

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

Date of decision: 12.01.2012

+ **CRL.A. 1116/2011, Crl. M. (Bail) 1578/2011**

MANJEET SINGH @ BABLOO

..... Appellant

Versus

STATE

..... Respondent

Through : Sh. Sanjay Lao, APP.

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. This appeal impugns a judgment and order of the learned Additional Sessions Judge, dated 8-10-2010, in SC No. 19/2007, whereby the appellant, Manjeet Singh was convicted for the offences punishable under Sections 394/302/307/411 IPC and sentenced to undergo imprisonment for life, and also various other prison terms; he was also asked to pay fine. All the sentences were to operate concurrently.

2. The facts of this case are that on 09.10.2006, DD No. 59B (Ex. PW14/A) was received by Inspector Joginder Kumar of P.S C.R. Park (PW-30 and IO in the case) regarding a murder which had taken place at 52/6 C.R. Park, New Delhi. The IO then assigned SI Raj Kumar PW-14 to the present case also. When they reached the scene of murder, they found that the first floor premises of this house was locked and they found out that the elderly couple who resided in that house had been taken to Max Hospital , Saket, both of them in seriously injured condition. PW-30 and PW-14 left for the hospital where Shri Mohan Singh (the complainant) and his wife Smt. Surjeet Kaur (now deceased) had been admitted, leaving the crime scene in the care of PW-12, Constable Jagdish. At the hospital, Mohan Singh PW-2 was declared fit to give a statement, which was recorded in question and answer form. In the statement, he said that Manjeet Singh,

had gone to their house at about 6.30 P.M. in the evening and had asked him to pay ₹ 5 Lakhs. He had visited them before as well since he wanted them to buy a house. He tried to strangle his wife and him and when they started to make noise, he attacked them with a knife. His statement is Ex. PW-2/A, and was recorded by PW-30. On the basis of the statement, the *rukka* was recorded, and from this, the FIR (Ex. PW- 8/A) under Section 307 IPC was registered.

3. The investigation was carried out and recoveries were made including a visiting card of the accused all of which were seized from the spot. Others were blood stained earth, knives, and a denture. From the accused's family, his photographs were seized, and witnesses' statements were recorded. Their search for the accused was however, unsuccessful. On 10.10 2006, Smt. Surjeet Kaur expired, and Section 302 was added to the FIR. Inquest proceedings were conducted as well as the postmortem. On 31.10.2006, the accused allegedly had moved an application for his surrender before the Ld MM. However, he did not appear before the Court, and was actually arrested (Ex. PW- 6/B), on the basis of secret information, outside Gurudwara Bangla Sahib, ₹ 12,500/ was seized from him which was believed to be a part of the ₹ 20,000/ he had looted from the complainant's house (Ex. PW-6/C) and his disclosure statement was recorded (Ex. PW-1/A).

4. The prosecution alleged that on the basis of the disclosure statement, a polythene bag containing the blood stained clothes of the accused was recovered from Jahanpanah forest; the Appellant had allegedly also disclosed that he had hidden the remaining money somewhere in Punjab, but that could not be recovered. On 15.11.2006, the statement of the complainant was recorded and the case property was deposited in the *malkhana* and relevant evidence was sent to the CFSL. After completion of the necessary formalities, the accused was charge sheeted for the commission of offences under Sections 394/397/302/307/411 IPC.

5. Before the Trial Court, the accused pleaded his innocence, and the case was committed for trial. In support of its case the Prosecution examined 30 witnesses and put on record other physical evidence. The Court found that the accused's guilt had been proved beyond reasonable doubt for the commission of the offences under Sections 394/302/307/411 and he was punished for the offences under Sections 307 and 394 IPC, with imprisonment of 7 Years each and a fine

of ₹ 5,000 each; for the offence under Section 411 IPC, with imprisonment for 1 year and a fine of ₹ 1,000 and for the offence under Section 302 IPC, with imprisonment for life and a fine of ₹ 10,000. These sentences were to run concurrently.

6. It was argued on behalf of the Appellant that the prosecution story could not be believed. Counsel urged that the deposition of PW-1 is untrustworthy, because he did not support the prosecution version regarding the disclosure allegedly made by the Appellant. According to the prosecution version, the witness was present at the time the accused made his disclosure statement. His silence damaged the credibility of the case against the Appellant. It was next argued that the testimony of PW-2 could not be believed, because he was the husband and close relative of the deceased.

7. Learned counsel argued that PW-2 denied having told the police that the accused had tried to strangle them with a piece of cloth. He deposed that when they tried to raise an alarm the accused stabbed both of them with a knife, that the mobile number of the accused was 9811795356; that the visiting card of the accused was in a box on the dining table, but denied that his address was on that card. It was highlighted that the police did not attempt to join or involve any member of the public in the investigation, or during trial, which rendered its case suspect. Elaborating on this aspect, it was contended that the crime took place in the vicinity of a shop where there were offices, and a security guard. None of these places were investigated; even the security guard was not questioned regarding the whereabouts of the assailants. All these showed that the prosecution wished to hide the truth, and not ensure a fair investigation, with the sole purpose of implicating the appellant.

8. It was submitted that where independent witnesses were available, the failure to associate them would result in miscarriage of justice, an end that the Courts should seek to avoid. It was submitted in this regard that the Supreme Court in *Masalti v. State of U.P.*, (AIR 1965 SC 202) has, in a four-Judge Bench ruling observed that the evidence of an interested or partisan witness has to be weighed by the Court very carefully. Similarly, reliance was placed on *Dalip Singh v. State of Punjab*, AIR 1953 SC 364 that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge

with the guilty. It was next submitted that the deposition of the deceased's daughter, PW-24 actually submitted that her mother had not been able to mention the identity of the assailant. In spite of this, the Court went ahead and concluded that the Appellant had attacked the deceased.

9. It was submitted that the Trial Court fell into error in believing the prosecution version about the recoveries, particularly the money allegedly recovered at the instance of the accused. The accused was arrested after several days of the incident. Therefore, the probability of the recovery of the money said to have been looted or taken away from the victim's house was highly unlikely.

10. The APP argued that this court should not interfere with the reasoning and findings of the Trial Court, as the appellant has not shown any substantial or compelling reasons calling for interference. It was argued that the crime was witnessed by PW-2, who cogently and succinctly narrated the events as they occurred. His testimony could not be challenged or shaken. Counsel submitted that the witness deposed that the accused had attacked him with a log on the head; which resulted in loss of consciousness. When he regained consciousness he saw that the accused went inside the bedroom and asked his wife to give him ₹ 5 Lakhs. When she told him that that amount of money was not in the house he beat her, dragged her out of the room and struck her head against the wall. She became unconscious and the accused then came and sat with the witness on the sofa. He had blood on his hands and clothes. The accused threw his wife to his feet. The witness stated that the accused wanted to kill his wife and him. He removed his blood stained shirt and threw it in the house, took a shirt belonging to the witness from the almirah, wore it, and on seeing that the couple were seriously injured, fled. The shirt was later recovered from the store room. As far as discrepancies with the testimony of other witnesses are concerned, learned counsel submitted that they were not eye-witnesses, and since they went to the spot later, their role was secondary.

11. It was submitted that the Trial Court was satisfied about the credibility and trustworthiness of PW-2, an injured witness. In such event, the objections about the findings not being based on evidence on the record, are without merit. So far as recovery was concerned, it was argued that the police could not be attributed the role of planting significant amounts of cash

on the accused, which were recovered when he was arrested, in connection with the crime.

12. In this case, PW-1, son in law of the complainant and the deceased made the call to the PCR. He states to having received a call, on 09.10.2006 at about 10.30 P.M., from a neighbour informing him that his parents in law were badly injured. He and his wife left immediately for their house. He saw his father-in-law on the ground floor, halfway out of the entry door, in a very badly injured condition. He asked him about his condition and he told him that one Manjeet Singh, a property dealer, who had been visiting to their house, had attacked them with knives. He immediately called the PCR No. 100; and the ambulance and PCR Van arrived there. His wife took her father (the complainant) in the ambulance, and he took his mother in law, Mrs. Surjeet Kaur, in the PCR Van to Max Hospital, Saket. Then he came back and pointed out the place of the incident to the Police. He saw the appellant, on 2.11.2006, when he went to the Police Station; he made a disclosure statement in his presence (Ex PW-1/A). He apparently also revealed that the police had already recovered ₹ 12,500/ from him, and that he had spent the rest of the money; that he could get recovered one golden chain, two golden bracelets and one golden ring; and his clothes from Jahanpanah Forest, opposite Don Bosco School, near the lane that led to Dakshin Puri, where they had been concealed beneath a pile of stones. However, later in his cross examination by the learned counsel for the accused he denies that the disclosure statement of the accused had been recorded on that day. His statement is a bit unclear as he then proceeds to state that he signed Ex. PW-1/A on that day itself. The only inference that one can make from this statement is that the disclosure statement had not been recorded in his presence, and that he had signed on it later on. In any case, this casts a doubt over the veracity of this disclosure statement and the recoveries made pursuant to it, i.e., of the blood stained clothes. PW-24, Ravinder Kaur (the deceased's daughter) corroborated the version of events as stated by her husband, (PW-1) and as far the words spoken by her mother is concerned, she is the primary witness. She stated that when she went upstairs, on being told by a resident of the ground floor of the house that her mother was there, she found her lying on a pool of blood, with deep neck injuries and bleeding from the head. When she first asked her mother who had done this to her, the latter refused to name the person stating that she had been threatened with dire consequences if she did so. When PW-24 persisted, the deceased said that Manjeet Singh had done that to them. He had demanded ₹ 5 Lakhs from them and when they told him that this amount of money

was not present in the house but they would withdraw the amount and give it to him he apparently told her “Who has seen tomorrow?” She also stated that when the ambulances arrived, her husband told her to go with her father to the hospital, and he followed with her mother, in another ambulance. They were admitted in Max Hospital.

13. PW-2 Mohan Singh, the informant was the injured witness whose wife succumbed to the attack. He states that on 09.10.2006, the accused went to his house, and told him that he wished to discuss the sale of the house and wished to meet his son. This witness told him that he would let him know when his son came, but the accused continued to sit there for about one and a half hours. When PW-2 asked him why he was still sitting, he apparently told him that he was waiting for his companion (also a property dealer) who had dropped him in the morning to come and pick him up. This witness stated that earlier in the day he had gone to the Centurion Bank of Punjab to withdraw money and as he had wanted new currency notes since his son was coming back. The Bank told him that they would send the new currency to his house at about 6 PM. At 6.30 PM, the money had not been delivered, and the accused was still sitting in his house. PW-2 asked the accused why he was still there, and was told that the tyre of the bike belonging to the friend who was to pick him up had been punctured. PW-2 then telephoned the bank to inquire about the money and was informed that it would be sent to his house soon. The money was delivered at 7 P.M., when the accused was present, in an envelope with two packets of currency in ₹ 100 denominations. He called his wife and handed the money to her for safe custody in the almirah. The time then was 7.30 P.M. He again asked the accused to leave, who again told him that his colleague’s vehicle had broken down, and that he had been continuously trying to call him. PW-2 states that he was unsure if the accused had called his friend. By this time, it was 8 P.M., and the television serial *Kasauti* had started; they were having dinner while watching the serial. The accused refused to eat with them and instead began to wander around the rooms in the house.

14. By this time the accused had brought a piece of wood from the terrace and struck him on the head from behind, and he became unconscious, when he regained consciousness he saw that he had received injuries on his neck, lower abdomen and fingers. Then the accused went inside the bedroom and asked his wife to give him ₹ 5 Lakhs. When she told him that the amount was

not in the house, he beat her, dragged her out of the room and struck her head against the wall. She lost consciousness and the accused then went and sat with PW-2 on the sofa. He had blood on his hands and clothes. The accused threw his wife at his feet. PW-2 states that the accused wanted to kill him and his wife. He removed his blood stained shirt and threw it in the house, took PW-2's shirt from the almirah, wore it, and on seeing that the couple were very seriously injured, he ran away. The shirt was later recovered from the store room. Upon regaining consciousness, he noticed that the accused had left. His wife had apparently asked him why he wanted to kill them, when he uttered the words "Mummy", she told him that she would arrange the money by tomorrow to which he had replied "Who has seen tomorrow?." This witness opened the door, went downstairs and knocked on the door of the house there. His neighbour Baljeet opened the door and on seeing him asked him who had caused him these injuries. By this time about 10-15 people had gathered there and he told them that Manjeet had caused the injuries. They then telephoned his son in law and told them that his parents in law were injured and almost dead. Then his daughter and son-in-law came there. When his daughter went upstairs to get him water to drink, she saw that the drawing room was full of blood. When she asked her mother who had caused the injuries, she refused to disclose the name as she had been threatened with the death of her entire family if she did so. They were then taken to Maxwell Hospital in two ambulances, and they were both admitted to the ICU. For the next few days he was not told of his wife's condition, and on the sixth day after being admitted he was told by his daughter in law that his wife had died the same night. His wife had apparently told their daughter, just before dying that the name of their attacker was Manjeet.

15. This witness was cross examined by the Learned APP as he was inconsistent with the earlier statement he had made to the Police wherein he had stated that the accused Manjeet had come to their house at about 6.30 P.M "who had to give a sum of Rs.5 lakhs" . He stated that the accused had come to their house at about 5 P.M., and had visited them before as well to try to sell them a house.

16. He denied having told the police that the accused had tried to strangle them with a piece of cloth He stated that when they tried to raise an alarm the accused stabbed them both with a knife, that the Mobile No. of the accused was 9811795356; that the visiting card of the

accused was in a box in the dining table, but denied that his address was on that card; he agreed to the fact that it had been 5 P.M., when the accused had come to their house and since he was known to them, they let him in, and he stayed there for about an hour and a half to two hours. He also corroborated his initial statement to the police to the extent that when the bank employee had come to deliver the money, the accused was standing in the balcony, and once he had left, this witness had counted the money in front of him. He denied having told the police that after this Manjeet had started making telephone calls and telling someone that the payment would be available after an hour; or that his wife had shut the door of the room when she had gone inside to watch television. He however, agreed having told the police that the “facial features” of the accused had changed at that time, and that then he started closing doors and windows, and that when he had asked the accused why he was doing so he had told him “ *abhi tujhe kaaran batata hoon.*” He also was also confronted to having told the police earlier that after the accused had hit him on the head, he made him lie down, sat on him and started beating him, while demanding Rs 5 Lakhs from him and pinched him with pins on his hand and that upon declining to give him money, the accused attacked him with a knife he had taken from the kitchen. He had said that after that he went into the room his wife was in and when she refused to hand over money, he attacked her as well. He denied to having got up to try to save his wife. He agreed to having stated earlier that the accused had told his wife “*paise de do nahin to upar ka ticket kaat doonga*”. He had also stated that the accused had taken out cash and jewellery from the almirah, and that when he regained consciousness and tried to make a phone call, he found that the line was dead. He agreed, when confronted by the prosecution, that the police had shown him the accused’s photograph later, and that he identified him.

17. In his cross examination by the counsel for the accused he revealed that the accused Manjeet and another person Gopal had been showing them a few houses over the course of the last one and a half years but denied that he owed them Rs 20,000/- for the services rendered or that the accused had come to their house on 09.10.2006 to collect such amount. He denied that his refusal to pay the accused money due to him led to an altercation between them. He also denied the suggestion put to him that his wife had been cutting vegetables with a knife then, and when she tried to interfere in the altercation, she sustained injuries from the knife she was

holding. He also denied the suggestion that he had locked the door of his house from the inside in order to confine the accused to beat him up.

18. PW-3 Kali Charan is a witness to the recovery of clothes of the accused. He states that on 2.11.2006, when he had gone to the C.R Park Police Station to enquire about the demolition of his *dhaba*, he was told by the Police that he should accompany them. He was taken to Don Bosco School in G.K-II, they entered a jungle, at that time other people were present there, and one bag was dug out from a pit, as the police had been told about this by Manjeet Singh. On opening the bag, one white shirt with broken buttons and one handkerchief were found. This case property he identified in the Court as well. In his cross examination by the APP, he added that a *baniyan* (vest) had also been recovered and he had identified that as well. He further clarified that the accused had been with the Police at the time of the recovery and had himself pointed out to the place from where the clothes were recovered. This has to be considered carefully since this witness had been silent on this aspect in his examination in chief. In cross examination by the appellant, he clarified that the accused had not been in the same vehicle as him. He admitted that though he was literate, he merely signed the statement recorded by the police, without reading it.

19. PW-5 Head Constable Hari Singh deposed to being informed while on emergency duty, about the incident, at C.R. Park police station, going first to the spot, and later to Max Hospital where the victims had been admitted. The IO met one Charan Singh (Harcharan Singh) and recorded his statement and took the pulanda of clothes. Then they went back to the house where the statement of Baljeet Singh was recorded and then went back to Max Hospital where the statement of PW-2 was recorded. Then they came back to C.R Park and searched the crime scene. On the dining table, they found a visiting card, knives, false teeth and hearing aid. Blood from the carpet and floor was also seized. The visiting card contained the address of the accused's mother (1209/13 Govind Puri) who informed them that accused resided at 1561/30, Govind Puri where they found the wife of the accused. She gave them six photographs of the accused and told them that he had gone to his sister in law's house in Narela, Sevaji Nagar. When they went there, she told them that he had returned to Govind Puri. He then identified the case property in the Court, including the knives, the denture and hearing aid. In his cross examination by the appellant, he stated that only Charan Singh signed on the seizure memo of

the clothes made in the hospital of the victims' clothes, and it was not signed by any doctor or even by Inspector Joginder Singh, the SHO. He stated that S.I. Rajkumar had sought permission from the doctors to record the statement of the injured, but that it had been refused. He states that after they came back from the hospital, the statement of Baljeet Singh was recorded, and evidence was collected from the scene of crime. When they went back to the hospital, S.I. Raj Kumar again sought permission from the doctor to record the statement of the injured and this time it was granted and he recorded the statement of Mohan Singh.

20. PW-6, H.C. Satpal was present during the arrest of the accused on 1.11.2006; pursuant to information received by Inspector Joginder Singh that the accused could be found in Gurudwara Bangla Sahib in Connaught Place. Other policemen were with him, and the informer; they went to the Gurudwara from where the appellant was arrested. His disclosure statement was recorded Ex. PW- 1/A. Money was seized from him by Memo Ex. PW- 6/C. The next day, on 2.11.2006, when the accused was further interrogated, he revealed that his clothes were hidden in Jahanpanah Jungle, and so it was that his clothes were recovered, in a polythene packet from the jungle under a heap of stones and seized by Memo Ex. PW-3/D. The post mortem of Surjeet Kaur was conducted and her blood samples were seized by Ex. PW-6/D . He then identified these case properties in the Court. He corroborated the statement of Kalicharan, that he went to the police station for his own work but ended up joining this investigation. However, he stated that Kali Charan's statement was recorded in the forest. This is discrepant from Kali Charan's deposition that his statement was recorded in the Police Station.

PW-8 HC Sanjeev recorded the FIR in the instant case. He stated that the Rukka was produced by SI Raj Kumar at 11.55 PM on the basis of which the FIR was registered under Section 307 IPC. (Ex. PW 8/A). In his cross examination by the Counsel for the accused, he revealed that it took him about 15-20 minutes in recording the FIR. PW-9 Inspector Vinod Pal, the SI of the Crime Team, South District stated that at the scene of crime; two kitchen knives, two broken teeth, one jaw and one hearing aid had been found, the room was covered in blood. The finger print expert tried but could not lift chance prints. It came to light in his cross examination that he had not mentioned these facts in his statement recorded by the Police.

21. The statement of PW-14 was in line with the statement of other police witnesses. This witness was the police man who took the *Rukka* from the hospital, post the recording of the statement of the complainant Mohan Singh. He corroborates the subsequent sequence of events as spoken of by the other police officers with respect to the collection of the blood stained clothes of the victims, of evidence from the house of the victims, such as the teeth, hearing aid, two knives, blood and earth control. He deposed to having gone back to the hospital when the IO recorded the supplementary statement of the injured complainant Mohan Singh. He states that it was after this that they again went back to the house and found the visiting card of the accused on the dining table. The statement of this witness, to some extent is at variance with the deposition of PW-5. Thereafter, he deposed to meeting one Mahesh, after tracing the address on the visiting card (in variation from PW-5 who made no mention of Mahesh) who told them that the accused's mother resides at H. No. 1209/13 Govind Puri . On going there, they met Balbir Kaur, the mother of the accused, who informed them that the accused resided at 1561/13 Govind Puri. Once they went there, they met the wife of the accused, Mrs. Seema, who told them that the accused had gone to meet his sister (and not sister in law as stated by PW-5) at T-12 Shivaji Nagar, Narela. There, the sister of the accused told them that the accused had not reached the house (whereas PW5 states that she had told them that he had come and left to go back to his house). This witness states that they then went back to Mrs. Seema's house where she gave them the new mobile number of Manjeet and six of his photographs (this too varied from PW-5's statement) and that Balbir Kaur, the mother of the accused also gave them a photograph With respect to the arrest of the accused, this witness's statement is similar to that of PW-6 Satpal with respect to all the material facts. This witness too identified all the physical evidence that was produced in Court. In his cross examination, he clarified that the mother of the accused had accompanied them from her house to 1561/13 Govindpuri, and there she also gave them a photograph of her son. No statement of Mahesh or Balbir Kaur or Seema or the accused's sister was recorded in this regard.

22. PW-30 recorded the statement of complaint of PW-2, went back to the crime scene where the recovery of finger prints, blood sample, two vegetable knives, dentures, hearing aid, a small piece of cloth with a button on it which was blood stained was undertaken. On 10.10.2006, post the death of Surjeet Kaur and after recording of the supplementary statement of the

complainant, he went back to the crime scene and found a visiting card of the accused on the dining table. In the narration of the sequence of events, his testimony slightly varies with that of PW-14. Additionally, he stated that a search party was made to look for the accused and a police party was even sent to Amritsar to look for him. The appellant applied to surrender in court on 31.10.2006, but on that day, he did not surrender; he was arrested on 1.11.2006. On this aspect, this witness' statements tally with those of the other police witnesses. He mentioned that the accused disclosed that other stolen items such as two ladies *kada*, two bangles and one chain had been hidden by him in his uncle's fields in Gurdas Pur. On 2.11.2006, the accused got recovered his blood stained clothes from the Jahanpanah Jungle. On 3.11.2006, he states that they all went to Gurdaspur, to the fields but could not recover anything.

23. PW-11 Dr. Kumud Rai, of Max Heart Institute, Saket was the doctor who declared PW-1 Mohan Singh fit to make the statement. He stated that Mohan Singh's MLC had been recorded by Dr. Sanjay Kumar Jaswal, the emergency medical officer in the hospital. He also stated that Mohan Singh had received injuries on his neck, axills, chest etc which were dangerous injuries. In his cross examination he revealed that he could not recall if the statement was recorded in his presence, after he had given the police the permission. PW-15 Dr Chitranjan Behera, Asst. Professor, Maulana Azad Medical College, conducted the post mortem of the deceased. He deposed that ten *ante mortem* injuries had been found on the dead body of the deceased out of which two injuries on the neck were sufficient individually in the ordinary course of nature to cause death. He said that 8 of the 10 injuries were caused by a sharp weapon (stitched wounds : four on the neck, one on her palm, one on her forearm, one on her chest) and 2 by blunt weapons (these being contusions on her fingers). He stated that the body had been brought to the mortuary with a history of assault on 09.10.2006 at around 8 P.M.; that the cause of death was hemorrhagic shock as a result of the injuries mentioned; and that the time since death was one and a quarter of a day (24 hours + 6 hours). The post mortem report was Ex. PW-15/A. As per the report, the autopsy was concluded at 2.25 PM on 11.10.2006, which puts the time of death at approximately 8.25 AM on 10.10.2006. The Death Report of Surjeet Kaur Ex. PW 30/C puts the date of death as 10.10. 2006.

24. The appellant, in reply to queries under Section 313, admitted to frequently visiting the house of the victims. He stated that on 9.10.2006, he had gone to their house because PW-2 had called him there to make part payment in advance with respect to some future purchase. He stated that on that evening he had gone to the house of the victims as previously, he had told them that since he had been showing them several properties over the course of the last one and a half years without charging them any money, they should pay him some amount, and PW-2 had acceded to that request, and asked him to come to their house on that day so that he could pay him this amount due to him. He alleged that since they did not pay him anything when he went to their house, a scuffle ensued between him and PW-2 and Surjit Kaur, who was carrying a vegetable cutting knife at that time, she too joined in the scuffle and inflicted some injuries on him. He stated that PW-2 also picked a knife and attacked him. He pushed him and in the course of the scuffle, PW-2 also sustained injuries. This apparently scared him and so he ran away.

DW-1 Balbir Kaur was the lone defence witness and the appellant's mother. She stated that on 09.10.2006, her son came to her house late at night in an injured condition and told her that he had been injured in an accident, and left the house. After some days, he came back and told her that he had gone to the house of Mohan Singh, where an altercation had taken place and that during that altercation a murder had taken place. She stated that the Police came after one or two days, in search of her son and harassed her. She made a request to her son to surrender to the Police as they were harassing her and he agreed.

25. The above discussion shows that the crime was seen by an eye-witness, who got injured at the time. His statement is credible and consistent and has been corroborated in the relevant parts by other eyewitnesses such as his daughter and son-in-law, by the physical evidence gathered from the spot such as the two vegetable knives, and the forensic reports which show that the injuries on the deceased could have been caused by the knives. Further, a piece of the accused's shirt and a button was found at the crime scene which matched the shirt recovered from the Jahanpanah Forest; the forensic reports show that these two pieces of cloth and the buttons are identical. The law on injured eye witnesses is clear on the importance to be attached to such statements. The Supreme Court's views on this issue, in *Bhajan Singh @ Harbhajan Singh and Ors. Vs. State of Haryana* (2011) 7 SCC 421:

“The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness”.

In a similar vein, it was held earlier, in *Jarnail Singh v. State of Punjab* (2009) 9 SCC 719 that:

*“Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In **Shivalingappa Kallayanappa v. State of Karnataka 1994 Supp (3) SCC 235**, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.”*

We also have the authority in *Abdul Sayeed v. State of Madhya Pradesh* (2010) 10 SCC 259 to a similar effect, which further states that : *...the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”*

26. The appellant’s statement under Section 313 Cr. PC corroborates his presence at the spot. His defence was that a scuffle took place. Now, before analyzing that aspect, the import of his statement is that the testimony of the eyewitness, not only as regards the attack, but also the previous events, which led up to it, have to be taken as proved. The accused’s demand for money, is, therefore not disputed by him. The nature of eyewitness testimony in this case is that there is no scope for speculation about what led to the attack. PW-2 and his wife knew the accused; he too admitted to knowing them, and frequenting their house earlier. The existence of some dealings between him and the couple is not denied. The only point of dispute is whether

there was a scuffle, as alleged by the Appellant, or did he attack the couple as alleged by the prosecution. Now, as observed earlier, the testimony of PW-2 is cogent and credible; he was also declared fit when his earliest statement was recorded. He clearly named the accused as the person criminally responsible. If the appellant's defence about a scuffle is to be considered, it was necessary for him, to lead some evidence. Instead, DW-1's testimony reveals otherwise. At any rate, the appellant was aware of the consequences when he attacked the old couple, as the injuries listed out in the post mortem testified. The nature of the injuries present on the body of the deceased shows the falsity of this version because she had deep fatal injuries on all sides of her neck, and it is fantastic to believe that, any person could inflict such injuries on herself accidentally. This leads to the inevitable conclusion that the accused had inflicted these injuries.

27. The incident was reported at the earliest possible opportunity. The Police witnesses too have mostly been consistent in describing the various stages of the investigation. There are discrepancies with regard to the exact sequence of events post the discovery of the accused's visiting cards, with respect to when exactly the wife and mother of the accused gave them the photographs. But by themselves, and considered in the light of the overwhelming evidence pointing to the guilt of the accused, these discrepancies do little to shift the case in favour of the accused. The Supreme Court has elaborated on the aspect of minor discrepancies, in *Leela Ram (Dead) Through Duli Chand vs. State of Haryana and Anr.* (1999) 9 SCC 525 that:

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole... Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”

28. So far as other aspects are concerned, there is no significant or major feature which detracts from, or undermines the essential prosecution allegations. As a consequence, this Court holds that the findings in the judgment and order of the Trial Court are based on sound reasoning and proper appreciation of the evidence. The conviction and sentence awarded to the appellant is therefore, affirmed and the appeal is dismissed.

(S.RAVINDRA BHAT)
JUDGE

12.01.2012

(S.P.GARG)
JUDGE