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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 15th January, 2009*

+ CRL.A. 104/2007

JAI BHAGWAN @ KABAR Appellant
Through: Mr. L.D.Mual, Advocate

versus

STATE Respondent
Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

1. On 24.4.2003 at 9:50 P.M. DD Entry No.59-B, Ex.PW-7/A, was recorded by PW-7 Const. Bhim Singh to the effect that a wireless message has been received informing that out side House No.295, Bhorgarh, Narela, a man has been murdered. That in the house of Ram Kumar, Kumharon Wali Gali, a husband has been inflicted a stab wound.

2. This swung the police into action. SI Rajinder Dabas PW-10, accompanied by PW-13 Const. Chattar Singh, and PW-14 Const. Satbir, proceeded to the spot and reached the place of the occurrence. Simultaneously, one other police officer, ASI Ramesh Chander PW-18, who had received a wireless message also reached the spot.

3. A dead body was lying on the road with a knife thrust in the abdomen region.

4. SI Rajesh PW-11, from the mobile crime team as also Const. Chunni Lal (Photographer) PW-19, reached the spot. 21 photographs, Ex.PW-19/A.1 to Ex.PW-19/A.21; (negatives whereof are Ex.PW-19/B.1 to Ex.PW-19/B.21) were taken. Inspector Mahipal Singh PW-15, posted as SHO PS Narela also reached the spot. Maya Devi PW-3, wife of the deceased Ram Kumar was found present at the spot. PW-15 recorded the statement Ex.PW-3/A of Maya Devi wherein she named the appellant as the killer of her husband, and made an endorsement thereon, Ex.PW-15/A, and at 11.50 PM handed over the same to Const. Satbir PW-14 for registration of a FIR. Satbir took Ex.PW-3/A to the police station and handed over the same to SI Panna Lal PW-16, who recorded the FIR Ex.PW-16/A at 12.05 AM on 25.4.2003. PW-15 prepared the site plan,

Ex.PW-15/B, recording therein the place at point marked 'A' where the deceased was stated to have been stabbed and the place at point marked 'B' where the dead body was found.

5. At the spot 4 chappals were taken possession of; blood and earth samples were lifted vide memo Ex.PW-3/B. The dead body was found, as noted above, with a knife still inside the body. It was sent for post-mortem to Babu Jagjivan Ram Memorial Hospital, where, on 25.4.2003 Dr.B.N.Acharya PW-2, conducted the post-mortem and gave the report Ex.PW-2/A. The sketch of the knife which was removed from the body was prepared by him being Ex.PW-2/B.

6. Apart from Maya Devi PW-3, the wife of the deceased, Ashok Kumar PW-4, the brother of the deceased was also at the spot when the police reached. His statement under Section 161 Cr.P.C. was recorded. Statement of Manju PW-5, the daughter of the deceased was also recorded under Section 161 Cr.P.C.

7. Since in her statement Ex.PW-3/A, made to PW-15, Maya Devi informed that the appellant was the assailant, the police set out to apprehend the appellant. The appellant was apprehended on 26.4.2003 as per arrest memo Ex.PW-10/A. The shirt Ex.P-1 and the pant Ex.P-2 which were worn by the

accused were seized by the police vide seizure memo Ex.PW-10/C.

8. Appellant was interrogated by PW-15 in the presence of SI Rajinder Dabas PW-10, HC Savinder PW-20 and Const. Baljeet Singh PW-21. He made a disclosure statement Ex.PW-20/A. Pursuant to the disclosure statement the accused took the police and vide pointing out memo, Ex.PW-10/B, pointed out the place where he admitted having committed the crime.

9. Armed with the aforesaid material the challan was filed accusing the appellant of having murdered the deceased Ram Kumar. A charge was framed against the appellants for having committed an offence punishable under Section 302 IPC.

10. At the trial, apart from examining afore noted police officers who proved the receipt of initial information, the police visiting the site of the occurrence, registration of FIR, recording statements of the witnesses during investigation, seizure memos, disclosure statement of the accused, photographs taken of the site, preparation of the plan of the site, the doctor who conducted the post-mortem of the deceased, Maya Devi, wife of the deceased, his brother Ashok Kumar and his daughter Manju were examined as PW-3, PW-4 and PW-5 respectively. FSL report Ex.P-X and Ex.P-Y pertaining to the clothes of the

deceased and the objects recovered from the site in relation to presence of blood thereon was also filed.

11. PW-3 deposed that her husband was working as a mistri. Since her husband had taken ill he had requested her to sell vegetables and hence she used to sell vegetables from a street behind a school in the industrial area at Village Bhorgarh. She deposed that her husband used to help her in the evening to sell vegetables. She deposed that on 22.4.2000 the accused Jai Bhagwan (who was identified by her in Court) came to them i.e. herself and her husband and told her husband to go to one Bhim and bring money from him at which she told the accused that her husband would not go to Bhim upon which the accused got angry and threatened that they i.e. she and her husband would have to bear the consequences. She further deposed that on 24.4.2000, the accused met them at the chowk on the way while they were proceeding to their house after selling vegetables and that the accused gave a knife blow on the abdomen of her husband and ran away. She deposed that her husband chased the accused by 10 to 15 steps and fell down. Her husband succumbed to the injuries. She deposed that public had gathered and her husband's brother, Ashok, PW-4, had also reached the spot. She deposed that soon thereafter

the police came to the spot and her statement Ex.PW-3/A was recorded which bore her signature at point 'A'. She deposed that the police recovered chappals from the spot vide seizure memo Ex.PW-3/B. She deposed that the knife remained inside the body of her husband as the accused had run away leaving the knife behind. She deposed that her daughter Manju also arrived at the spot when proceedings were being conducted by the police.

12. On being cross examined she denied that she was deposing falsely. She stated that she identified the dead body of her husband at the spot.

13. Relevant would it be to note that a suggestion was given to Maya Devi during cross examination that she and Ashok had murdered Ram Kumar. Needless to state, she denied the same.

14. Ashok Kumar PW-4, deposed that on 24.4.2003 at around 9:15 or 9:30 PM he had reached Gali Kumhar Wali and saw many people having gathered. He saw his brother Ram Kumar lying on the road with a pool of blood having stab injuries with a knife. He deposed that his sister-in-law Manju was present at the spot when he reached the spot and that the body of his brother was removed to the hospital.

15. Relevant would it be to note that Ashok Kumar never claimed to be an eye witness to the incident. The relevance of his testimony would be to corroborate Maya PW-3, who claimed to be present at the site where the unfortunate incident took place.

16. It would also be relevant to note at this stage that learned counsel for the accused after getting it recorded during cross examination of PW-4 that he was asking a question on the specific instruction of the accused, put a suggestion to PW-4 that PW-4 and Maya Devi were present at the spot and were the ones who had killed the deceased. Needless to state, the suggestion was denied.

17. PW-5 Manju, daughter of the deceased, aged 12 years when she was examined on 12.5.2005; being around 10 years old on 24.4.2003 when the unfortunate incident took place, deposed that at around 8:30 P.M. on 24.4.2003 the accused had come to their house enquiring about her father and that she had told him that her parents had gone to sell vegetables in the industrial area. She deposed that later on she came to know that her father had been murdered and that the accused had fled.

18. On being cross examined she stated that she was a

student of Class VI at Nagar Nigam Prathamik Bal Vidyalaya Village Bhorgarh. She deposed that she learnt that the name of the accused was Jai Bhagwan after her father was murdered and not before. She denied the suggestion that she was tutored. On being questioned as to who gave her the information of her father being murdered, she informed that a tenant of her uncle Ratan gave said information to her, and that on receiving the information she reached the spot at 12:30 A.M.

19. PW-2 Dr.B.N.Acharya deposed that he conducted the post-mortem of the deceased on 25.4.2003 and gave his report Ex.PW-2/A which records the following internal injuries:-

“Incised cut mark 2.5 cm length on lateral surface. On medial surface 2 cut mark of 1 cm and 0.5 cm in length. Diaphragm is also cut.”

20. At the rear page of the post-mortem report he has recorded as under:-

“Examination of body shows a metallic knife pierced in Lt. side of chest. On removal one incised penetrating stabbed wound is seen which is present 14 cm from nipple and 17 cm from mid-line. Upper end of the wound is acute and 19 cm below the ant. axillary line and lower end is 23 cm from Lt. axillary line i.e. axillary fold anteriorly. It is placed slightly obliquely. Its margin is clean, cut and regular. Size 5 cm x 2 cm x chest cavity deep. On dissection the wound enters chest cavity in between 6 and 7 by cutting muscle of the chest. It enters the lung as mentioned on front page. Two cut mark of medial surface indicates the knife is used two times. It further cut diaphragm and

stomach.

Total length of track is 18 cm.

Knife removed and handed over to the police in sealed manner with sketch diagram.

Opinion:- Injury on chest is ante-mortem in nature and is caused by sharp edged weapon as removed from the body. Death is due to hemorrhagic shock consequent on injury to left lung. Injury of lung Lt. is sufficient for causing death in ordinary course of nature. Time since death is about 14 hrs back."

21. Believing the testimony of PW-3, PW-4 and PW-5, in view of the post-mortem report, Ex.PW-2/A, the learned Trial Judge has convicted the appellant and has sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default to undergo RI for 5 months.

22. Before the learned Trial Judge various submissions were urged, but since in appeal, all have not been urged before us, we shall be dealing with the submissions urged at the hearing of the appeal today; being as under:-

A. First submission is that in the disclosure statement of the accused Ex.PW-20/A, it stands recorded that the accused informed the police of having lifted the knife from the hand cart of one Raees, a meat seller. It is urged that only by examining Raees could the police establish the identity of the knife and possession thereof with the accused. It is urged that by not

examining Raees the prosecution failed to establish that the accused was ever in possession of the knife. Linking this argument further and urging a sub-submission thereof, it is urged that the knife in question was not recovered at the instance of the accused and hence the same could not be linked (as the weapon of offence) with the accused.

Before us, learned counsel for the appellant has cited the decision reported as AIR 1983 SC 349 State of U.P. Vs. Jageshwar & Ors. on the point of recovery of a weapon of offence and linkage thereof with the accused.

B. Second submission urged is that there is a contradiction in the ocular and the medical evidence. It is urged that the same discredits Maya Devi PW-3. The factual matrix of the submission is the statement by Maya Devi that the accused inflicted a single knife blow on the stomach of her husband and that the post-mortem report Ex.PW-2/A, contents whereof have been noted in paras 19 and 20 above which record that the lung has two cut marks on the medial surface indicating that the knife had been used twice. It is urged that when PW-2, the author of the post-mortem report was examined, he categorically deposed that two cut marks of medial surface indicates that the knife was used two times. It is accordingly

urged that since Maya Devi categorically deposed that the accused inflicted only one knife blow and thereafter fled from the spot, the second injury on the person of the deceased remains unexplained. Hence, it is urged that Maya Devi has to be disbelieved. Alternatively, it is urged that benefit of doubt should be given to the accused.

C. The third submission urged is, with reference to the report of the forensic science laboratory dated 20.10.2004, Ex.P-X and Ex.P-Y, which show that the pant and the shirt, Ex.P-1 and Ex.P-2, worn by the accused, stated to have been seized vide seizure memo Ex.PW-13/B, were never sent for opinion and hence the claim of the police that blood stained pant and shirt were seized from the accused remained unproved.

D. With reference to the recovery memo, Ex.PW-3/B, wherein it is recorded that four chappals were seized by the police from the spot it is urged that it has not been established that any chappal out of the said four belonged to the accused and hence the same do not link the accused to the crime or being at the spot of the crime. Alternative/additional submission made pertaining thereto is that the presence of many persons at the spot is evidenced by the recovery of the chappals and this probablizes that there were more than one

person acting in concert when the deceased suffered injury.

E. With reference to the site plan, Ex.PW-15/B where the place where the deceased is stated to have suffered the injury is shown at point A and the place where his dead body was found is shown at the place mark B, lack of blood trail being shown therein, vis-à-vis the statement, Ex.PW-3/A, made by PW-3 to the police to the effect that after the accused inflicted the knife blow in the abdomen of her husband and fled she stated, "*mere pati ne bhi khoon se lathpath halat main uska peecha kiya tha*"; it is urged that the site plan does not conform to the statement of PW-3 and hence, it is submitted, that PW-3 gave a false story to the police. Before us, learned counsel for the appellant cites 1993 CrL. LJ 1801 (SC) Bhimappa Jinnappa Nagnaur Vs. State of Karnataka.

F. With reference to the site plan Ex.PW-15/B another submission is made that the location of house No.242 has not been shown therein. Referring to the testimony of PW-19 Const. Chunni Lal, the photographer who took the photographs of the site, it is pointed out that PW-19 categorically stated that the photographs taken by him pertained to the dead body which was lying in the gali near house No.242. In a nut shell, submission made is that the prosecution has failed to establish

the place where the incident took place.

23. The first plea pertaining to Raees not being examined has been repelled by the learned Trial Judge with the findings in paras 47 and 48 of the decision as under:-

“47. The counsel for the accused urged that as per disclosure of the accused Ex.PW-20/A, he procured the knife allegedly used in commission of offence from Raees. Thus, Raees was a material witness. The IO did not examine the said Raees U/s 161 Cr.P.C. and did not cite him for the reason best known to him. According to him the same introduces a fatal lacuna in the case of the prosecution. In support of his submission, he relied upon decision of the Hon’ble Supreme Court in Pratap Singh vs. State 2005 AIR SCW 6158 in which it was held that during investigation IO noticed that 2 witnesses had also witnessed the occurrence but their statements were not filed before Ld.Trial Court along with charge sheet, drawing adverse inference for non-examination of said witness is proper, benefit of said non filing of statements must be given to defence and not to prosecution.

48. I have carefully considered the arguments and judgment cited by the Counsel for the accused and feel that the same is distinguishable. Eye witness stands on a different footing than a person from whom weapon used in the commission of offence is procured. The later does not have any knowledge about the commission of the offence and his examination cannot be said to fatal.”

24. We note that the learned Trial Judge has not discussed the submission pertaining to the knife as per the second limb of the submission urged and as noted in the latter part of sub-para A of para 22 above. We shall deal with the same a little later.

25. Unfortunately, the second submission as noted in sub-para B of para 22 above has not been discussed by the learned Trial Judge.

26. The third submission as noted in sub-para C of para 22 above has again not been dealt with by the learned Trial Judge. But, we note a vague reference thereto in para 46 of the impugned decision which reads as under:-

“46. Yet another argument raised by Ld.Defence counsel is that according to the case of the prosecution the wearing clothes of the accused were containing blood stains though he was arrested after 2 days on 26/4/03 as per seizure memo Ex.PW-10/C. According to him no person would continue to wear blood stained clothes so as to leave a scope with the police to collect evidence against him. The argument does not help the accused at all. Every person does not have the same intelligence and cannot think on the lines to save himself. The accused was a layman. He might not have got the opportunity to change the clothes in the fear of being caught. He might be trying to conceal himself.”

27. The fourth submission as noted in sub-para D of para 22 above has been dealt with by the learned Trial Judge in para 41 of the decision. It reads as under:-

“41. The Ld.Defence counsel urged that according to the case of the prosecution 4 + 1 chappals were recovered in front of house no.124 but PW-3 did not identify any of the said chappals as belonging to her husband. From this he wanted me to hold that the prosecution has done some paddling with the case and the same creates doubt. The argument is quite far fetched. The police seized

whatever was available at the spot. Those chappals may be belonging to the accused or the public persons who gathered at the spot. It may be that the police could not lay its hand on the chappals of the deceased. Thus, there was no occasion for PW-3 to identify the seized of chappals.”

28. The submissions number 5 and 6 as noted in sub-para E and F of para 22 above have been dealt with by the learned Trial Judge in paras 31 and 38 of the decision as under:-

“31. On the other hand the Ld.Defence counsel submitted that according to case of prosecution there are more than one places of incident. According to rukka Ex.PW-15/A incident was near Chopal chowk. The same thing was deposed by PW-3 and PW-11. But according to DD No.59B copy of which is Ex.PW-7/A, the incident took place near house No.295, Bhorgarh, Narela. PW-10 & PW-18 gave the same version. PW-15 gave the 3rd version that according to DD No.59B Ram Kumar was murdered at Kumharonwali gali, village Bhorgarh, Narela. PW-19 added that he reached near house No.242, gali Kumharonwali gali, village Bhorgarh. From this he wanted me to hold that the prosecution has failed to establish the spot of occurrence. I am not impressed by the argument. Substantially the place of occurrence is near the house of Rajender Panchal, Chopal Chowk, Bhorgarh, Narela. Everybody has his own powers of perception, retention and reproduction.

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38. The Ld.Counsel for the accused did not miss to argue that according site-plan Ex.PW-15/B the victim walked from point A to point B, after being hit with knife. So blood must have fallen from the wound on the earth but the site plan does not show any such blood. The argument is based on conjecture. Statement Ex.PW-3/A shows that the witness ran for 20 22 paces only which

must have taken less than two minutes. The attack was fresh. It is just possible that blood did not come out in such short span.”

29. Before dealing with the contentions urged before us today, the broad contours of the case of the prosecution and the evidence brought on record may be briefly noted. The accused had wanted the deceased to bring money from Bhim and on 22.4.2000, PW-3 had told him that her husband would not do so at which the accused had threatened the deceased and his wife to face the consequence. On 24.4.2000 he accosted the husband and wife at the chowk at around 9.30 PM and struck a blow in the abdomen of the deceased and fled leaving behind the knife in the abdomen of the deceased. PW-3 is a natural witness and nothing has been brought out in her testimony save and except the alleged discrepancy vis-à-vis the post-mortem report. (With which we shall be dealing shortly herein after). Her evidence is consistent. Her presence at the spot has in fact been admitted by the appellant evidenced by the suggestion to her that she and PW-4 had murdered the deceased. Nothing has been shown to us to discredit Manju, PW-5 whose testimony brings out that the accused had gone to the house of the deceased at 8.30 PM and Manju told him that her parents had gone to sell vegetables. Testimony of PW-4, Ashok also

establishes that Maya Devi was present at the spot when her husband was attacked. The statement of Maya Devi to the police, Ex.PW-3/A recorded sometimes prior to 11.50 PM shows her being present at the spot when the police reached the spot after receipt of information at 9.15 PM vide Ex.PW-7/A. It would be relevant to note that no motive to falsely implicate the accused has been brought out while cross-examining PW-3.

30. Pertaining to the first plea urged it would have been relevant, only if there was no direct evidence to link the appellant with the offence. It is not a case of a weapon of offence being recovered pursuant to a disclosure statement made by the accused. The knife in question was left in the abdomen of the deceased when the accused fled away and was removed from the body of the deceased at the time of post-mortem. The decision relied upon in Jageshwar's case (supra) does not apply in the instant case inasmuch as in said case as many as 14 or 15 persons were alleged to have participated in the commission of the crime and one gun was used which was ostensibly recovered pursuant to a disclosure statement made by accused Durga from one Sunder Ahir from whom Durga stated that he had borrowed the gun. The recovery was effected at the instance of another accused. In said

circumstance non-examination of Sunder Ahir was held to be a ground to doubt the use of the gun by accused Durga.

31. The second plea pertaining to the alleged contradiction in the ocular evidence i.e. testimony of Maya Devi PW-3 and the medical evidence Ex.PW-3/A has been carefully looked into by us. At first blush the submission looks attractive. But, a deeper consideration reveals the hollowness thereof. The opinion recorded in the post-mortem report clearly records, at the first instance: *"on removal one incised penetrating stabbed wound is seen which is present 14 cm from nipple and 17 cm from mid-line. Upper end of the wound is acute..... It is placed slightly obliquely. Its margin is clean, cut and regular."*

32. The aforesaid evidences only a single external wound. The reference to the second wound appears at two places in the report. The first is while noting the internal injuries wherein it is recorded *"Incised cut mark 2.5 cm length on lateral surface. On medial surface 2 cut mark of 1 cm and 0.5 cm in length. Diaphragm is also cut."* The second is wherein it is recorded *"On diasection the wound enters chest cavity in between 6 and 7 by cutting muscle of the chest. It enters the lung as mentioned on front page. Two cut mark of medial surface indicates the knife is used two times. It further cut diaphragm and stomach. Total*

length of track is 18 cm”.

33. Unfortunately, PW-2 was not questioned to obtain clarifications as to how with a single external wound, two internal cut wounds could be inflicted. Had the witness been further questioned he would have obviously answered the same and the Court would have had the benefit of expert opinion. In the absence thereof we have to rely on human anatomy. The lungs are just above the diaphragm. There is only one incised cut mark of 2.5 cm length on the lateral surface of the lung. The two internal cuts noted are on the medial surface. Though not recorded, from the nature of the injury recorded in Ex.PW-2/A it is apparent that the medial surface has to be of the lung. To put it with clarity, on the abdomen only one external cut has been noted between rib No.6 and 7. This evidences that the knife has pierced the abdomen (in fact lower portion of the chest on the left side and not the front and hence only one incised cut of 2.5 cm length on the lateral surface of the lung stands inflicted). Two cut marks have been recorded on the medial surface of the lung. The fact that the knife pierced 18 cm inside the body and had a total length of 28.9 cms of which only 9 cms was the length of the handle and the remaining i.e. 18.9 cms, the length of the blade, has to be kept in mind. Now, one can easily

understand as to what has happened. With the first blow, the knife penetrated into the body after cutting the skin and the muscle underneath. It penetrated the lateral surface of the lung and cutting through the lung penetrated the medial surface of the lung. The knife was pulled back a little and re-penetrated with a slight deviation causing the second cut in the medial surface of the lung. This could have happened when the deceased probably retracted when the blow was inflicted, causing the knife to recede, followed by the accused once again jabbing the knife. In any case, the entry wound into the body is only one; and hence Maya Devi has rightly spoken of only one stab wound; which obviously was what she could see.

34. The third submission is neither here nor there because even if recovery of the blood stained shirt and the pant from the appellant is removed from the evidence, it makes no difference inasmuch as instant case is not of circumstantial evidence but is one of direct evidence. Similarly, the issue of chappals being seized vide recovery memo Ex.PW-3/B and none being linked to the appellant is irrelevant because the prosecution has proved the case by direct evidence.

35. The last two submissions pertaining to the site plan and the decision in Bhimappa's case (supra) may now be dealt

with. The decision in Bhimappa's case (supra) is distinguishable for the reason that the said case did not deal with an issue of a site plan. In said decision the testimony of PW-1 therein was tested with respect to the evidence on record that the distance between the place where the injured was attacked and the place where the dead body was found were 400 feet apart and there were more than 100 bleeding injuries on the deceased and yet no trail of blood was found between the two places. In said circumstance it was held that no trail of blood assumed importance.

36. In the instant case the external injury on the body of the deceased is one; two internal wounds were inflicted only on the medial surface of the lung. The distance walked by the deceased from the place where he was stabbed to the place where he fell is 10 to 15 steps away. The injured walked with a knife in his stomach. Any person in said injured condition would be clutching and pressing his stomach thereby preventing large quantity of blood flowing out. Further, the wound is above the stomach cavity and hence would result in the blood first accumulating in the stomach cavity and thereafter spilling on to the road. By this time the injured had already covered the distance of 10 to 15 steps. Obviously, some blood would flow

out and would be visible on the clothes of the injured, and hence the statement of PW-3 to the police that soaked in blood her husband ran after the accused.

37. The non-recording of house number 242 on the site plan is immaterial because the stabbing took place, as disclosed by PW-3, at the chowk which has been shown in the site plan Ex.PW-15/B and the place at the chowk where the deceased was attacked has been marked at point 'A'. The gali i.e. the road has been duly shown and the place where the injured fell down and died has been shown at the point marked 'B'. Under the circumstances it hardly matters that the location of the house was not given. The only importance of reference to house number is the testimony of the photographer PW-19 who stated that he took the photographs of the dead body lying in the gali near house No.242. It may be emphasized that the incident did not take place inside house No.242 nor is there any relevance of the said house. We could have appreciated if the case of the prosecution was that a particular witness saw the incident from house No.242 or that the accused ran inside the said house or likewise. The evidentiary value of a site plan has been discussed in the decision reported as AIR 2003 SC 3408 State of UP Vs. Babu & Ors. In said case the eye-witnesses stated to have

identified the accused because of torch light used by them and the gas light. In the site plan there was an omission to indicate the location of the gas light in the site plan. The accused persons were known to the witnesses. Under the circumstances the omission in the site plan to indicate the location of the gas light was not held to be fatal. We may add that this means that a site plan is not to be treated as a substantive evidence.

38. We find no merits in the appeal. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 15, 2009
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