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**IN THE HIGH COURT OF DELHI**

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Judgment reserved on : February 06, 2009

Judgment delivered on : February 26, 2009

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**CRL.A. 478/2008**

RAMESH KUMAR ..... Appellant  
Through: MR. Bhupesh Saini, Advocate

versus

STATE ..... Respondent  
Through: Mr. Pawan Sharma, 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?
3. Whether judgment should be reported in Digest?

**: PRADEEP NANDRAJOG, J.**

1. The appellant along with co-accused Raja Ram faced trial for the charge of having murdered Jagat Pal (herein after referred to as the "Deceased") on the morning of 22.08.2002 and for using arms in contravention of Section 5 of the Arms Act, 1959.

2. Vide impugned judgment and order dated 08.04.2008 the appellant and the co-accused have been held to be guilty of offences punishable under Sections 302/34 IPC and Sections 27/54/59 of the Arms Act. Vide order dated 11.4.2008 they have been sentenced to undergo imprisonment for life for the offence punishable under Sections 302/34 IPC and to undergo RI for one year for offence punishable under Sections 27/54/59 of the Arms Act.
3. The case of the prosecution against the accused persons; commencing from their apprehension, the circumstances of their apprehension and the recoveries effected is, as recorded in the endorsement (tehrir) Ex.PW-28/A made by Inspector Ram Kishan PW-28, which reads as under:-

“Respected Duty Officer Police Station Mandir Marg New Delhi it is humbly submitted that today on 22.08.2002 after receiving a copy of DD No.8A I reached the spot i.e. service road, near Haryana Emporium, Baba Kharag Singh Marg New Delhi where ASI Suresh Chand No.4619/D along with Const. Subash Giri No.3939/J, Const. Jasbir Singh 2907/T and Const. Amrit Singh 2963/T were present. The said police officials had apprehended accused Ramesh Kumar s/o Leela Ram and accused Raja Ram s/o Parsuram. The clothes of the accused persons were stained with blood and huge quantity of blood was lying at the spot. After leaving SI Krishan Lal who had come at the spot on receiving a call as the incharge of the investigation I left for the RML Hospital. On reaching the RML Hospital I learnt vide MLC No.107519/02 that an unknown male person aged 35 years has been declared brought dead. On the right side of the dead body of the deceased, Om was inscribed and there were fresh injuries on the chest, right arm and

forehead of the body. On finding no eye-witness in the hospital I reached the spot where ASI Suresh Chand got recorded his statement and Const. Jagbir Singh had apprehended accused Raja Ram s/o Parsuram and Const. Subash Giri had apprehended accused Ramesh Kumar. Const. Jagbir Singh produced one knife which was recovered from accused Raja Ram. The length of the knife was 23 cm, length of the handle was 9.5 cm, width of the knife was 13.5 cm and was having green colored plastic handle. The said knife was kept in a pulanda and sealed with the seal of RK. Const. Subash Giri produced one knife which was recovered from accused Ramesh Kumar. The length of the knife was 35.1 cm, width of the knife was 23.1 cm, length of the handle was 12 cm and handle was covered with a newspaper. The said knife was kept in a pulanda and sealed with the seal of RK. Both the knives were stained with blood. On the basis of the statement of ASI Suresh Chand No.4619/D and MLC of the deceased accused persons are found guilty of committing offences punishable under Sections 302/34 IPC, 27/54/59 Arms Act. The said endorsement is being handed over to Const. Gajender Singh No.8221/ND for registration of FIR. The FIR be registered and further investigation be conducted. Crime team and photographer be sent to the spot for investigation. Special Report be sent. I inspector is conducting investigation at the spot.

Arrival at the spot: 22.08.2002 at 11.30 AM

Place of occurrence: Service Road Near Haryana Emporium, Baba Kharag Singh Marg.

Time of departure of endorsement: 22.08.2002 at 2.30 P.M.(Translated Version)"

4. As per the prosecution, the events which preceded the recording of the afore-noted endorsement, were, that on 22.08.2002 at about 11.25 A.M. ASI Suresh Chand PW-25, along with Const. Amrit Singh PW-17, were patrolling on a motorcycle in the area around Baba Kharag Singh Marg, when a person informed them

that two persons are stabbing a man near Haryana Emporium on Kharag Singh Marg. PW-25 transmitted the said information to Police Control Room based whereon DD No.8A, Ex.PW-28/DA, was recorded at the local police station. ASI Suresh Chand and Const. Amrit Singh proceeded on their motorcycle to Haryana Emporium.

5. On reaching the spot at about 11.30 A.M. they saw that two persons who were holding knives in their hands were stabbing a man at the service road near Haryana Emporium and were saying that he steals their smack daily and that they would kill him. On seeing the police officials arrive at the spot, the said two persons started to flee. The two police officers raised an alarm and started chasing the said two persons. On hearing the alarm calls of ASI Suresh Chand and Const. Amrit Singh, Const. Subash Giri PW-4, and Const. Jasbir Singh PW-16, who were regulating the traffic at T-point at Hanuman Mandir Lane, Baba Kharag Singh Marg, also started chasing the accused persons. One accused person ran towards the Hanuman Mandir lane while the other ran towards the mosque at Connaught Place.
6. Const. Subash Giri PW-4, apprehended one accused person whose name was later on revealed as Ramesh Kumar (appellant) at Hanuman Mandir lane while Const. Jasbir Singh PW-16, apprehended the other accused person at the rear of the mosque

whose name was later revealed as Raja Ram (co-accused). As noted in endorsement Ex.PW-28/A, the clothes of both the accused persons were stained with blood and one blood stained knife each was recovered from their possession. Both the accused persons were brought at T-point at Hanuman Mandir lane.

7. In the meantime, the PCR van removed the deceased to the RML hospital where Dr.Padma conducted the medical examination of the deceased and recorded the MLC No. 107519/02 Ex.PW-24/A, declaring him as brought dead. The T-shirt which the deceased was wearing at the time of the commission of the offence was handed over to Const. Satish PW-6, who seized the same vide seizure memo Ex.PW-6/A.
8. SI Krishan Lal PW-15, and Insp. Ram Kishan PW-28, who had also received the information regarding the incident also reached the spot. On learning that the deceased has been removed to RML hospital, PW-28 proceeded to the hospital where he learnt that the deceased has been declared brought dead.
9. Thereafter PW-28 returned to the spot and recorded the statement Ex.PW-25/A of ASI Suresh Chand PW-25, based whereon the afore-noted endorsement Ex.PW-28/A (tehrir) was recorded. In his statement Ex.PW-25/A, ASI Suresh Chand stated that on 22.08.2002 at about 11.25 AM, a public person had

stopped him and Const.Amrit Singh and informed that two persons were stabbing a man near Haryana Emporium; that on reaching the spot he saw that the accused persons holding knives in their hands were stabbing and exhorting the deceased; that the clothes of the accused persons were stained with blood; that Const. Subash Giri had apprehended accused Ramesh Kumar at Hanuman Mandir Lane and Const.Jasbir Singh had apprehended accused Raja Ram at the rear of the mosque; that one blood-stained knife each was recovered from the possession of the accused persons.

10. The statement Ex.PW-25/A on which the endorsement Ex.PW-28/A was made by Insp. Ram Kishan was forwarded at 2.30 P.M. through Const. Gajender Singh PW-22, to the police station for registration of a FIR. Gajender Singh took Ex.PW-28/A to the police station and handed over the same to HC Panna Lal PW-8, who recorded the FIR No.286/2002, Ex.PW-8/A, at 2.45 P.M. on 22.08.2002.
11. As recorded in tehrir Ex.PW-28/A the accused persons were apprehended at the places near the spot.
12. From the spot sample control earth and blood stained earth were lifted vide memo Ex.PW-4/C. Head Constable Ravinder Kumar (Photographer) PW-9, from the crime team was summoned. 24

photographs, Ex.PW-9/A1 to Ex.PW-9/24, negatives whereof are Ex.PW-9/A25 to Ex.PW-9/48 were taken.

13. On the same date i.e. 22.08.2002 SI Chandrika Prasad PW-1, accompanied by Const. Kuldeep Chand PW-5, took the accused persons to the RML Hospital, where Dr.P.K.Nayak PW-26, conducted the medical examination of the accused persons. MLCs Ex.PW-26/A and Ex.PW-26/B of the accused persons respectively record that no injury was found on their person. The blood sample of the accused persons and the clothes which they were wearing at the time of the commission of the offence were handed over to the police at the hospital and the same were seized vide memo Ex.PW-7/A.
14. On the next day i.e. 26.08.2002 the dead body of the deceased was transferred to Lady Hardinge Hospital where Dr.Amit Kochar PW-21 and Dr.Sumit Seth PW-23, conducted the post-mortem and gave their report Ex.PW-21/A which recorded that eight ante-mortem injuries were found on the person of the deceased; that the cause of death was haemorrhage shock and the injuries found on the person of the deceased; that the injuries nos. 1 and 2 noted in the post-mortem report were sufficient to cause death in the ordinary course of nature both individually and collectively. The blood stained clothes of the deceased and a blood sample on a gauze were handed over to the police.

15. The blood stained clothes of the deceased and the clothes of the accused having blood stains thereon as also the two knives were sent to a serologist for a serological test and reports Ex.PW-28/C, Ex.PW-28/D and Ex.PW-28/E record that the blood group of the deceased was 'B' and that the human blood of 'B' group was detected on the clothes of the deceased and the accused persons. On the knives, human blood was detected, group whereof could not be ascertained.
16. Armed with the post-mortem report, the serological report, the various seizure memos a charge sheet was filed listing the various police officers associated with the investigation as the witnesses.
17. ASI Suresh Chand PW-25 deposed in harmony in with his earlier statement Ex.PW-25/A recorded by Insp Ram Kishan PW-28, on the date of the incident.
18. Const. Amrit Singh PW-17 deposed that on 22.08.2002 at about 11.25 AM a public person had stopped him and ASI Suresh Chand and informed that two persons were stabbing a man near Haryana Emporium; that on reaching the spot he saw the accused persons holding knives in their hands were stabbing and exhorting the deceased; that the clothes of the accused persons were stained with blood; that when the accused attempted to flee Const. Subash Giri apprehended accused Ramesh Kumar at

Hanuman Mandir Lane and Const.Jasbir Singh apprehended accused Raja Ram at the rear of the mosque; that one blood stained knife each was recovered from the possession of the accused persons.

19. Const.Subash Giri PW-4 deposed that on 22.08.2002, he along with Const. Jasbir Singh was regulating traffic at T-point at Hanuman Mandir lane, when at about 11.30 A.M. he heard the alarmed voices of ASI Suresh Chand and Const.Amrit Singh and saw them chasing the accused persons; that one of the accused person was running towards Hanuman Mandir lane while the other was running towards a mosque; that he chased accused Ramesh Kumar who was running towards Hanuman Mandir lane and apprehended him; that the accused Ramesh was holding a blood stained knife in his hand and his clothes were also stained with blood at the time of his apprehension; that the other accused person was apprehended by Const. Jasbir Singh .
20. Const.Jasbir Singh PW-16 deposed that on 22.08.2002 he along with Const. Subash Giri was regulating traffic at T-point at Hanuman Mandir lane, when at about 11.35-11.40 A.M. he heard loud voices coming from the direction of Haryana Emporium and saw that the accused persons who were holding knives in their hands and whose clothes were stained with blood were running at a fast speed; that he started to chase the accused person who

was running towards the mosque and apprehended him at the rear of the mosque; that the other accused person was apprehended by Const.Subash Giri; that the accused Raja Ram was holding a blood stained knife at the time of his apprehension.

21. Insp. Ram Kishan PW-28 deposed that the endorsement Ex.PW-28/A was recorded by him on the basis of the statement Ex.PW-25/A of ASI Suresh Chand.
22. SI Krishan Lal PW-15 who had assisted in the investigation at the spot on the date of the incident deposed that the accused persons had already been apprehended by Const. Subash Giri and Const. Jasbir by the time he had arrived at the spot; that on reaching the spot he found that the clothes of the accused persons were stained with blood and that huge quantity of blood was lying at the spot.
23. In his statement under Section 313 Cr.P.C. the appellant denied everything. His defence was of false implication by the police officials. He stated that on 22.08.2002 he was present at his residence with his family when at around 12.00 P.M. or 12.30 P.M. a police constable came and told him that senior police officials have called him at the police station Mandir Marg; that on reaching the police station his clothes were forcibly got changed, his signatures and thumb impressions were obtained on blank papers and he was compelled to hold a knife.

24. On behalf of the appellant, one Kavita who was the daughter of the deceased was examined as DW-1. She deposed on the lines of the defence raised by the appellant in his statement under Section 313 Cr.P.C.
25. Believing the testimonies of the police officials and holding that the presence of human blood of 'B' group on the clothes of the appellant and presence of human blood on the knife recovered from the possession of the appellant lends corroboration to the case of the prosecution, the learned Trial Judge has convicted the appellant of committing offences punishable under Section 302/34 IPC and Sections 27/54/59 of the Arms Act. Similarly, on the same set of reasoning the co-accused has also been convicted.
26. In support of the appeal, the first submission advanced by the learned counsel for the appellant was that despite the fact that 10-15 persons collected at the spot at the time of the incident as deposed by the prosecution witnesses particularly Const. Subash Giri, not a single public witness has been examined by the prosecution and, therefore, no reliance should be placed on the evidence of the police officials.
27. In this regards, it would be most relevant to quote the following observations of the Hon'ble Supreme Court in the decision reported as Sarwan Singh v State of Punjab (2003) 1 SCC 240:-

"As regards the examination of independent persons or witnesses, we would do well to note a decision of this Court in Ambika Prasad and Anr. v. State (Delhi Admn.) (2002) 2 SCC 646, wherein this Court in paragraph 12 observed:

"12. It is next contended that despite the fact that 20 to 25 persons collected at the spot at the time of the incident as deposed by the prosecution witnesses, not a single independent witness has been examined and, therefore, no reliance should be placed on the evidence of PW5 and PW7. This submission also deserves to be rejected. It is known fact that independent persons are reluctant to be witnesses or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the close relative of the deceased are under constant threat and they dare not depose the truth before the court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Another reason may be the delay in recording the evidence of independent witnesses and repeated adjournment in the court. In any case, if independent persons are not willing to cooperate with the investigation, the prosecution cannot be blamed and it cannot be a ground for rejecting the evidence of injured witnesses. Dealing with a similar contention in State U.P. v. Anil Singh (1988 Supp SCC 686), this Court observed: (SC pp. 691-92, para 15)

"In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable."

The test of creditworthiness and acceptability in our view, ought to be the guiding factors and if so the requirements as above, stand answered in the affirmative, question of raising an eyebrow on reliability of witness would be futile. The test is the credibility and acceptability of the witnesses available - if they are so, the prosecution should be able to prove the case with their assistance.

Coming to the contextual facts once again, while it is true that there is no independent witness but the evidence available on record does inspire confidence and the appellant has not been able to shake the credibility of the eye-witnesses. There is not even any material contradiction in the case of the prosecution.”

28. The legal position which emerges from the afore-noted decision is that the factum of non-examination of public/independent witnesses is not fatal to the case of the prosecution in every case. It depends upon the additional factor whether the evidence led by the prosecution inspires confidence or not. If the evidence led by the prosecution is otherwise credible and trustworthy, the non-examination of independent/public witness is of no consequence.
29. In the instant case, we shall shortly embark upon the appreciation of the evidence of the witnesses of the prosecution as one of submission advanced in support of the appeal is predicated upon the evidence of said witnesses.
30. The second submission advanced by the learned counsel was that the only evidence which connects the appellant with the crime of murder of the deceased are the testimonies of the police

officials and that it is not safe to rely upon the evidence of the police officials to sustain the conviction of the appellant.

31. A similar contention was repelled by the Lordships of the Hon'ble Supreme Court in the decision reported as Kalpna Rai v State (1997) 8 SCC 732 in the following terms:-

“As a legal proposition it was argued that it would be unsafe to base a conclusion on the evidence of police officers alone without being supported by at least one independent person from the locality. To reinforce the said contention Shri V.S. Kotwal, Senior Advocate cited the decision of this Court in Pradeep Narayan Madgaonkar and Ors. v. State of Maharashtra (1995) 4 SCC 255 wherein want of independent witnesses of the locality rendered suspicious a raid conducted by the police.

There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined. In Pradeep Narain Madgaonkar (supra) to which one of us (Mukherjee, J) is a party, the aforesaid position has been stated in unambiguous terms, the relevant portion of which is extracted below:

Indeed, the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigation or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation; requires greater care to appreciate their testimony.

In Balbir Singh v. State (1996) 11 SCC 139 this Court has repelled a similar contention based on non-examination of independent witnesses. The same legal position has been reiterated by this Court time and again vide Paras Ram v. State of Haryana (1992) 4 SCC 662, Same Alana Abdulla v. State of Gujarat (1996) 1 SCC 427, Anil alias Andy a Sadashiv Nandoskar v. State of Maharashtra [AIR 1996 SC 2943](#), Tahir v. State (Delhi) JT 1996(3) SCC 338.”

32. The last submission advanced was that there are material contradictions/discrepancies in the testimonies of the police officials who were associated with the apprehension of the accused persons and the conduct of the investigation on the date of the incident which establishes the defence of the appellant that he was picked up from his house on the date of the incident and had been falsely implicated by the police.
33. Before dealing with the afore-noted submission of the counsel for the appellant it would be apposite to refer the following observations rendered by the Hon'ble Supreme Court in a recent decision in Criminal Appeal No.456/2002 Jayaseelan vs. State of Tamil Nadu decided on 11.02.2009:-

“.....Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be shifted with care. The

aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment.....As observed by this Court in State of Rajasthan v. Smt Kalki and Anr. (1981) 2 SCC 752, normal discrepancies in evidence are those which 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 which 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 not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc. AIR 2002 SC 1965 and in Sucha Singh v. State of Punjab [AIR 2003 SC 3617](#). It was further illuminated in the Zahira H. Sheikh v. State of Gujarat [AIR 2004 SC 346](#); Ram Udgar Singh v. State of Bihar [\(2004\) 10 SCC 443](#) ; Gorle S. Naidu v. State of Andhra Pradesh (2003) 10 SCC 449; Gubbala Venugopalswamy v. State of Andhra Pradesh [\(2004\) 10 SCC 120](#) and in Syed Ibrahim v. State of A.P. [AIR 2006 SC 2908](#)." (Emphasis supplied)

34. In the backdrop of afore-noted legal position, we are examining the so-called contradictions/discrepancies pointed out by the learned counsel for the appellant in the evidence of the witnesses of the prosecution herein under. Under column B we are noting the subject matter of the alleged contradiction/discrepancy; under column C we are noting the contradiction/discrepancy alleged and under column D we are noting our observation:-

| A     | B                                                                                           | C                                                                                                                                                                                                                                                                                                                                            | D                                                                                                                                                                                                                                                   |
|-------|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| S.No. | Subject of Contradiction/Disc-repancy                                                       | Contradiction/Discrepa-ncy                                                                                                                                                                                                                                                                                                                   | Remarks                                                                                                                                                                                                                                             |
| 1.    | Place of arrest of accused persons                                                          | <p>(i) Const. Subash Giri PW-4 had deposed that '<i>both the accused persons were brought at T-point at Hanuman Mandir. Both were arrested vide arrest memo Ex.PW-4/D and E.</i>'</p> <p>(ii) Const. Jasbir Singh PW-16 had deposed that '<i>accused Raja Ram was arrested at about 2.30 pm after he was brought in police station.</i>'</p> | There is no contradiction inasmuch as PW-4 is deposing that accused persons were brought together at T-point after being apprehended at different places whereas PW-16 is deposing about formal arrest of the accused Raja Ram.                     |
| 2.    | Place of preparation of arrest memo of accused Raja Ram                                     | Const. Jasbir Singh PW-16 had deposed that he had signed the arrest of accused Raja Ram in the police station whereas Const. Amrit Singh PW-17 had deposed that all the documents were prepared at the spot.                                                                                                                                 | PW-17 is not a party to the preparation of all the documents prepared during the investigation particularly the arrest memo of the accused persons therefore there was no occasion for him to depose to about the preparation of all the documents. |
| 3.    | Recording of time in FIR Ex.PW-8/A and MLC of the accused persons Ex.PW-26/A and Ex.PW-26/B | The time of registration of FIR is recorded as 3.15 P.M. on 22.08.2002 in FIR Ex.PW-8/A whereas MLC Ex.PW-26/B of the accused Ramesh records his time of arrival in the hospital as 3.05 PM on 22.08.2002 and MLC Ex.P-26/A of the accused Raja Ram records his time of arrival in the hospital                                              | This 'minor discrepancy' of 10-15 minutes in FIR and MLCs is of no consequence.                                                                                                                                                                     |

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|----|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                  | <p>as 3.10 PM on 22.08.2002.</p> <p>Counsel argued that the said discrepancy evidences that the accused persons were medically examined before registration of the FIR</p>                                                                          |                                                                                                                                                                                                                                    |
| 4. | Seizure of the sealed materials                  | <p>(i) ASI Suresh Chand PW-25 had deposed that '<i>IO seized blood and earth control at the spot at about 3.15 pm.</i>'</p> <p>(ii) HC Ratan Singh PW-12 had deposed that '<i>the sealed parcels were deposited in Malkhana at about 3 pm.</i>'</p> | This discrepancy of fifteen minutes is trivial in nature considering the fact the witnesses were being examined 2-3 years after the happening of the incident and therefore does not create a dent in the case of the prosecution. |
| 5. | Time of arrest of accused persons                | Insp Ram Kishan PW-28, deposed that he had arrested accused persons at about 4.30 or 4.45 pm on 22.08.2002 whereas ASI Suresh Chand PW-25, had deposed that the accused persons were arrested about 3.15 pm                                         | This minor discrepancy in the evidence particularly when the witnesses are deposing 3-5 years after the happening of the incident does not cast a doubt on the veracity of the case of the prosecution.                            |
| 6. | Involvement of public witnesses in investigation | <p>(i) ASI Suresh Chand PW-25, had deposed that '<i>I had not enquired from any public person but I straight away tried to apprehend the accused persons.</i>'</p> <p>(ii) Ct. Amrit Singh PW-17 deposed that '<i>IO requested</i></p>              | The only apparent contradiction is between the testimonies of Ct. Amrit Singh PW-17, Ct. Jasbir Singh PW-16, Insp Ram Kishan PW-28 and SI Kishan                                                                                   |

|    |                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                            | <p><i>some public persons to join the investigation but nobody agreed...I also requested some public persons to join at the time of apprehending the accused but they did not join.'</i></p> <p>(iii) Ct.Jasbir Singh PW-16 deposed that '<i>several persons also gathered there but nobody came nearby....IO requested some public persons who had collected on the spot to join investigation.'</i></p> <p>(iv) Ct. Subash Giri PW-4 had deposed that '<i>10-15 persons collected on the spot at the time of the incident. I do not remember if IO asked any public person collected on the spot to join the investigation.'</i></p> <p>(v) Insp Ram Kishan PW-28 deposed that '<i>public persons were present on the spot when I reached there first time. I made inquiries from them if anyone has witnessed the commission of crime but nobody agreed.'</i></p> <p>(vi) SI Kishan Lal PW-15 had deposed that '<i>Inspector Ram Kishan had not talked to any public person in my presence.'</i></p> | <p>Lal PW-15, who had deposed to the effect that Ram Kishan who was the IO had not talked to any public person in his presence.</p> <p>However it is to be borne in mind that PW-15 had soon departed the spot after Insp Ram Kishan PW-28 had returned to the spot from RML hospital.</p> <p>Therefore, there is no contradiction inasmuch as it is quite possible that Insp Ram Kishan might have talked to public persons after the departure of SI Kishan Lal.</p> |
| 6. | Seal on the clothes of the accused persons | Testimony of SI Chandrika Prasad PW-1 brings out that clothes of the accused persons were sealed with the seal of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | The answer to the argument of counsel lies in seizure memo                                                                                                                                                                                                                                                                                                                                                                                                             |

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|----|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                         | <p>CMO DR RML Hospital and were seized vide memo Ex.PW-1/A.</p> <p>Testimony of Ct.Satish PW-6 that one red colored t-shirt with blood stains was sealed with the seal of CMO DR RML Hospital and was seized vide memo Ex.PW-6/A.</p> <p>Counsel argued that if the clothes of the accused persons were seized vide Ex.PW-1/A then from where did t-shirt which was seized vide Ex.PW-6/A emanate from?</p>                                                                                                                                                 | <p>Ex.PW-6/A.</p> <p>Ex.PW-6/A refers to a MLC No.107519/02.</p> <p>The deceased was first brought to RML hospital where he was declared brought dead vide MLC No.107519/02</p> <p>Therefore, the T-shirt which was seized vide memo Ex.PW-6/A was the t-shirt which the deceased was wearing at the time of the commission of the crime.</p>                                                 |
| 7. | Place of seizure of the clothes of the accused persons. | <p>(i) Ct.Subash Giri PW-4 had deposed that <i>"the clothes of the accused were seized in the police station."</i></p> <p>(ii) Ct. Jasbir Singh PW-16, had deposed that <i>"the clothes of the accused Raja Ram which he was wearing were seized at police station and I signed on the seizure memo in police station."</i></p> <p>(iii) Insp Ram Kishan PW-28 and the doctor Dr. P.K. Nayak who had conducted their medical examination had deposed that the clothes which the accused persons were wearing at the time of the commission of the crime</p> | <p>It is a fact that the accused persons were first taken to RML hospital for their medical examination and then brought to the police station.</p> <p>The police officers who had taken the accused persons for their medical examination had deposed that doctor had handed over clothes of the accused and that the same were seized vide seizure memo Ex.PW-6/A.</p> <p>Obviously the</p> |

|  |  |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--|--|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | <p>were seized at the time of their medical examination.</p> | <p>accused persons could not have been taken naked from the hospital to the police station and some alternative clothes must have been worn by them.</p> <p>The witnesses PW-4 and PW-16 are deposing about the seizure of alternative clothes which must have been worn by the accused persons after their medical examination which stands corroborated by the fact that the seizure memo Ex.PW-6/A of the clothes of the accused persons which they were wearing at the time of the commission of crime does not bear the signatures of PW-16 whereas he had deposed that signed on seizure memo of clothes. Therefore, PW-16 must have signed on the memo vide which alternative clothes which the accused persons were wearing after their medical examination were</p> |
|--|--|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|  |  |  |         |
|--|--|--|---------|
|  |  |  | seized. |
|--|--|--|---------|

35. Having dealt with the submissions of the learned counsel for the appellant, the facts which stand conclusively proved by the prosecution need to be noted in order to arrive at a final conclusion.
36. ASI Suresh Chand PW-25 and Const.Amrit Singh PW-17, had seen the accused persons stabbing and exhorting the deceased. ASI Suresh Chand PW-25 and Const.Amrit Singh PW-17, Const Subash Giri PW-4, Const. Jagbir Singh PW-16 and SI Kishan Lal PW-15, had seen that the clothes of the accused persons were stained with blood. (The afore-noted witnesses were cross-examined but nothing has been brought out to discredit their respective testimonies). One blood – stained knife each was recovered from the possession of the accused persons at the time of their apprehension. The blood group of the deceased was 'B' and human blood of 'B' group was detected on the clothes of the accused persons. Human blood was detected on the knives recovered from the possession of the accused persons at the time of their apprehension.

37. The afore-noted facts unerringly connect the appellant to the crime of having murdered the deceased and of using arms in contravention of Section 5 of the Arms Act.
38. The appeal is dismissed.

**PRADEEP NANDRAJOG, J.**

**ARUNA SURESH, J.**

**February 26, 2009  
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