

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

% Judgment Reserved on: 20.09.2010  
Judgment Pronounced on: 27.09.2010

+ **CRL.A. 542/2009**

**NAVJEET @ PRINCE & ORS.**

**..... Appellants**

**- versus -**

**STATE**

**..... Respondent**

**Advocates who appeared in this case:**

For the Appellants : Mr Avninder Singh  
For the Respondent : Mr Sanjay Lao, APP

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

- |                                                                          |     |
|--------------------------------------------------------------------------|-----|
| 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 Digest?                    | Yes |

**V.K. JAIN, J**

1. This appeal is directed against the judgment dated 27<sup>th</sup> April, 2009 and Order on Sentence dated 30<sup>th</sup> April, 2009, whereby both the appellants were convicted under section 302 and 307 of the Indian Penal Code (IPC) read with section 34 thereof for committing murder of Sanjay

Sharma and attempting to commit murder of the informant Sagar Sharma and were sentenced to imprisonment for life and to pay fine of Rs.5,000/- or to undergo SI for 3 months each in default under section 302/34 of the IPC. Identical sentence was awarded to them under section 307 of the IPC read with section 34 thereof.

2. The case of the prosecution, as disclosed in the FIR registered on the statement of Sagar Sharma, nephew of the deceased, is that a quarrel had taken place between the informant Sagar Sharma and the appellant Navjeet on payment of money for purchase of eggs by the informant on 2<sup>nd</sup> December, 2003. This is also the case of the prosecution that on 3<sup>rd</sup> December, at about 11.15 p.m. when the informant along with his uncle deceased Sanjay Sharma was returning after attending a marriage reception, the appellants who are brothers, stopped the motorcycle being driven by the deceased, saying that they have been searching him since the previous day, and would teach him a lesson. This was followed by the appellants abusing him. The informant was dragged from the motorcycle and the appellant Tavinder gave knife blows on his left shoulder and

stomach. When deceased Sanjay Sharma tried to save him the appellant Navjeet held him whereas Tavinder gave a knife blow on his chest, as a result of which he fell on the ground. Thereafter Tavinder gave a number of knife blows to the deceased. In the meanwhile his uncle Babloo Sharma and the younger brothers of the deceased, namely, Lalit Sharma and Amit Sharma, who also were returning after attending the same marriage reception, stopped there on seeing them. When they raised alarm and rushed towards them, the appellant Tavinder fled away along with his knife, but, the appellant Navjeet was apprehended by Babloo and Lalit Sharma. A number of persons from the public also rushed there on hearing the alarm and Navjeet sustained some minor injuries when he was overpowered by them. The informant and Amit Sharma brought Sanjay Sharma to S.D.N. Hospital where he was declared brought dead. The murder as well as the attempt to commit his murder, according to the informant, was actuated by a feeling to take revenge for the incident which had taken place on 2<sup>nd</sup> December, 2003.

3. The case of the prosecution against the appellants

is based on ocular as well as circumstantial evidence. The ocular evidence comprises of the testimony of the informant Sagar Sharma, his uncle Babloo Sharma and younger brothers of the deceased, namely, Lalit Sharma and Amit Sharma. The following circumstances were also alleged by the prosecution against the appellants:

- (a) There was a quarrel between the informant and the appellant Navjeet which constituted motive for the murder and the attempted murder;
- (b) The appellant Navjeet was apprehended on the spot;
- (c) An abrasion was found on the right side outer angle of the right eye of the appellant Tavinder when he was examined in the hospital on 5<sup>th</sup> December, 2005, which indicates his involvement in the incident.
- (d) The weapon used for committing the offence was recovered concealed in a park pursuant to the disclosure statement made by the appellant Tavinder;
- (e) The knife recovered at the instance of the appellant Tavinder was found stained with blood and it was opined by the doctor that injuries to the deceased were possible from that knife;

### **Ocular Evidence**

4. The complainant Sagar Sharma came in the witness box as PW-1 and stated that on 2<sup>nd</sup> December, 2003 at about 9:30 p.m. he gave a Fifty Rupee note to the appellant Navjeet, who along with his brother and co-appellant Tavinder used to sell eggs, towards payment of four eggs. He, however, did not return the balance amount and started abusing him. The appellant Tavinder also abused him and pushed him. He then came back to his house.

He further stated that on 3<sup>rd</sup> December, 2003 at about 11:15 p.m., he along with Sanjay Sharma, was returning on the motor cycle of Sanjay Sharma, after attending the wedding reception of his neighbor Sonu, held at Sanatam Dharam Shala Gali No.13, Shanti Mohalla. When they reached near house No.3938, Gali No.13 of Shanti Mohalla both the accused persons came in front of their motor cycle which was stopped by Sanjay Sharma. Navjeet caught hold of him(PW1) and dragged him from the motorcycle saying that he had been searching him and would teach him a lesson. He also started abusing him.

Tavinder gave a knife blow on his right chest and left shoulder. When Sanjay Sharma tried to save him, Navjeet caught hold of him (Sanjay Sharma) and Tavinder gave knife blow on his chest as a result of which he fell down. Tavinder then gave 5-6 blows to Sanjay Sharma. Jatinder Sharma alias Babloo, Lalit Sharma and Amit Sharma also reached there and caught hold of Navjeet, whereas Tavinder ran away from the spot. He along with Amit Sharma took Sanjay Sharma to S.D.N. Hospital, where he was declared brought dead. He further stated that Navjeet also sustained minor injuries when he was overpowered by Jitender Sharma and Lalit Sharma. He also identified Exhibit P1 as the knife which was used by Tavinder for causing injuries to him and to his uncle deceased Sanjay Sharma.

5. PW-2 Jitender Sharma alias Babloo stated that on 3<sup>rd</sup> December, 2003 at about 11:20 p.m. when he was coming back after attending the reception ceremony of his friend Sonu held at Sanatam Dharam Shala Gali No.13, Shanti Mohalla along with his two small children and reached Gali No. 13, at Shanti Mohalla, he saw Tavinder giving knife blows to Sanjay Sharma and Navjeet quarreling

Sagar Sharma. He, Lalit Sharma, and Amit Sharma asked the accused persons as to why they were stabbing Sanjay Sharma, Tavinder then ran away with knife in his hand whereas Navjeet was apprehended by him with the help of Lalit Sharma and some persons from the public who had gathered on the spot. Police came to the spot and the accused Navjeet was handed over to the police.

6. PW-3 Lalit Sharma stated that when he along with Amit Sharma reached Gali No. 13 while returning from the wedding reception on foot, he saw Tavinder giving knife blows to Sanjay Sharma and Navjeet quarreling with Sagar Sharma. When he cried and asked them as to why they were beating Sanjay Sharma Tavinder ran away with knife whereas Navjeet was apprehended by him and Jitender Sharma. Amit Sharma and Sagar Sharma took Sanjay Sharma to S.D.N. Hospital whereas Navjeet was handed over to the police.

7. PW-5 Amit Sharma corroborated the deposition of the informant Sagar Sharma and stated that when he reached Gali No.13, Shanti Mohalla along with his brother Lalit Sharma and PW-2 Jitender Sharma alias Babloo after

attending the wedding reception held at Shiv Mandir Dharam Shala, Shanti Mohalla, he saw Navjeet holding his brother Sanjay Sharma who was lying on the ground whereas Tavinder was stabbing him with a knife. When they cried and asked them not to beat their brother, Tavinder ran away with knife. He chased him but on account of darkness could not catch hold of him. He then came back to the spot. In the meanwhile his brother Lalit and Jitender had over powered Navjeet with the help of some persons from the public. He and Sagar Sharma then took Sanjay Sharma to S.D.N. Hospital, where he was declared dead by the doctors.

8. In his statement under section 313 of the Code of Civil Procedure the appellant Navjeet alias Prince admitted that he used to sell eggs on a cart but denied that his brother Tavinder was also selling eggs with him. He denied the incident of 2<sup>nd</sup> December, 2003. As regards the incident of 3<sup>rd</sup> December, 2003 he, while denying the case of the prosecution against him, stated that he was beaten by the deceased and several prosecution witnesses and not by the public, when he was going to the police station for making

enquiry about their complaint. He further stated that after giving beating to him they fled from the spot. He also stated that Tavinder had gone to seek help when he was beaten by the deceased and the prosecution witnesses. He claimed that no one was injured by him and his brother.

9. The appellant Tavinder, however, admitted that he along with his brother co-appellant Navjeet alias Prince used to sell eggs at Shanti Mohalla on a cart. He, however, denied the incident of 2<sup>nd</sup> December, 2003. He also denied the case of the prosecution against him regarding the incident which took place on 3<sup>rd</sup> December, 2003 and stated that the deceased had suffered injuries somewhere else and had implicated him and his brother in the case. He claimed that his brother Navjeet was beaten by the deceased and prosecution witnesses when they were going to the police station to enquire about their complaint. He also claimed that he had gone to seek help when his brother was beaten by the deceased and the prosecution witnesses. He also denied having caused injuries to the deceased or to any other injured.

10. PW-14 Dr. N.K. Tangri who was posted as CMO in

S.D.N. Hospital, Shahdara on 4<sup>th</sup> December, 2003 examined PW-1 Monu Sharma alias Sagar Sharma and found that he had a clean incised wound right side lower part of chest 8 mm x 2 mm deep up to subcutaneous deep. He also found 5 cm long abrasion over left upper arm which was skin deep. The injuries were noted by him on the MLC Exhibit PW14/B.

11. The MLC of the informant Sagar Sharma coupled with his deposition in the court leaves no doubt that he was injured in the incident which took place in the night intervening 3/4<sup>th</sup> December, 2003 at Shanti Mohalla. Being injured, the informant is the best witness of the incident in which injuries were caused to him and in the absence of strong and compelling reasons, his testimony needs to be believed since being one of the victims of the crime, he is unlikely to spare the real culprit and implicate an innocent person. He would rather be keen to ensure that the real culprit does not go unpunished.

Though, in his statement under section 313 of Cr.PC the appellant Tavinder claimed that the injuries by the deceased and the prosecution witnesses were sustained

in some other incident, he did not tell the court as to what that incident was, where it had taken place and who had caused injuries to the deceased and to the informant Sagar Sharma. There is absolutely no evidence of either the deceased or the informant having sustained injuries in some other incident. Therefore, we see no reason to disbelieve the injured Sagar Sharma who categorically and unequivocally stated that he was injured by the appellant Tavinder in the course of the same incident in which injuries were caused by him to the deceased Sanjay Sharma.

As held by the Supreme Court in a number of cases including **Machhi Singh vs State of Punjab** 1983 Crl. LJ 1457, **Makan Jivan and Ors. vs State of Gujarat**: AIR 1971 SC 1797; **Mori Lal and Anr. vs State of U.P.** AIR 1970 SC 1969; and **Jamuna Chaudhary and Ors. vs State of Bihar** AIR 1974 SC 1822, the evidence of the injured alone is sufficient to bring home the guilt of the accused, even if the evidence of other witnesses is excluded from consideration. Therefore, even if the testimony of PW-2 Jitender Sharma, PW-3 Lalit Sharma and PW-5 Amit Sharma is excluded from consideration, the deposition of

injured Sagar Sharma by itself is sufficient to prove the involvement of the appellants in the incident in which deceased Sanjay Sharma lost his life and the informant was injured.

12. A perusal of the MLC of the deceased Exhibit PW 14/A and the MLC of the informant Exhibit PW-14/B shows that they were brought to the hospital by Amit Sharma s/o Ravinder Kumar Sharma, who had been examined as PW-5 in this case. He has fully corroborated the deposition of the informant from the stage he reached the spot. Since the deceased was brought to S.D.N. Hospital by the informant as well as PW-5 Amit Sharma as is evident from their MLC besides their oral deposition, we see no reason to disbelieve this witness. His testimony cannot be rejected merely because he happens to be the brother of the deceased. In fact, none of the appellants specifically claimed that this witness was not present at all when the incident took place.

13. The testimony of PW-2 Jitender Sharma, PW-3 Lalit Sharma and PW-5 Amit Sharma was assailed by the learned counsel for the appellants on the ground that being relatives of the deceased they are interested witnesses and

since no independent eye witness was examined by the Investigating Agency, their testimony should not form basis of the conviction of the appellants. We find no merit in the contention. Relationship of the witnesses with the deceased does not by itself affect their credibility. A witness cannot be said to be an interested witness merely because he happens to be a relative of the victim of the crime. As observed by Supreme Court in **Ashok Kumar Chaudhary vs State of Bihar** 2008 Crl.L.J 2030, the term “interested” postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either, because he had some animus with the accused or for some other oblique motive.

14. The only rule of caution the Court may adopt with respect to such a witness is to scrutinize his evidence with care and caution but, if on such scrutiny his evidence is found to be reliable, probable and trustworthy, conviction can be based even on the sole testimony of a witness who is related to the victim of the crime. In this regard Supreme Court in **Dalip Singh vs State of Punjab** 1954 SCR 145 inter alia observed as under:-

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

Hence, the testimony of PW-2, PW-3 & PW-5 cannot be discarded merely on account of their relationship with the deceased, particularly when there is no evidence of any of them having any kind of animus against the appellants or harbouring any grudge against them.

15. It was contended by the learned counsel for the appellants that the case of the appellants is covered by Exception IV to Section 300 of IPC, since the stabbing was preceded by a quarrel and happened in a heat of passion generated during the quarrel. In support of his contention, the learned counsel for the appellant has referred to the decision of the Supreme Court in **Satish Narayan Sawant**

**vs State of Goa JT 2009 (12) SC 224.** In that case there was a heated exchange of words between the appellant and the deceased. Thereafter, the appellant and the other accused gathered in a hall to assault the deceased, PW-1 and PW-8, who in order to avoid the assault, went to the balcony. The appellant then brought a knife from the room of his brother and stabbed the deceased, using that knife. Only one main injury was caused to the deceased, other injuries being superficial and that main injury was also given on his back side. It was also noticed that there was scuffle between the parties before the incident of stabbing took place. It was held by Supreme Court that the appellant could not be said to have any intention to kill or to inflict an injury of a particular degree of seriousness. It was, therefore, held that the case fell under Section 304 Part II of IPC.

16. **Exception IV**

An accused is entitled to the benefit of exception IV to section 300 of the Indian Penal Code, only if the act committed by him satisfies the following conditions:

- (i) It is committed without premeditation;

(ii) it is committed in a sudden fight; and

(iii) the act is committed in the heat of passion upon a sudden quarrel, provided the offender does not take any undue advantage and does not act in a cruel and unusual manner.

17. All the above conditions must exist before this exception is invoked. Even if one of the aforesaid conditions is missing. The case of the accused cannot be brought within the purview of this exception.

18. 'Undue advantage' would mean an unfair advantage. The nature of the weapon used by the accused and the manner of attack made by him have a material bearing while deciding whether the accused had taken an undue advantage or not. If the nature of the fight does not justify the use of weapon actually used by the accused, this would clearly amount to taking undue advantage of the victim and would take the case of the accused out of the purview of Exception IV to section 300 of the Indian Penal Code. After considering the facts and circumstances of the case, including the nature of the quarrel between the accused and the deceased, if it is found that use of the

weapon actually used by the accused was wholly unjustified and unwarranted, that by itself may amount to acting in a cruel manner and may deprive the accused of the benefit of this exception.

19. In the case of **Satish Narain** (supra), initially the appellant did not have any weapon with him and he lifted it from the room of his mother during the course of the quarrel, whereas in the case before us the appellant Tavinder Singh was already armed with a knife when he met the deceased and the informant. There could be no good reason for the appellant Tavinder Singh to be carrying a knife with him late in the night. According to the appellants, they were going to the Police Station to enquire about the complaint made by them, against the informant, with respect to the incident of 2<sup>nd</sup> December 2003, when they met him and the deceased on the way to the Police Station. The plea taken by the appellants, however, is not convincing at all. Ordinarily, one would not go to make an enquiry of this nature past 11 'O' Clock in the night, when very few police officials are expected to be available in the Police Station. In any case, there could be no reason for the

appellant Tavinder to be carrying a knife with him while going to the Police Station. The logical inference, therefore, is that the appellants were at least prepared to cause injury to the informant, using a knife for the purpose, when they intercepted them in the night of 3<sup>rd</sup> December 2003. Moreover, the appellant Tavinder first gave two knife blows to the informant which was followed by giving one knife blow to the deceased on his chest. He did not stop even there and, despite the deceased having fallen on the ground on receipt of the knife blow on his chest, and gave three other knife blows to him, which clearly indicates an intention to commit his murder by giving repeated knife blows on vital parts of his body. The following stab wounds were found on the body of the deceased when postmortem was conducted by PW-13 Dr Akash Jhanjee:-

1. Incised penetrating wound 2.2 x 0.5 cms present over front of lower half left side chest 015 cm above the level of left heel, 12.2 cms below and inner to left nipple with margins clean cut. The upper and outer angle was rounded and lower inner angle was acute.
2. Incised punctured wound 1.2 x 0.5 cms present over back of lower half left side chest 8.2 cms below and inner to left scapula inferior angle, 3.8 cms to the

left of midline slightly obliquely placed with margins clean cut outer angle rounded and inner angle acute. Wound was muscle deep with depth of 0.4 cms.

3. Incised penetrating wound 2.3 x 0.6 cms present over back of lower half left side chest 3.2 cms below and inner to injury no. 2, almost near midline with outer angle acute and inner angle rounded.
4. Incise punctured wound 1.8 x 0.5 cms obliquely placed over back of upper half right side abdomen placed obliquely with margins clean cut 3 cm below and to the right of injury no. 3. Wound was muscle deep with depth of 0.5 cm.

The blade of the knife recovered by the police at the instance of the appellant Tavinder Singh was found to be about 11cm long. The depth of injury No. 1 was found to be 9.5cm whereas the depth of injury No. 3 was found to be 8.6cm. This clearly shows that full force was applied by the appellant Tavinder while giving knife blows to the deceased, inasmuch as almost whole of the blade was thrust in his body. The injury No. 1 had cut through the skin, subcutaneous tissues, inter costal muscle of eight left inter costal muscle space, entered into left side chest cavity, then cut through the anterior wall of pericardialsac, produced a

cut 0.5 cm in length over anterior wall of right ventricle and ended in the cavity of the right ventricle. The third injury cut through the skin, subcutaneous tissues, inter costal muscle of seventh left inter costal muscle space, entered into left side chest cavity then cut through the plural layer of left lung lower lobe, then substance of lower lobe through just above the lower border producing a cut in the left dome of diaphragm and ended there, near its attachment with left costal cage border.

20. In a recent decision in **Singapagu Anjaiah vs. State of Andhra Pradesh** 2010 (6) SCALE 374, PW-1 S. Ramulu was abused by one of the accused for which he was admonished by the witness. He then assaulted the witness. In the meanwhile, another accused, the appellant before the Supreme Court, came from behind, held his head and threw him down. Accused person then assaulted PW-1 to PW-5, all of whom sustained various injuries on their person. The appellant before the Supreme Court then hit the deceased at his head, with a crow bar causing serious injury. It was contended on behalf of the appellant that even if the case of the prosecution is accepted, the allegations proved against

the appellant made out, the case under Section 304 Part II of IPC and, therefore, conviction of the appellant under Section 302 of IPC was bad in law. Rejecting the contention, Supreme Court observed that no one can enter into the mind of the accused and his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of injury caused. Noticing that the appellant had chosen a crow bar as the weapon of offence and a vital part of the body, i.e., head for causing injury which had caused multiple fractures of the skull and indicated the force applied while using the weapon, the only conclusion was that the appellant intended to cause death of the deceased.

Considering the number of knife injuries given to the deceased, even after he had fallen on the ground on receiving the first stab injury, the force used while giving knife blows and the vital part chosen by the appellant Tavinder to give knife blows, we have no reasonable doubt in our mind that his intention was to commit murder of the deceased.

If the accused gives repeated knife blows at vital

blows of the body, using full force for the purpose, even after the deceased has already fallen on the ground on receiving the first injury, it cannot be said that the accused did not take any undue advantage of the situation in which the deceased was placed at that time and did not act in cruel manner.

21. The learned counsel for the appellant has next referred to the decision of the Supreme Court in **Manubhai vs State of Gujarat** AIR 2007 SC 2437. In the case before the Supreme Court the accused had used a knife causing injury just below the stomach and the knife had gone 6cm deep, which the Supreme Court found indicative of the fact that blow was given with great force. It was noticed that the deceased was trying to pacify the party and no role was played by him in the exchange of words which was taking place at the spot. The trial court convicted the appellant under Section 304 Part I of IPC noticing that only one blow was given to the deceased. The High Court, however, altered the conviction of the appellant from Section 304 to Section 302 of IPC. The appeal filed by the appellant was dismissed and alteration of the conviction to Section 302 of

IPC was upheld by the Supreme Court. We fail to appreciate how this judgment helps the appellant in any manner. In fact this judgment rather goes against the appellant since even in a case of single blow conviction under Section 302 of IPC was upheld by the Supreme Court, considering the force used by giving knife injury to the deceased.

22. The learned counsel for the appellant has referred to **Imtiaz & Anr vs. State of U.P.** 2007 Cri.L.J 1663. In that case, the appellant, who was convicted under Section 302 of IPC, claimed benefit of Exception I to Section 300 of IPC, claiming that the act was not premeditated and was done in grave and sudden provocation given by the deceased. While rejecting the plea, the Supreme Court observed that for taking benefit of Section 300 of IPC it was incumbent upon the accused to prove beyond doubt that the complainant or his brother had abused or used any provocative words sufficient to provoke reasonable person in ordinary circumstances. It was also held that for claiming exception a heavy burden lies upon the accused. Dismissing the appeal filed by the appellant, his conviction

under Section 302 of IPC was maintained.

23. In order to bring the case within Exception I, the following conditions must be complied with:

- (i) The deceased must have given provocation to the accused;
- (ii) The provocation must be grave;
- (iii) The provocation must be sudden;
- (iv) The offender, by reason of the said provocation, shall have been deprived of his power of self-control;
- (v) He should have killed the deceased during the continuance of the deprivation of the power of self-control; and
- (vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

Another requirement of Exception I to Section 300 of IPC is that the provocation must have come from the victim and if it comes from someone else, the Exception does not apply and the accused cannot claim its benefit. The provocation should be of such a degree that the person who is given provocation ceased to be the master of his understanding becomes incapable of cool reflection and lose control over his passions.

24. In the case before us, the deceased Sanjay Sharma did not give any provocation at all to either of the appellants not to talk of a sudden and a grave provocation. He only tried to save the informant, who was his nephew, when he was attacked by the appellants. The case of the appellants is that one of them, Navjeet was beaten by the deceased and the PWs. They however do not say that the appellant Tavinder gave knife blows to the informant as well as to the deceased Sanjay Sharma on account of beatings given by them to the appellant Navjeet. Their case is that the stab injuries were sustained by the informant as well as by the deceased elsewhere and they were not responsible for causing those injuries. It is true that mere failure of an accused to specifically set up a plea of sudden and grave provocation will not come in the way of his getting the benefit of the Exception, if it is otherwise attracted to the facts and circumstances of the case, but, we find no material on record from which it may be inferred that the appellant were beaten by the informant and the deceased before knife blows were given to them. The testimony of the witnesses rather shows that the injuries by the appellant

Navjeet were sustained when he was overpowered by the prosecution witnesses with the help of some person from the public, who had gathered on the spot. While returning from the wedding reception, the informant and the deceased, would not be expecting to meet the appellants at the place where this incident took place. Even if it is presumed, as claimed by the appellant, that one of them Navjeet was beaten by the informant and the deceased, that did not in our mind constitute grave and sudden provocation sufficient to deprive them of their power of self control, to the extent of inflicting multiple injuries to the deceased at vital parts of his body and that too using full force for the purpose. A normal reasonable person, if given beatings without use of any arm, is not likely to lose his control to the extent that he would use a knife and that too repeatedly and at vital parts of the body of the victim. Therefore, no case of sudden and grave provocation within the meaning of Exception I to Section 300 of IPC is made out in the facts and circumstances of the case.

25. The learned counsel for the appellant has also referred to **Jagriti Devi vs State of H.P.** *Criminal Appeal*

*No. 823/2003 decided on 06.07.2009.* In that case, there was an altercation between the appellant and the deceased, wherein the appellant was insulted and thereby provoked by the deceased. Thereafter, the deceased took out a *Khurki* kept under her pillow, with intent to assault the deceased. Thereupon the assailant, in order to save herself, grappled with the deceased and during that process, she also received injuries. In these circumstances, it was held by Supreme Court that it was a case falling under Section 304 Part II of IPC. However, in the case before us, the deceased was not armed with any weapon. It was the appellant Tavinder who was carrying the knife, which he used for giving multiple stab injuries to him at vital parts of his body. There is no evidence of any grappling between appellant Tavinder and the deceased. In these circumstances, the case of the appellant cannot be brought within the purview of Exception I or IV to Section 300 of IPC.

26. Pointing out the injuries sustained by the appellants, it was contended by the learned counsel for the appellants that since the prosecution has failed to explain

the injuries sustained by them, the version given by the prosecution witnesses should not be believed. A perusal of the MLC of the appellant Tavinder would show that he had one scratch measuring 1 cm x 1 cm over left side of outer angle of his left eye and a 4 cm long liner vertical abrasion over right side outer angle of right eye. The MLC of the appellant Navjeet was not filed by the prosecution along with the charge sheet but was produced by DW 2 Superintendent, Jail No. 4 as a part of his medical record available in the Jail Hospital. In fact, an application under section 391 of Cr.PC has also been filed by the appellants seeking permission to place on record some documents including his MLC to show the injuries suffered by him when he was beaten by the informant and the appellants in the night of 3<sup>rd</sup> December, 2003. On a perusal of the documents, we find that the appellant Navjeet had swelling and tenderness on his right index finger and hand, swelling on lower eyelid and adjacent region, swelling on right parietal area of skull, mild swelling and tenderness on right thigh and some bruises on his body.

27. In **State of Gujarat Vs. Bai Fatima** (1975) 2 SCC

7, the Supreme Court was of the view that:

**“in a situation when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:**

(i) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(ii) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(iii) It does not affect the prosecution case at all.”

The Supreme Court specifically held that there may be cases where the non-explanation of injuries by the prosecution may not affect the prosecution case. This principle would apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, witnesses are independent and disinterested, and their testimony is so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

In **State of Madhya Pradesh Vs. Sardar**, 2001 (5)

*AD (SC) 566*, the Supreme Court held that where the evidence is clear, cogent and creditworthy, a reasonable inference which can be drawn is that the accused received injuries during the course of occurrence and some members of the prosecution party inflicted such injuries.

In **Kashmir Lal & Others Vs. State of Punjab** 1996 1 SCC 471, the Supreme Court held that a person who is unlawfully attacked has every right to counteract and attack his assailant and cause such injury as may be necessary to ward off the apprehended danger or threat.

In **Rajender Singh Vs. State of Bihar** AIR 2000 SC 1779, the Supreme Court reiterated that ordinarily the prosecution is not obliged to explain each injury on an accused even though the injuries may have been caused in the course of the occurrence, provided that the injuries are minor in nature.

28. The following propositions of law emerge from these cases:

a. The prosecution needs to explain the serious injuries sustained by an accused in the course of the some transaction in which he is alleged to have

committed the offence attributed to him. This applies particularly to a murder case.

b. The prosecution is not bound to explain the minor injuries, if any, sustained by an accused.

c. If the serious injuries sustained by an accused in the course of some transaction are not explained by the prosecution and a defence version is put up by the accused and the injuries sustained by the accused are compatible with the defence version, the court may believe the defence version, giving benefit of doubt to the accused.

d. Even if the prosecution fails to explain the serious injury sustained by an accused, that by itself will not result in the entire case of the prosecution being rejected on this ground alone where the testimonies of the witnesses is found to be unambiguous, creditworthy and reliable and the court is in a position to ascertain the true facts of the incident by separating the chaff from the grain.

e. If the court, on analyzing the evidence produced by the prosecution, finds that the accused

was the aggressor who went to the place of the prosecution witness(s) and inflicted injuries to him, right of private defence will not be available to the accused who by going to the place of the prosecution witness and attacking him had invited a counter-attack on him.

29. Since the injuries sustained by the appellant Navjeet were minor in nature, the only inference which can be drawn in the facts and circumstances of this case is that either he received them in the course of being overpowered by prosecution witnesses and/or persons from the public who gathered there on account of the alarm raised by the witnesses, as claimed by the prosecution witnesses or they were caused to him by the deceased and/or the informant, in the process of counteracting and attacking them in order to save themselves from him and his co-accused Tavinder. As regards the injuries sustained by the appellant Tavinder which again are very minor and superficial in nature, the only inference which can be drawn in the facts and circumstances of the case is that these injuries suffered by him at the hands of the informant and/or the deceased, in

the process of they defending themselves from him and his co-accused Navjeet. In any case, considering that the injuries were minor and testimony of prosecution witnesses, particularly, that by the informant and PW-5 Amit Sharma who took the deceased to the hospital along with the informant is found to be unambiguous, reliable and trustworthy, no ground for discarding the version given by them is made out. This is more so as no defence version compatible with their injuries has been put forward by the appellant who claim that no injuries were caused by either of them to the informant Sagar Sharma and/or the deceased Sanjay Sharma.

30. The learned counsel for the appellants in this regard referred to **Krishan and others vs. State of Haryana** (2006) 12 SCC 459; **Shaikh Majid and Anr. vs. State of Maharashtra and ors.** (2008) 11 SCC 131; **Lakshmi Singh and others etc. vs. State of Bihar** AIR 1976 SC 2263; and **Cherlopalli Cheliminabi Saheb and others vs. State of A.P.** (2003) 2 SCC 571. Considering the settled proposition of law as discussed by us, these judgments do not help the appellants in any manner.

31. The learned counsel for the appellant has also referred to **State vs Sunil and Anr (2001) 1 SCC 652**. In that case, the blood stained knickers of the deceased were seized by the police pursuant to a disclosure statement made by the accused. No independent witness was, however, joined in the seizure. The seizure of the Knickers was assailed on the ground that it was not attested by any independent witness. Rejecting the contention Supreme Court inter alia observed as under:

“In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person “and signed by such witnesses”...

...But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the

Code..... Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.”

We fail to appreciate how this judgment helps the appellants in any manner. In fact in the case before us, the recovery of knife pursuant to the disclosure statement made by the appellant Tavinder was attested not only by the police officials but, also by the informant Sagar Sharma @ Monu, who signed the seizure memo as an attesting witness. When he came in the witness box as PW-1, Sagar Sharma clearly stated that not only was the disclosure statement was made by Tavinder in his

presence and bears his signature at point 'A', the knife concealed by him in the park, under the earth was also recovered in his presence and the seizure memo of the knife Ex PW 1/D bears his signature at point 'A'. Thus we have evidence not only of police officials but, also of a public witness as regards the disclosure statement made by the appellant Tavinder and the recovery of the knife pursuant to the disclosure statement made by him.

32. The learned counsel for the appellants has also referred to **Pandappa Hanumappa Hanamar and another vs. State of Karnataka** (1997) 10 SCC 197; **Aagdish Narain and another vs. State of U.P.** AIR 1996 SC 3136; **Tama @ Tamal Mal vs. State of West Bengal** (2007) 10 SCC 493; and **Machhi Singh vs State of Punjab** 1983 CrL LJ 1457. We have done through the judgments. We have not been able to find any such proposition of law in any of these cases which can be of any help to the appellants.

33. The ocular evidence produced by the prosecution finds corroboration from recovery of the knife Exhibit P-1 at the pointing out of the appellant Tavinder pursuant to the disclosure statement made by him while in police custody.

In his statement to the police, to the extent it is admissible in evidence, the appellant Tavinder stated that the knife was thrown by him in Pratap Park, Kanti Nagar which he could get recovered. This part of his statement is admissible in evidence under section 27 of the Evidence Act, since pursuant to this statement the police discovered the fact that a knife was lying in Pratap Park, Kanti Nagar. PW-14 Dr. N.K. Tangri vide his opinion on MLC Exhibit PW 14/B was of the view that the injuries to the informant Monu alias Sagar Sharma could be caused by this weapon. Similar opinion was given by PW-13 Dr. Akash Jhanjee with respect to the injuries sustained by the deceased. A perusal of the report of CFSL Exhibit PW 21/G would show that human blood was found on the knife recovered by the appellants.

34. Three possibilities arise from the statement made by the appellant Tavinder to the police and consequent recovery of knife by the police from the park. One possibility is that he himself had concealed the knife in the park. The second possibility is that he had seen someone concealing the knife there. The third possibility is that

someone had informed him that the knife had been concealed in the park. The appellant Tavinder did not tell the Court as to how he had come to know that a knife had been concealed in the park under the earth. Though the park is a public place the knife was not lying in the open and had been concealed under the earth. In these circumstances, the inevitable inference is that the appellant Tavinder himself had concealed the knife at the place from where it was recovered by the police. There is no explanation from the appellant for concealing a knife stained with human blood, in a park. Considering the ocular evidence produced by the prosecution and the opinion of the doctors, the Court would be justified in inferring that it was the same knife which was used by him for causing injuries to the deceased and the informant. Therefore, recovery of a blood stained knife at the instance of the appellant Tavinder is an incriminating circumstance which corroborates the ocular evidence produced by the prosecution.

35. The injuries found on the person of the appellants, though minor in nature, also corroborate the case of the

prosecution by showing that they were the persons involved in the incident which resulted in murder of the deceased and injuries to the informant. The quarrel between the informant and the appellant Navjeet on 2<sup>nd</sup> December, 2003 is an admitted fact and is yet another circumstance incriminating to the appellants. It is also an admitted case that the appellant Navjeet was apprehended at the same spot, where this incident took place, and was handed over to police.

36. However, even if the circumstantial evidence is excluded from consideration, the testimony of eye witnesses, particularly that of the injured informant Sanjay Sharma and PW-5 Amit Sharma, who took the deceased to the hospital along with the informant is sufficient to prove that it was the appellant Tavinder who had committed the murder of deceased Sanjay Sharma.

37. As regards the charge under section 307 of the IPC, we find that the informant Sagar Sharma had sustained two injuries one of which was an abrasion over left upper arm 5 cm long and skin deep, whereas the other was a clean incised wound measuring 8 mm x 2 mm on the

right side of lower part of his chest. A perusal of his MLC Exhibit PW 14/B would show that the injury sustained by him was found to be simple. Considering the nature of the injuries caused to him, we find it difficult to hold that the appellants intended to commit his murder. Had that been the intention, as in the case of the deceased, the knife blow would have been given with substantial force and the appellant Tavinder may not have stopped at giving one knife blow to him. In our view, the appellants intended only to cause injuries to him using a knife, which is a sharp edged weapon and also an instrument of cutting and stabbing. Hence, the charges under section 307 of IPC does not stand established and the appellant Tavinder is liable to be convicted only under section 324 of IPC for causing injuries to the informant Monu alias Sagar Sharma.

38. Coming to the role of the appellant Navjeet, it is an admitted case that no weapon was used by him either against the deceased or against the informant. The exhortation attributed to him is that he, while dragging the informant from the motor cycle, said that he had been searching him and would teach him a lesson. No intention

to commit murder either of the deceased or of the informant is to be necessarily inferred from the statement attributed to him, though it does disclose at least an intention to cause injuries to him, with the knife which his brother and co-appellant Tavinder was carrying with him at that time.

It has come in the deposition of the informant as well as the PW 5 Amit Sharma that the appellant Navjeet had held the deceased, when knife blows were given to him by the appellant Tavinder. However, PW-2 Jitender Sharma and PW-3 Lalit Sharma, both of whom are stated to be eye witnesses to the stabbing of the deceased, clearly stated that when they reached the spot, they found Tavinder giving knife blow to Sanjay Sharma and Navjeet quarreling with Sagar Sharma. These two eye witnesses, therefore, do not support PW-1 Sagar Sharma and PW-5 Amit Sharma as regards the role attributed by them to the appellant Navjeet, at the time the deceased was stabbed by his co-appellant Tavinder. Thus, if we go by the version given by PW-1 and PW-5, the appellant Navjeet had held the deceased, when fatal knife blows were given to him by the appellant Tavinder, whereas if we go by the version given by the PW-2

Jitender and PW-3 Lalit Sharma, the appellant Navjeet was found engaged in quarreling with the informant Sagar Sharma, meaning thereby that he was not holding the deceased when stab blows were given to him by the appellant Tavinder. If two versions of the same incident are given by the prosecution witnesses, one of which goes in favour of the accused, the Court needs to give benefit of doubt to the accused by accepting the version which is favorable to him, unless it is shown that the version favorable to him was improbable and the incident could not have happened in the manner disclosed in that version. Considering the simple nature of the lone stab injury found on the person of the informant, he was in a position to engage the appellant Navjeet even after having received that injury. Therefore, the version given by PW-2 Jitender Sharma and PW-3 Lalit Sharma cannot be said to be inherently improbable and unacceptable. We, therefore, are inclined to give benefit of doubt to the appellant Navjeet as far as the charge under section 302 of IPC read with section 34 thereof is concerned.

However, in the facts and circumstances of this

case charge under section 324 of the IPC read with section 34 thereof stands duly proved against him since he shared a common intention with the appellant Tavinder to cause injuries to the informant, using the knife which his brother Tavinder was carrying with him.

39. For the reasons given in the preceding paragraphs, we maintain conviction of the appellant Tavinder under section 302 of the IPC. His conviction under section 307 of the IPC read with section 34 thereof is converted into conviction under section 324 of the IPC read with section 34 thereof. The appellant Navjeet is acquitted of the charge under section 302 of the IPC read with section 34 thereof. His conviction under section 307 of IPC read with section 34 thereof is converted into conviction under section 324 read with section 34 thereof.

40. Since the appellant Tavinder has been sentenced to imprisonment for life and to pay fine of Rs. 5,000/- only, we see no reason to interfere with the sentence awarded to him under section 302 of the IPC. Both the appellants are sentenced to undergo imprisonment for three years each and to pay fine of Rs.5,000/- each or to undergo simple

imprisonment for three months each in default under section 324 of the IPC read with section 34 thereof.

The appeal stands disposed of accordingly.

**(V.K. JAIN)**  
**JUDGE**

**(BADAR DURREZ AHMED)**  
**JUDGE**

**SEPTEMBER 27, 2010**  
**RS/Ag**