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

+ **CRL. A. 201/2003**

Date of Decision: 22nd July, 2013

NARESH @ KOKI

..... Petitioner

Through

Mr. Hem C. Vashisht, Adv.

along with appellant in person

versus

STATE OF DELHI

..... Respondent

Through

Ms. Fizani Husain, APP

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 22nd February, 2003 and order on sentence dated 7th March, 2003 arising out of Sessions Case No.133/2000 in case FIR No. 268/2000, PS Sangam Vihar under Sections 302/307/34 IPC vide which the appellant along with co-accused was held guilty of offence under Section 324/34 IPC and 326/34 IPC. All the accused were sentenced to undergo rigorous imprisonment of five years and a fine of Rs.10,000/- each under Section 326/34 IPC, in default of payment of fine to undergo simple

imprisonment of six months. Further rigorous imprisonment for one year was awarded to each of the accused persons under Section 324/34 IPC. The substantive sentences were to run concurrently. Out of the fine, if so deposited, an amount of Rs.30,000/- was directed to be paid to legal heirs of the deceased Sunil Kumar as compensation.

2. The factual matrix of the case is:-

On 11th July, 2000, on receipt of DD No. 17B Ex. PW 12/B SI Girish Kumar Singh PW15 along with Constable Yad Ram reached near Shubham Vatika, Devli Extn., where he came to know that a quarrel had taken place and injured had already gone to hospital. Thereafter, he along with Constable Yad Ram reached All India Institute of Medical Sciences where injured Sunil S/o Ramprakash and Aas Mohd. were admitted. SI Girish moved an application Ex. PW15/A on which injured Sunil was declared unfit for statement. Injured Aas Mohd. was declared fit for statement. As such, he recorded statement Ex. PW3/A wherein he disclosed that he is resident of A-80, Devli Extn., New Delhi and is a carpenter by profession. On 10th July, 2000, his friend Trilok had a quarrel with Chini and Babloo in respect of some money transaction. On 11th July,

2000 at about 11:00 a.m. Vinod @ Chini, Babloo @ Vicky, Naresh @ Koki and Irshad met him at Subham Vatika where he and his friend Sunil S/o Ram Prakash were standing. All the four persons caught hold of him and Sunil. Vinod @ Chini and Babloo caught hold of him and Naresh @ Koki and Irshad caught hold of Sunil. He tried to save himself from the said persons but Vinod @ Chini took out a knife and gave a knife blow which landed on his right hand. He shouted 'Bachao-Bachao' and on this, Babloo @ Vicky exhorted "*Aaj tum dono ko jaan se hi khatam kar denge.*" Thereafter, Vinod @ Chini again inflicted knife injury on his stomach. In the meanwhile, he freed himself from both of them and started running. Thereafter all the four persons caught hold of deceased Sunil. Irshad caught hold of Sunil from his back and Naresh @ Koki who was also having a knife inflicted number of knife injuries on Sunil on his chest and stomach. Irshad exhorted "*Isko khatam kar ke hi chodna*". In the meanwhile, people gathered there and started pelting stones on those persons. Then they ran away. All the four persons, namely, Vinod @ Chini, Babloo @ Vicky, Irshad and Naresh @ Koki inflicted injuries on him and Sunil with intention to kill them.

3. On the basis of this complaint, FIR No. 268/2000 under Section 307/34 IPC was registered at PS Sangam Vihar, New Delhi and investigation started. SI Girish Kumar Singh made endorsement Ex.PW15/C on the statement of Aas Mohd. and sent Constable Yad Ram to police station for registration of the case, on the basis of which FIR Ex. PW12/C was registered by ASI Sarita (PW12). At the instance of PW4 Trilok Singh, site plan Ex. PW15/D was prepared. SI Girish Kumar inspected the place of incident where some blood was lying on the ground. He lifted the blood stained earth and earth control. The same was kept in plastic panni and was sealed with the seal of GKS and were seized vide seizure memo Ex.PW4/C. Thereafter, he along with Constable Yad Ram and Trilok reached A-10, Devli Extn. New Delhi where Naresh @ Koki was present. He was interrogated. He made a disclosure statement Ex.PW4/E. He was arrested and his personal search was conducted vide Ex.PW4/D. In pursuance to the disclosure statement, accused Naresh pointed out the place of incident vide pointing out memo Ex.PW4/5. He also got recovered a knife from near the place of incident. Sketch of the knife Ex.PW4/F was prepared which was seized vide seizure memo

Ex.PW4/A. Thereafter, accused Babloo @ Vicky, Vinod Kumar @ Chini and Irshad Khan were arrested. Vide DD 15A, Ex.PW14/A, an information was received that the injured Sunil has expired in the hospital. On 12th July, 2000, dead body of Sunil was identified by PW7 Jagdish and PW8 Surinder Kumar. Post-mortem on the dead body of Sunil was conducted by Dr. Sanjeev Lalwani. Scaled site plan Ex.PW10/A was prepared. After completing investigation, charge sheet was submitted against all the accused.

4. Charge under Section 307/302/34 IPC was framed against all the accused persons, to which they pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution examined 15 witnesses. Thereafter statements of all the accused persons were recorded under Section 313 Cr. P.C. wherein they denied the case of prosecution and alleged false implication in the case.

6. Vide order dated 22nd February, 2003, all the accused were convicted and sentenced as mentioned above. Only accused Naresh @ Koki has challenged his conviction by filing the present appeal.

7. It was submitted by learned counsel for the appellant that the statements of the witnesses are not reliable inasmuch as they have been

changing their statements time and again. The role assigned to the accused persons in the initial statement which led to registration of case FIR has been changed during their deposition in the Court. Moreover, complainant himself is a convict in a case under Section 307 IPC and is now languishing in jail. Furthermore, motive to commit the crime is not established. Moreover, exhortation made by the accused persons as alleged in the complaint Ex.PW3/A has been denied by all the prosecution witnesses. Even the place of incident is not established. Recovery of knife from accused Naresh @ Koki is doubtful. Even otherwise PW2 Dr. Sanjeev Lalwani who conducted post-mortem on the dead body of Sunil Kumar, could not deny in his cross-examination that the knife allegedly recovered at the instance of Naresh @ Koki may not have been used in the commission of crime. Furthermore, it has come in the statement of the witnesses that deceased Sunil made a statement to the Investigating Officer, however, that statement has not been brought on record by the prosecution which cast doubt on the prosecution story. Furthermore, the public witnesses have introduced one Subhash with four accused persons but he was not made an accused. As such, prosecution has failed to prove its case. Even the learned Additional Sessions Judge

did not convict any of the accused for offence under Section 302 IPC, but convicted them for offence u/s 326 IPC, however, even offence under Section 326 IPC is not made out against the accused. As such, the impugned order deserves to be set aside. In case, the conviction is upheld, then the appellant has already undergone half of the sentence, he has a family to support, as such, he be released on the period already undergone.

8. Per contra, it was submitted by learned Public Prosecutor that presence of all the accused at the spot is proved by all the public witnesses. Some discrepancy has appeared regarding the role played by them but that is of no consequence. The Court has already taken a lenient view by convicting them under Section 326 IPC. The motive is also proved from the testimony of the prosecution witnesses. Supporting the judgment, it was submitted that there is no infirmity in the impugned order which calls for interference. As such, the appeal is liable to be dismissed.

9. I have given my thoughtful consideration to the respective submissions of learned counsels for the parties and have perused the record.

10. Material witnesses to unfold the case of prosecution are PW3 Aas Mohd., the complainant, PW4 Trilok Singh, PW6 Anil Kumar and PW9 Ajay Kumar.

11. PW3 Aas Mohd. unfolded that all the four accused persons were known to him from before. On 11th July, 2000 at about 11.00 a.m. he was present at Tea Shop near his house at Devli Extn. and deceased Sunil was also sitting with him. All the four accused persons along with one Subhash came towards them and caught hold of him and Sunil. They took out knife and inflicted injuries on his person and then inflicted injuries with knife on the person of Sunil. He further deposed that accused Vinod @ Chini and Babloo @ Vicky gave knife blows on his person and when he fell down, they gave knife blows on the person of Sunil whereas two other accused persons, namely, Irshad and Naresh with Subhash caught hold of Sunil. Accused Vinod @ Chini gave knife blow on the stomach of Sunil whereas accused Babloo gave knife blow on his chest. Sunil started bleeding from injuries and thereafter he lost conscious and regained consciousness in the hospital. His statement Ex.PW3/A was recorded by the police. He further stated that statement of Sunil was

also recorded by police in which he named five persons to be the assailants and he was on a separate bed lying in the same room of the hospital.

12. Since this witness resiled from his earlier statement, he was cross-examined by learned Public Prosecutor wherein he stated that he knew all the accused prior to the incident, however, he denied that they were present near Shubham Vatika when the incident took place. He also denied that accused Vinod @ Chini and Babloo @ Vicky caught hold of him or that accused Naresh @ Koki and Irshad caught hold of deceased Sunil. He admitted that when he tried to rescue himself from accused Vinod @ Chini and Babloo @ Vicky, at that time, Vinod took out a knife and gave knife blow on his right hand as he tried to save himself. He further deposed that accused Vinod @ Chini was holding a knife and he gave several knife blows to Sunil. He also denied that accused Irshad ever exhorted “Isko Khatm Karke Chhodna”. He also denied that he along with Subhash took Sunil in a scooter to AIIMS or that statement of Sunil could not be recorded as he expired. He admitted that cause of quarrel was money dispute between Trilok and Sunil but later on accused Vinod @ Chini,

Babloo @ Vickey and Naresh @ Koki intervened. He denied having joined the investigation on 11th September, 2000.

13. PW4 Trilok Singh deposed that he was to take money from Sonu as Sonu had taken atta (flour) from his shop (chakki) on credit. On 10th July, 2000, he demanded money from Sonu but he brought accused Babloo @ Vicky, Vinod @ Chini and Naresh @ Koki to threaten that he should not demand money from Sonu. On 10th July, 2000, in the evening he and Sunil again met four accused persons and quarrel had taken place amongst them. Accused gave beatings to him and deceased Sunil took his side on which accused persons threatened him and Sunil to see them next day. On the next day, i.e., 11th July, 2000, he got an information about a quarrel going on between the accused persons and the complainant. Thereupon, he rushed to the place of incident where he saw all the accused persons holding knives in their hands and saw accused Vinod @ Chini giving a knife blow on the chest of Sunil while accused Babloo @ Vicky, Naresh @ Koki and Irshaad were holding Sunil and as he tried to save Sunil, accused Babloo @ Vicky exhorted “Tu bhi aa ja”. People gathered there on hearing his alarm and accused persons ran away. He brought an auto

rickshaw and took Sunil to hospital along with Aas Mohd. In his presence, a knife, by which accused Vinod @ Chini inflicted injuries on the person of Sunil, was seized vide seizure memo Ex.PW4/A. Since this witness also did not support the case of prosecution in entirety, he was also cross-examined by the learned Public Prosecutor and then he admitted that all the accused persons caught hold of Sunil and accused Naresh @ Koki gave several knife blows to Sunil. Sunil was bleeding profusely. He, however, denied the arrest of the accused persons or recovery of knife in his presence.

14. PW6 Anil Kumar deposed that on 11th July, 2000 at about 10:30/11:00 a.m., he reached near Shubham Vatika where accused Irshad and Naresh @ Koki were holding Sunil Kumar and accused Vinod @ Chini and Babloo gave knife blows to Aas Mohd. Thereafter Aas Mohd. managed to escape and then accused Vinod @ Chini and Babloo gave knife blows on the person of Sunil. Aas Mohd. ran away. Sunil fell down due to injuries received at the hands of Vinod @ Chini and Babloo @ Vicky. Public gathered there and pelted stones on accused persons, as a result of which, they started running. He hired a three wheeler scooter and took Aas Mohd. and

Sunil to AIIMS hospital and got them admitted there. This witness also did not support the case of prosecution, as such, he was declared hostile. In cross-examination, he admitted that accused Vinod @ Chini was holding a knife in his hand and he inflicted injuries on the person of Aas Mohd but denied the suggestion that accused Babloo ever exhorted "*Isko Khatam Kar De*". He also denied that accused Irshad, Babloo and Vinod @ Chini caught hold of Sunil and accused Irshad exhorted "*Koki Isko Khatam Kar Ke Hi Chhodna*". He denied giving knife blows by accused Naresh @ Koki to Sunil.

15. PW9 Ajay Kumar identified all the accused persons but did not support the case of prosecution by deposing that he had not seen anyone stabbing the injured with his own eyes. He went on stating that when he reached the place of incident he saw a crowd gathered there and he came to know that injured was stabbed by someone. Thereafter Anil, one Shakti and Trilok took Sunil/injured to hospital and he also accompanied them.

16. The prosecution case, from the initial statement made by Aas Mohd., which became the bed rock of investigation, reveals that according to him accused Vinod @ Chini gave a knife blow to him

while accused Babloo @ Vicky hold him from the back. Accused Naresh @ Koki gave deadly blows by knife to Sunil while accused Irshad caught hold of Sunil from his back. The roles qua accused Babloo @ Vicky and Irshad are of exhorting. However, as seen above, a twist came in the prosecution story when the witnesses came to depose before the Court. Aas Mohd. in his deposition before the Court stated that accused Irshad, Naresh @ Koki with Subhash caught hold of deceased Sunil while accused Vinod @ Chini and Babloo @ Vicky gave knife blows on his stomach and chest. He also stated in his cross-examination that accused Vinod @ Chini gave knife blows on his stomach. According to PW4 Trilok Singh, all the four accused were present with knife while Babloo @ Vicky, Naresh @ Koki and Irshad were holding the deceased Sunil, accused Vinod @ Chini gave knife blows to deceased Sunil. According to PW6 Anil Kumar, accused Vinod @ Chini and Babloo @ Vicky gave knife blows to Sunil and Aas Mohd. Thus, there is change in roles of accused persons.

17. Under the circumstances, learned counsel for the appellant relied upon *Sampath Kumar vs. Inspector of Police, Krishnagiri*,

2012 (2) JCC 1185 for contending that the statement made by the witnesses are wholly unreliable. In this case, reference was made to ***Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra***, (AIR 2000 SC 3352), where it was held that while discrepancies in the testimony of a witness which may be caused by memory lapses were acceptable, contradictions in the testimony were not. It was observed:

“Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person.”

18. In ***Sampath Kumar(supra)***, the statement made by the witness was in complete contrast with the statement made by him before the police where the witness stated nothing about having seen the appellants standing near the deceased around the time of incident. The omission was considered to be of very vital character. It was observed that he did not, in his version given to the police, come out with what according to him is the truth, but withheld it for a period of

five years till he was examined as a prosecution witness in the Court. He made substantial improvement in the version without giving any acceptable explanation. As such, it was observed that his testimony is wholly unreliable.

19. The difference between discrepancies and contradictions was explained in *State of Himachal Pradesh Vs. Lekh Raj and Anr*, AIR 1999 SC 3916 and *State of Haryana Vs. Gurdial Singh & Pargat Singh*, AIR 1974 SC 1871 where the prosecution witnesses had come out with two inconsistent versions of the occurrence. One of these versions was given in the Court while other was contained in the statement made before the police. It was held that in view of the contradictory versions, the conviction of the accused could not be sustained.

20. Things are entirely different in the instant case. Accused persons were well known to the witnesses from before. As such, their identity is not in dispute. Presence of all the accused and their participation in the crime, their coming together and leaving the spot together was also deposed by all the material prosecution witnesses. It

was only regarding the role assigned to the accused persons in which some variance has come.

21. In *State of Maharashtra Vs. Kalu Shivram Jagtap and Ors.*, 1980 Supp SCC 224, it was held that where common intention of two or more accused persons to kill the deceased is established and the medical evidence shows that injuries caused by the accused were sufficient in the ordinary course of nature to cause death, the case squarely falls under Section 302/34 IPC and the question as to who actually dealt the fatal blow is wholly immaterial.

22. In *Satbir Vs. Surat Singh And Ors.*, (1997) 4 SCC 192 also, three persons were assaulted by a number of persons at one and the same time with different weapons. It was held that in such situation, some contradictions as to who assaulted whom and with what weapon cannot be made a ground to reject the evidence of the eyewitnesses, if it was otherwise reliable.

23. Again in *Mahmood and Anr. Vs. State of U.P.*, AIR 2008 SC 515, it was held that once membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish any specific overt act to any of the accused for fastening of liability with

the aid of Section 149 of the IPC. Although, that was a case under Section 302 IPC read with Section 149 IPC, however, *ratio decidendi* of that case is equally applicable to the facts of the present case. It is established on record that all the accused came together to the place of incident which proves their common intention. Simple injuries to Aas Mohd and grievous injuries to Sunil were caused by them. In such a fact situation, some contradiction as to who assaulted whom cannot be made a ground to reject their evidence which otherwise is reliable. They had no axe to grind to falsely implicate accused persons, more particularly when no animosity, ill-will or grudge is alleged against them.

24. The ocular testimony of the prosecution witnesses finds corroboration from the medical evidence. PW1 Dr. Imli examined the complainant Aas Mohd. and proved the MLC Ex.PW1/A which shows 2 c.m. stab wound in right lumbar region and wound of 2 c.m. in right forearm. The nature of injuries was opined as simple by blunt object.

25. PW2 Dr. Sanjeev Lalwani, of AIIMS Hospital conducted post-mortem of Sunil, S/o Ram Prakash on 12th July, 2000 and proved

post-mortem report Ex.PW2/A. The post-mortem report Ex.PW2/A shows various injuries but the material injuries are injury Nos. 2 & 7. As per the post-mortem report, following material injuries were found on the person of deceased Sunil:-

Injury No.1 is stitched wound 21 cm over chest wall left side laterally going obliquely upward and backward. On dissection underlying muscular haematoma on chest wall with fracture of 5.6 ribs seen. Injury No.2 is stab wound present over it, upper chest laterally of six 1.5 cm x 1 cm situated 9.5 cm above and lateral to it, nipple, 12 cm from shoulder tip & 14.5 cm lateral and left to midline with underline muscular downward piercing second left interpostal space in mid clavicular line penetrating pleura as well. Injury No.7 shows left lung collapsed showing repair at both upper and lower lobes at four sides, two at upper and two at lower ribs. Both upper repaired wound were communicated to each other and both lower repaired wound were communicated to each other. Right wt. 380 grams and left wt. 150 gm.”

He opined that injury No. 1, 2 & 7 as mentioned in post-mortem report Ex.PW2/A are sufficient in ordinary course of nature to cause death. He further deposed that injuries on the persons of deceased were possible with dagger/chhuri Ex.PW4/1. Under the

circumstances, ocular testimony of the witnesses finds due corroboration from the medical evidence.

26. As regards the submission of learned counsel for the appellant that recovery of knife from accused Naresh @ Koki is doubtful, same is devoid of merit inasmuch as although PW4 Trilok Singh who was one of the witnesses in whose presence recovery was effected has not supported the case of prosecution but then there is testimony of PW13 Constable Yad Ram and PW15 Girish Kumar Singh in whose presence the recovery was effected. There is no reason to disbelieve the testimony of both these witnesses.

27. The testimony of police personnel should be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. (*Karanjit Singh Vs. State (Delhi Admn.*, 2003 5 SCC 291; *Sunil Clifford Daniel vs. State of Punjab*, (2013) 1 SCC (Cri) 438). Record reveals that both the police officials were

subjected to searching cross-examination but nothing could be elicited to discredit their testimony, as such, recovery of knife at the instance of appellant Naresh @ Koki stands proved.

28. Furthermore, PW2 Dr. Sunil Lalwani has also deposed that knife/dagger Ex.PW4/1 may be responsible for injuries caused to deceased Sunil. Learned counsel for the appellant, however, referred to his cross-examination where the witness could not deny that injuries on the person of Sunil may not have been caused by this knife. Thus there is variance in the testimony of doctor inasmuch as in examination-in-chief, he deposed that injuries were possible by this knife whereas in cross examination could not rule out the possibility that injuries may not be caused by this knife. This, however, is not sufficient to discard the ocular testimony of witnesses all of whom have deposed that injuries on the person of Aas Mohd and Sunil were caused by knife. It is settled law that where the medical evidence is at variance with ocular evidence, it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye witnesses' account which had to be tested independently. Where the eye witnesses' account is found credible

and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive.

29. In *State of Haryana v. Bhagirath & another*, (1999) 5 SCC 96, it was held as follows:-

“17. The opinion given by a medical witness need not be the last word on the subject. Such opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.”

30. In *Solanki Chimanbhai Ukabhai v. State of Gujarat*, AIR, 1983 SC 484, the Supreme Court observed:

“Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

Similar view was taken in *Mani Ram & Others v. State of U.P.*, 1994 Supp(2) SCC 289; *Khambam Raja Reddy & Another. V. Public Prosecutor, High Court of A.P.*, (2006) 11 SCC 239; *State of U.P. v. Dinesh*, (2009) 11 SCC 566 and *Abdul Sayeed vs. State*, 2010 IX AD SC.615.

31. Under the circumstances, variance in the deposition of the doctor as to whether the knife recovered at the instance of appellant was used in the crime or not is not fatal, more particularly so, because he could not rule out the possibility of user of this knife in the crime. There is no categorical assertion that injuries could not have been inflicted with this knife.

32. Moreover, during the course of investigation, the knife was sent to FSL from where report Ex.PW15/G was received which reflects that blood of 'A' Group was found on dagger which matched with the blood group or blood stained gauge of deceased Sunil. This is another clinching piece of evidence against the accused.

33. As regards the submission that the deceased Sunil had made a statement to the Investigating Officer but same has been

withheld by the prosecution, same is devoid of substance, inasmuch as, it has come in the statement of PW15 SI Girish Kumar Singh that he had moved an application Ex.PW15/A for recording the statement of Sunil but he was declared unfit for statement. In cross-examination, no question was put to the witness that Sunil had made a statement which had been withheld. Under the circumstance, it cannot be believed that deceased Sunil made any statement to the Investigating Officer. In fact PW4 Trilok Singh has denied that deceased Sunil ever made any statement to the Investigating Officer.

34. As regards, introduction of Subhash by some of the prosecution witnesses, that does not cast any dent on the prosecution case. No active involvement of Subhash was even otherwise alleged by any of the prosecution witnesses. In *Chittarmal Vs. State of Rajasthan*, 2003 (1) AD SC 239, it was held that if injured witness(s) is/are found to be reliable in respect of involvement of accused then improvement of versions viz. roping of more persons would not make whole statement unreliable.

35. As regards, the submission that the place of occurrence has been changed by PW3 Aas Mohd. in his deposition before the Court, that, at best, is a minor variation which does not affect the basic substratum of the case. All the other witnesses have deposed that the place of occurrence was near Shubham Vatika. The Investigating Officer had also visited the place of incident which was an open plot near Shubham Vatika and seized blood stained earth and earth control sample vide seizure memo Ex.PW4/C. Site plan Ex.PW15/D also reflects that the place of incident was near Shubham Vatika. Under the circumstances, the discrepancy is of a minor nature which does not cast any dent on the prosecution case.

36. Another limb of arguments that motive is not established is also devoid of substance. As revealed by PW-4 Trilok Singh, he had to take money from Sonu as he had taken atta from his shop on credit. On 10th July, 2000, he demanded money from Sonu, instead of paying the same, he brought accused Babloo @ Vicky, Vinod @ Chini and Naresh @ Koki to threaten that he should not demand money. Thereafter, on the same day, in the evening, a

quarrel took place between him and accused persons and Sunil was also present at that time. Accused gave beatings to Trilok Singh and at that time, Sunil took his side on which the accused persons threatened Sunil and Trilok Singh to see them next day. On the next day, the incident took place. Even if it is taken that there was no enmity between accused persons and the injured Aas Mohd. and Sunil, even then, in view of the direct evidence available on record, specifying the role of the accused persons, even if motive to commit crime is not established, same pales into insignificance. In *Bhagirath and Ors. vs. State of Haryana*, AIR 1996 SC 3431; *Molu vs. State of Haryana*, AIR 1976 SC 2499; *Mohinder vs. State*, 2010 VII AD (Delhi) 645, *Narain Singh v. State*, 2013 (1) AD (Delhi) 685, it was held that prosecution is not required to necessarily prove motive when it relies upon direct evidence, i.e., evidence of eye-witnesses. Failure to establish motive would not reflect upon the credibility of a witness. In the instant case, since direct evidence is available, absence of motive assumes secondary role.

37. The entire evidence led by the prosecution was minutely scrutinized by the learned Additional Sessions Judge. It was observed that in view of the interpolation of roles, though the benefit of doubt in respect of the fact as to who actually inflicted the murderous assault had to be given but since all accused had common intention to teach lesson to Aas Mohd. and Sunil and they all acted together having knife, each one of them must be held to have knowledge that grievous injury is likely to be caused as such case u/s 324/326/34 IPC was made out. No fault can be found in this finding of learned Trial Court.

38. As regards the quantum of sentence, leniency in sentence was prayed on the ground that the appellant has suffered half of the sentence and he has a family to support. As such, he be released on the period already undergone. However, this submission is not fortified by the nominal roll received from jail according to which the unexpired portion of sentence is 3 years, 11 months and 15 days. Even otherwise, the appellant was convicted for committing offence under Section 326/324/34 of IPC. The sentence prescribed under Section 326 IPC is

imprisonment for life or imprisonment which may extend to ten years and shall also be liable to fine. The appellant was sentenced to undergo rigorous imprisonment for five years only and fine under Section 326 IPC and for one year under Section 324 IPC. As such, already a liberal view has been taken by learned Additional Sessions Judge while awarding sentence. No further leniency is warranted. That being so, there is no merit in the appeal, the same is accordingly dismissed.

39. Trial Court record be sent back.

**SUNITA GUPTA
(JUDGE)**

July 22, 2013

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