he knew Meena who was

operating a hotel from there for the past 8-9 years. DW 2 deposed that his shop is close to the hotel of Meena and that on 08.03.2000, he was sitting at his shop when suddenly he saw customers running away. He closed his shop and heard that somebody had inflicted knife blows to Rattan Lal. The incident took place at about 8:00 PM on that day. This witness further deposed that by the time he reached the spot the injured had already been removed to the hospital, and none of the family member of the injured person was found present at the spot. Meena came there after about 20-30 minutes. DW-2 further deposed that police interrogated him at the spot, he was taken to the police station and thereafter he was released. In the cross-examination by the learned APP, this witness deposed that he knew all the appellants and that they also had shops under the Zakhira Bridge. Further stated that he did not close the gate of his shop on seeing the people running and that he did not see Meena at the spot after the incident. DW 2 further deposed in his cross-examination that he did not see the incident nor saw any person taking Rattan Lal to the hospital. He did not know as to where the incident had taken place and did not go out of his shop. DW 2 further deposed that he did not see Meena at the spot after the incident.

30. DW 3, Kailash maurya, s/o Sh. Ram Sanehi Maurya, r/o 122, Nehru Nagar, Delhi deposed that he runs a TV and Radio repair shop under Zakhira Bridge for the past 7 years. This witness deposed that he knew Meena and that on the day of the incident

which was a 2nd Wednesday of the month of March, 2000, he was sitting at his shop when he heard a noise of quarrel in the market. He asked his son to sit at the shop and went near the 'Meena hotel'. DW-3 deposed that he saw that Meena's son was lying on the ground in an injured condition and was being removed by some neighbours. He deposed to have not seen even a single family member of the injured, including Meena at that time at the spot. He remained there for about half an hour and thereafter Meena arrived at the spot. He remained alongwith Meena at the spot for about 15-20 minutes. In cross-examination by the learned APP, DW 3 deposed that the incident in question did not take place in his presence. He heard the noise of '*maar diya, maar diya*' and at that time he was attending to his customers. He left his employee at the shop and came to the hotel of Meena. A lot of people had gathered there. No family member of the injured was present there and all were waiting for the arrival of any member of the injured. Thereafter, Meena came alongwith Komal Singh.

31. Learned counsel for the appellant submits that the judgment of the trial court is contrary to law and facts established on record. There is no legal evidence against the appellant, justifying the conviction in above case. Learned counsel submits that presence of the two eye witnesses PW-4 and PW-11 i.e. mother and father of the deceased is highly doubtful. He submits that they being the interested witnesses, no reliance should be placed on their testimonies. It is next contended that there are

material contradictions in the testimonies of the witnesses examined by the prosecution and the contradictions go to the very root of the case and thus it creates serious doubt in the story of the prosecution. It is next contended that blood stained clothes of the persons, who removed the injured to the hospital have not been taken into possession which also casts a doubt about their presence at the spot of the incident. Learned counsel argues that the clothes of the parents have not been seized by the police. Since an essential piece of evidence has not been submitted before this Court, the case of the prosecution cannot be believed. In support of the same, reliance has been placed on the case of **State of Rajasthan v. Teja Singh** reported at **AIR 2001 SC 990**. Furthermore, prosecution has to prove as to who gave the final blow to the deceased. In the same vein counsel submits that the parents have shown a complete unnatural conduct as they neither shouted for help nor made any effort to save their son which also creates a doubt with respects to their presence at the spot of the incident, as it would be natural for the parents to ask for help to save their son. The direct consequence of this fact is that they were not present at the spot of the incident. Learned counsel has also strongly argued before this court that as per the evidence on record, the victim was alive and he had a brief chat with the doctor (PW-9) before he was declared dead. In view of this fact, if the victim knew the assailants, he would have surely named them before PW-9, Dr. Rakesh Sharma of Jeewanmala Hospital. In support of this submission he has relied upon the case of **Devinder v. State of**

Haryana reported at **1996 Cri. LJ 4461**.

32. Learned counsel for the appellant further submits that in spite of there being a large number of persons available at the spot of the incident, public witnesses have not been associated in this case, hence the evidence of the witnesses PW-4 and PW-11, being interested witnesses, without corroboration cannot be relied upon. And even otherwise also PW-6, Abdul Rubb and PW-7 Bholu, have not supported the case of the prosecution.
33. Learned counsel for appellant, Ishtkhar further submitted that the MLC of the deceased says that the father had brought the injured son to the hospital, but the Investigating Officer (IO) took the statement of the mother and not of the father and which conduct is questionable. The learned counsel has in support relied upon the case of **Meharaj Singh V. State of U.P.**, reported at 1994 SCC Cri. 1390.
34. Learned counsel for the appellant, Miraj while relying upon the submissions made by counsel for appellant, Ishtkhar further submits that the First Information Report (FIR) is fabricated and thus the case of prosecution can be said to be false and unreliable. In support of this argument, learned counsel relies upon the case of **Marudanal Augusti v. State of Kerala** reported at **AIR 1980 SC 638** and **Bandi Mallaiah and others v. State of Andhra Pradesh** reported at **AIR 1980 SC 1160**.
35. Learned counsel for appellant, Miraj submits that in a criminal case it is the prosecution on which the onus lies to prove the different ingredients of the offence and unless it discharges that

onus, it cannot succeed. To support his argument, learned counsel relies upon the cases of **Kali Ram v. State of Himachal Pradesh** reported at **1974 Cri. LJ 1 (SC)** and **Md. Alimuddin and others v. State of Assam** reported at **1992 Cri. LJ 3287**. Learned counsel for appellant, Miraj submits that the recovery of the weapon of offence is also doubtful and in light of the same the appellant cannot be convicted. In support, he relies upon the case of **Babudas v. State of M.P.** reported at **II (2003) CCR 116 (SC)**.

36. Furthermore, learned counsel for appellant, Miraj submits that defense witnesses are entitled to equal treatment and equal respect as that of the prosecution and bases his argument on the case of **State of Haryana v. Ram Singh** reported at **I (2002) CCR 68 (SC)**.

37. Learned counsel for appellant, Miraj further submits that since there were improvements in the version of witnesses, such evidence given by them is to be disbelieved and to support this argument learned counsel cites the case of **Kunju Muhammed v. Khumani and another** reported at **2003 (3) JCC 1549** and **Ahmed Bin Salam v. State of Andhra Pradesh** reported at **1999 (3) Ch. Crl. Cases 72**. Learned counsel submits that inconsistent statements have been given with regard to material facts, and thus such witnesses are to be held as unreliable in view of the case of **Suraj Mal v. State (Delhi Administration)** reported at **AIR 1979 SC 1408**. Lastly he submitted that when two views are possible, then the one which favours the accused,

is to be accepted, also noted in ***State of Haryana v. Inder singh*** reported at **2002 (2) Crimes 164 (SC)**.

38. Learned counsel for the State submits that prosecution has been able to prove its case beyond any shadow of doubt. The evidence of PW-4 and PW-11 i.e. mother and father of the deceased is truthful and reliable. They are the witnesses to the crime and their evidence cannot be discarded merely because they are closely related to the deceased. It is also contended that merely because the blood stained clothes were not seized, this by itself cannot be reason enough to come to the conclusion that PW-4 and PW-11 were not present at the spot of the incident. It is also submitted that at the time when the victim reached the hospital his condition was such that he could not have made any statement to the doctor.
39. We have heard learned counsel for the parties and carefully analyzed the evidence on record. Learned counsel for the appellant has strongly urged before this Court that the evidence of the mother and father of the deceased cannot be relied upon broadly on two grounds, firstly that they are the interested witnesses and secondly that their presence at the spot of the incident is highly doubtful. Before dealing with the submissions made, it would be useful to discuss the law laid down by the Apex Court with regard to placing reliance on evidence of witnesses who are interested or partisan. In the case of **Masalte Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, the Apex Court has held as under:

“14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

40. Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported at AIR 2003 (90) Supreme Court 3613:-

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh and others v. The State of Punjab (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses.

Speaking through Vivian Bose, J. it was observed:-

“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 rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rajasthan', (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.”

9. Again in Masalti and others v. The State of U.P. (AIR 1965 SC 202) this Court observed : (pp. 209-210 para 14):

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

- 10.** To the same effect is the decision in State of Punjab v. Jagbir Singh, (AIR 1973 SC 2407) and Lehna v. State of Haryana, (2002 (3) SCC 76). As observed by this Court in State of Rajasthan V. Smt. Kalki and another, (AIR 1981 SC 1390), normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who

are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in *Krishna Mochi and others v. State of Bihar etc.* (JT 2002 (4) SC 186)."

41. This view has again been reiterated recently in the case of ***State of NCT of Delhi Vs. Rani Kant Sharma & Ors.***, reported at 2007 (3) JT 501, relevant portion is reproduced below:-

"11. In some cases persons may not like to come and depose as witnesses and in some other cases the prosecution may carry the impression that their evidence would not help it as there is likelihood of partisan approach so far as one of the parties is concerned. In such a case mere non-examination would not affect the prosecution version. But at the same time if the relatives or interested witnesses are examined, the court has a duty to analyse the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence was biased. Whenever a plea is taken that the witness is partisan or had any hostility towards the accused, foundation for the same has to be laid. If the materials show that there is partisan approach, as indicated above, the court has to analyse the evidence with care and caution. Additionally, the accused persons always have the option of examining the left out persons as defence witnesses."

42. Again in the case of ***Manoj Vs. State of Tamil Nadu***, reported at 2007(5) JT 145, it has been observed:

9. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be

laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

10. In **Dalip Singh and Ors. v. The State of Punjab** it has been laid down 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 relation 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 a 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. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

11. The above decision has since been followed in **Guli Chand and Ors. v. State of Rajasthan** in which **Vadivelu Thevar v. State of Madras** was also relied upon.

43. It is seen that it has been consistently held by the Apex Court that the Courts must be cautious and careful while weighing the evidence given by witnesses, who are partisan or interested. However, the evidence of such witnesses should not be mechanically discarded. Applying the aforesaid principles laid down by the Apex Court to the facts of this case and having

analyzed the evidence of PW-4 and PW-11 carefully and with deep scrutiny, we find that the incident in question took place at about 8:00 p.m. and the FIR was recorded at 11:20 p.m., on the statement of the mother (PW-4). This shows that there was no unnecessary delay in lodging the FIR and the appellants were also named at the very first instance and opportunity available to the mother of the deceased, PW-4. PW-4 has also deposed that on 8.3.2000 at about 8:00 p.m. she was present at her Dhaba along with her husband and son, deceased – Rattan Lal. During her examination she pointed to the appellants (who had visited her Dhaba looking for her elder son Sunder) and rightly identified them. On being told that Sunder had gone to attend a marriage, the assailants had asked for her son Rattan Lal, whom they stabbed in her presence and in the presence of her husband. According to this witness (PW-4), Ram Lakhan and Bhola Nath had taken the injured to the hospital where her statement (PW-4) was recorded. Her presence at the hospital stands corroborated by the evidence of PW-10 S.I. Babulal, wherein he has stated that he met Meena Devi (PW-4) in the hospital from whom he made enquiries and recorded her statement as PW-3/B. Inspector Gurdip Singh, PW-23 has deposed that he was posted as SHO, Police Station Moti Nagar on the night of 8th - 9th March, 2000. He received information on the wireless with respect to the incident and he learnt that the injured had been taken to Jeewan Mala Hospital where he met SI Babu Lal, along with the parents of the deceased and learnt that Babu Lal had already sent Rukka on the statement of PW-4,

Meena Devi, mother of the deceased and he recorded the statement of Ram Lakhan and Abdul Rubb under Section 161 of the Cr.P.C. Presence of Ram Lakhan and Abdul Rubb also stands corroborated by the evidence of PW-9, Dr.Rakesh Sharma, who in his testimony has stated that on 8.3.2000 he was the attending doctor at Jeevan Mala Hospital and on that date one patient, Rattan Lal, was brought by Ram Lakhan and Abdul Rubb with alleged history of sustaining multiple injuries over chest, abdomen and lumber. There are no contradictions in the evidence of PW-4 mother and PW-11, father of the deceased on material aspects. Both have deposed that on 8.3.2000 they were present at that Dhaba around 8:00 p.m. when their son Sunder Lal had gone to attend marriage and five persons had asked about Sunder Lal and on being told that Sunder Lal is not available, they asked about Rattan Lal and who was thereafter stabbed by these five persons. PW-11 has also correctly identified the appellants in Court and also corroborated that he, Abdul Rubb and 3 -4 persons had lifted the injured person and took him to Jeevan Mala Hospital. Both PW-4 and PW-11 have stated that they along with others had taken the injured to the hospital. Soon thereafter, statement of mother of the deceased, PW-4 was recorded at the hospital and the MLC shows the presence of the father at the hospital. Having regard to the testimony of both PW-4 and PW-11, which statements are firm and consistent with respect to the time, place of incident, the manner in which the accused persons had approached them while they were at the Dhaba and the manner in which the entire

incident was described, we find no reason to disbelieve the evidence of PW-4 and PW-11, who are natural witnesses. Merely because they happen to be the parents of the deceased this fact alone cannot be a ground to disbelieve their testimony.

44. Further to say that merely because the blood smeared clothes of PW-4 and PW-11 were not seized by the police that by itself cannot create a doubt upon their evidence. It has been held by the Apex Court in the case of **State of U.P. Vs. Hari Mohan & Ors.**, reported at 2000 VIII AD(SC) 389 that the defective investigation cannot be made a basis for acquitting the accused if despite such defects and failures in their investigation a case is made out against the appellant.

45. On the same line, it has been observed by the Apex Court in the case of **State of West Bengal Vs. Meer Mohd. Umed and Others**, reported at JT 2000 (9) SC 467, that:-

“41. The function of the Criminal Courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officer. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by Courts to see that criminal justice is salvaged despite such defects in investigation.”

46. It has been next contended before us that the evidence of defence witnesses shows that the mother of the deceased was not present at the spot and in fact equal weightage is to be given to the evidence of the defence witnesses. There is no quarrel to

this proposition of law mooted before us, however, this proposition is subject to the condition that the evidence of defence witnesses should be truthful and reliable.

47. In the matter before us, DW-1 has deposed that a day prior to the date of incident i.e. 7.3.2000 it was settled that he would go to the house of PW-4 on 8.3.2000 at Anand Parbat and thereafter would proceed for the marriage. Although, we find that DW-1, has deposed that on the fateful day, he met PW-4, Meena, mother of the deceased at around 8:00 p.m. and he had asked her to accompany him to the marriage, but she requested him to come to the house, as she had learnt that her son had quarreled with somebody and when both reached the spot at about 8:20 – 8:25 p.m. they were informed that her son had already been removed to the hospital but they did not come to know about the name of the hospital. He further goes on to say that he remained with Meena for more than 30 minutes and thereafter left the house. In the cross-examination he has stated that he did not reach the house of Meena, but he met her in the gali. We find the evidence of this witness unreliable for the reasons that on the one hand this witness has stated that Meena and he were to attend the wedding together and he was to pick her up from the house and on the other hand he has deposed that he had met Meena in the gali. In case Meera had agreed to go to the marriage with DW-1, knowing fully well that she had to accompany DW-1 to the marriage, she would be waiting for him in the house and not be present in gali. As per this witness he

stayed with Meena for more than 30 minutes and then decided to attend the wedding, which is again an unusual situation that instead of helping Meena to find out in which hospital her injured son is taken, he has left her and went to attend the wedding. On the other hand the statement of S.I. Babulal PW-10, who is an independent witness shows that he met Meena at Jeevan Mala Hospital, soon after the incident. This would show that evidence of DW-1 is not truthful as he could not have been with Meena for 30 minutes after the incident.

48. As per the evidence of DW-2 his shop is near the hotel of Meena and he was aware that at 8:00 p.m. a quarrel had taken place near the hotel of Meena and he also heard that somebody had inflicted knife blow to Rattan Lal. As per his evidence, when he reached the spot, the injured had already been removed to the hospital and none of the family members were present at the spot and Meena came afterwards about 20 – 30 minutes at the spot and further that he was interrogated at the spot by the Police. We also find the evidence of this witness to be unreliable, as in the cross-examination he has admitted that Dhaba of Meena is situated 3 shops / jhuggi away from his jhuggi. In the cross-examination he has stated that he did not see the incident and did not know as to who took Rattan Lal to the hospital, did not know where the incident had taken place as he did not come out of his shop and further he did not come to the spot of the incident and Police came at the spot after one hour of the incident. In the cross-examination he further goes on to state

that he did not see Meena at the spot after the incident. His evidence is contradictory as on the one hand in the examination-in-chief he has stated that the police came at the spot after 20 – 30 minutes, on the other hand he has stated in the cross-examination that the police came to the spot after one hour. In the examination in chief he has stated that Meena reached the spot after the incident. In the cross-examination he has stated that he did not see Meena at the spot after the incident. In case he did not see the incident, did not know who took the injured to the hospital while he was present only three shops away from the incident how would he know whether Meena was present at the spot of the incident or not. Similarly DW-3, Kamlesh Maurya has deposed that he heard noise of quarrel in the market so he rushed towards it and saw son of Meena lying on the ground in the injured condition being removed by some neighbours and that he did not find Meena at the spot and Meena came only after half an hour. Evidence of this witness is also unreliable as according to him he remained at the spot of the incident for half an hour and thereafter Meena came to the spot, while as per S.I. Babu Lal, PW 10, statement of mother was recorded at the hospital soon after the incident. All the three witnesses, we feel have been introduced to show that Meena was not at the spot. If DW-1 is to be believed he along with Meena reached the spot of the incident by about 8:20 p.m. DW-3 Kamlesh Maurya was present soon after the incident, but did not find Meena present at the spot, but came there after about half an hour. This witness has further deposed that 3 – 4 neighbours were taking

the son of Meena to the hospital, but DW-3 was not able to tell their names and kept on waiting at the spot for 40 -45 minutes as none of the family members were present. Both Abdul Rubb and Bhola Masalewala, the two independent witnesses have joined as the prosecution witnesses. They did not identify the assailants during the evidence, however, they admitted that the occurrence of the incident had taken place on 8.3.2000 at 8:00 p.m. Both PW-6, Abdul Rubb and PW-7, Bhola, were declared hostile. The fact that PW-9 Dr. Rakesh Sharma has deposed that injured was brought to the hospital by Ram Rattan and Abdul Rubb would show that Abdul Rubb has been bought over or was under threat from the appellant, as there is no reason for the doctor to falsely state that Abdul Rubb had brought the victim to the hospital. Merely because the two independent witnesses decided not to support the case of the prosecution no fault can be found against the prosecution for not associating independent persons the investigation. In this regard, reliance can be placed on a judgment titled as **Iswar Singh Vs. State**, reported in 1985 Cri.C.J. 1625 in which it was observed as under:-

“It is common experience that people are greatly reluctant to co-operate with the police in such matters for a variety of reasons and there is as such absolutely no reason to disbelieve the I.O. that public did not respond to join the investigation.”

49. We find no force in the submission of the counsel for the appellants that since the injured was alive when he was removed

to the hospital, he could have given the name of the assailants, whom he knew, to the doctor. It is also submitted that PW-4 Meena has deposed that when her son was taken to the hospital he was alive and was saying that he would be saved and thereafter had told about the incident to the attending doctor, to whom he had talked to 3 -4 minutes and thereafter he was taken to the operation theatre. PW-9, Dr.Rakesh Sharma, who attended the victim, has deposed that the patient was brought in gasping condition, B.P and pulse was not recordable; pupil of both sides were dialated at the time of arrival of the patient, Cardio Pulmonary Resuscitation was done but the patient could not be revived and was declared dead at 8:40 pm. It is seen that the patient was having the following injuries:

1. CLW about 8 cm on left cheek
2. About 5 cm CLW over left front of Axilla near heart.
3. Incised wounds about 8 cm , 12 cm; with muscle and lung deep in right axilla and right pectoral region;
4. Incised wounds in epigastrium with lever, stomach, intestine exposed.
5. CLW on left arm.
6. Muscle deep incised wound left above knee.
7. Left wrist incised wound with bone exposed.
8. Left arm CWL.

50. Looking at this evidence, we find that a patient with multiple stab injuries over chest, abdomen and lumber brought in a gasping condition to the hospital, with B.P and pulse not recordable, would not be in a fit condition to talk.

51. We also do not find any force in the submission of learned counsel for appellants that merely because the mother and father of the victim allegedly did not run to save him, it should

lead to the conclusion that they were not present at the spot. The sequence of events would show that five persons reached at the spot and not finding Sunder Lal, they moved towards the victim, Rattan Lal and started stabbing him. We are in agreement with the reasons given by learned ASJ that different persons react differently to a situation and there cannot be any straightjacket formula that as to how a person would react in a situation like this. In the case of **Rana Pratap Vs. State**, reported at AIR 1983 SC 680 it has been held that *“to discard the evidence of a witness on the ground that he did not react in particular way, is to appreciate the evidence wholly in unreleastic and unimaginative manner”*.

52. For the reasons aforesaid we find that PW-4 and PW-11 were present at the spot at the time of the incident and were the eye witnesses to the occurrence. They have fully supported the case of the prosecution and there are no material contradictions in their evidence which go to the root of the matter. The ocular version of these witnesses stand corroborated with the medical evidence of PW-8, Dr.Ashok Jaiswal, who conducted the postmortem on the body of the deceased, Rattan Lal and found ten incised wounds on his person. As per the opinion of PW-8, these injuries were caused by a sharp edged weapon and on examining the knife which was recovered in this case, this witness has also opined that injuries found on the person of the deceased, were possible by the knife recovered. We are further satisfied that the witnesses (PW-4 and PW-11) could not help

their son because of the sudden attack by the five persons, who were armed, however, these witnesses were in fact natural witnesses and their evidence is honest, truthful and reliable. There is no force in the submission of counsel for the appellants that PW-4 and PW-11 were not present at the spot and have falsely implicated the appellant as the parents would be more interested in getting the real culprits punished rather than falsely implicating the appellants at the cost of letting the real culprits go scot free. On a careful consideration of the above stated submissions made by counsel for the parties and in light of the evidence discussed above, we find that the judgment of the trial court does not suffer from any manifest error or improper appreciation of evidence and does not warrant interference in so far as the conviction and sentence awarded by the trial court to the appellants under section 302/34, IPC is concerned. Further both PW-10 and PW-23 have deposed that appellant Miraj led them to the bushes near Railway Lines where a knife was recovered at his instance and that the said knife was seized vide memo Ex. PW-5/F. PW-8, Dr. Ashok Jaiswal on being shown the knife recovered in this case, has deposed that it was possible to inflict the injuries found on the deceased, with the said weapon. Taking into account the said stand, whereby the injuries have been connected to the recovered weapon of offence, we find no reason to interfere in the sentence awarded to appellant Miraj under sections 27/54/59 of the Arms Act. Having upheld the conviction of appellant Miraj under section 27 of the Arms Act, there is no reason to convict this appellant (Miraj) under section

25 of the Arms Act as well. Accordingly, the conviction and sentence under Section 25 of the Arms Act in respect of the appellant, Miraj, has to be set aside. Furthermore, as no weapon has been recovered from appellant Ishtkhar, the charge under sections 25/27 of the Arms Act against this appellant is not made out, and hence his conviction and sentence under sections 27/54/59 is liable to be set aside.

53. The appeal is disposed of in above terms.

**G.S.SISTANI
(JUDGE)**

**B.N.CHATURVEDI
(JUDGE)**

April 13th, 2009
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