

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

+ **CRIMINAL APPEAL No. 538/2011**

Date of decision: 2nd April, 2013

KARTAR Appellant
Through Mr. Sumer Kumar Sethi, Advocate.
Versus

STATE OF THE NCT OF DELHI Respondent
Through Mr. Sanjay Lao, APP for the State.

+ **CRIMINAL APPEAL No. 539/2011**

PAWAN KUMAR Appellant
Through Ms. Nandita Rao, Advocate.
Versus

STATE OF THE NCT OF DELHI Respondent
Through Mr. Sanjay Lao, APP for the State.

+ **CRIMINAL APPEAL No. 561/2011**

RAM KISHAN Appellant
Through Mr. Bhupesh Narula, Advocate.
Versus

STATE OF THE NCT OF DELHI Respondent
Through Mr. Sanjay Lao, APP for the State.

+ **CRIMINAL APPEAL No. 404/2013**

RAJESH Appellant
Through Mr. Bhupesh Narula, Advocate.

Versus

STATE (NCT OF DELHI) Respondent
Through Mr. Sanjay Lao, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.:

1. Kartar, Pawan Kumar, Ram kishan and Rajesh have preferred the instant appeals questioning their conviction under Section 302/34 of the Indian Penal Code, 1860 (IPC) vide impugned judgment dated 14th February, 2011 for committing the murder of Dinesh, at about 9:30 p.m. on 25th June, 2007. By an order on sentence dated 23rd February, 2011, they have been sentenced to undergo rigorous imprisonment for life and pay fine of Rs.5,000/- each. In default of payment of fine, the appellants are to undergo Simple Imprisonment for six months.

2. Homicidal death of Dinesh is not under dispute. Dinesh was taken to All India Institute of Medical Sciences (AIIMS) on 25th June, 2007 in a PCR Van at about 10.24 p.m. The MLC of Dinesh has been proved on record as Ex. PW17/A by Dr. C.H. Gyan Singh (PW-17). According to PW-17, the MLC of Dinesh, Ex. PW17/A was prepared by Dr. Sameer Jagati who has left the services of the hospital. However PW-17 identified the handwriting and signature of Dr. Sameer Jagati.

PW-17 Dr. C.H. Gyan Singh has deposed that on 25th June, 2007 one patient, namely, Dinesh, an adult male, aged about 26 years was brought by Head Constable Suraj Bhan(not examined) in an injured condition with alleged history of stab wound inflicted at Lal Kuan at 9.30 p.m. with a sharp instrument. The patient was examined and the following seven injuries were noticed on the person of Dinesh:-

- “1. Laceration with exposed subcutaneous fascia 7×4 cm.
2. Laceration over the base occipital area (6×2×2 cm).
3. Laceration over the mouth (upper lip) 3×2 cm.
4. Stab injuries at the abdomen with exposed small intestine.
5. Old scar marks over the chest.
6. Laceration over the left iliac.
7. Laceration over the left elbow.”

3. MLC Ex PW-17/A records that patient (Dinesh) was not fit for statement. PW-17 was not cross-examined.

4. Dinesh died on 27th June, 2007 and thereafter post mortem was conducted on his body by Dr. Sukhdeep Singh. The post mortem report which is Ex PW-12/A however, stands proved from the statement of Dr. Sushil Sharma (PW-12). He identified the handwriting and signature of Dr. Sukhdeep Singh. As per the post mortem report Ex. PW-12/A, the deceased had suffered the following injuries:-

- “1. A surgical stitched wound vertically placed on the abdomen running from 3 cm above the

umbilicus and 14 cm below it (total length 17 cms). The wound confined in to left side of abdomen running up to a distance of 9 cm. The wound was opened and after removal of stitches, the track of the horizontal wound was found to be running vertically obliquely (downward backward and laterally) to a depth of 15 cm. 1.5 to 2 liter of blood clot seen in peritoneal cavity. All superficial muscles, fascia and mesentery were cut in the way.

2. Incised wound placed obliquely on the middle of the dorsum of right forearm 4 cm in length.
3. Incised wound placed horizontally on the dorsum of right finger.
4. A incised wound 10 cm in length on the posterior lateral aspect of back (middle right side).
5. A incised wound 7 cm in length obliquely placed on the upper lip.
6. Multiple incised wounds size 4 to 12 cms obliquely placed over the anteromedial aspect of right leg with tailing towards right side.
7. Incised wounds horizontally placed over the right knee 3 cm in length.
8. Incised wound obliquely placed 4 cm in length over the lateral aspect of the right ankle.
9. An abrasion 3×2 cm placed over anterior aspect of middle of the right shin.
10. A incised wound 5 cm length present over the occipital region 1 cm below this wound. There is another wound 7 cm in length.
11. Multiple superficial incised wound size 5 to 12 cm, 5 in number running obliquely over the left side of leg.
12. A superficial incised wound 4 cm in length obliquely placed present on the middle of the thigh.
13. Contusion in the left knee.
14. Contusion over the left ankle.
15. Contusion over the left upper eye lid with a lacerated wound 1 cm in size in the middle of the root of eye lid.
16. A incised wound 3 cm in length running from lateral aspect of right ala of nose and then obliquely downward forward left side on upper and lower lip associated with swelling.

17. A contusion with abrasion in an area of 3×3 cm over the left cheek eminence.
18. A incised sutured wound of length 45 cm present 4 cm below the left pinna, obliquely running downward and crossing the lower boarder of left mandible.
19. A linear abrasion of length 30 cm × .5 cm width running obliquely from left shoulder to the manubrium sterni, obliquely placed with tailing towards left side.
20. A linear incised wound 4 cm in length vertically placed on the lower one third of anterior aspect of left forearm.
21. A incised wound 8 cm in length present over the dorsum of hand running up to the base of thumb.
22. Multiple incised wound 4 to 6 cm in length present 3 cm below elbow.
23. Incised wound over the lateral aspect of arm 4 cm in length and obliquely placed.
24. Incised wound obliquely placed 4 cm in length over the lateral aspect of left arm.
25. Incised wound 12 cm in length running vertically downward over dorsum of left forearm.
26. Multiple abrasions over the lateral aspect of abdominal wall on left side.”

5. According to the post mortem report Ex PW-12/A, the cause of death was shock (Septicemic) consequent upon stab injury on the abdomen (injury No.1). Injury Nos.1 to 8, 10 to 12, 16, 18 and 20 to 25 were caused by a sharp edged weapon and injury Nos.9, 13 to 15, 17, 19 and 26 were caused by blunt force. Stab Injury No.1 was sufficient to cause death in ordinary course of nature. However, other injuries could also collectively lead to death in ordinary course of

nature. The time of death was opined to be half a day before the autopsy was conducted.

6. Dr. Sushil Sharma (PW-12) also proved the opinion, Ex PW-12/B tendered by Dr Sukhdeep Singh regarding the weapon of the offence which consisted of stones Ex P-2 and knife with a broken handle, Ex P-1. PW-12 has deposed that injury Nos. 1 to 8, 10 to 12, 16, 18 and 20 to 25 mentioned in postmortem report, ExPW-12/A could be caused by Ex 1 (the knife with the broken handle). He further deposed that injuries no. 9, 13 to 15, 17, 19 and 26 could either be produced by handle of knife or due to the blunt force by fall on the stones.

7. On the question of involvement of the appellants, it is urged by the learned counsels for the appellants that the eye witnesses, namely, Smt. Mangi (PW-4) and Shushila (PW-9) are unreliable and their testimonies are apparently contradictory. In this regard, reference is specifically made to the statement of Sushila (Ex.PW9/A) recorded under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to contend that Mangi (PW-4) had reached the spot of occurrence after the actual incident of stabbing and she was not an eye witness to the alleged incident. Next, reference is made to the two site plans, Ex.PW20/A (the rough and unscaled site plan) and Ex.PW5/A (the scaled site plan). From the difference between the two site plans it is

pointed out that Mangi (PW-4) could not have seen the occurrence as the house of deceased-Dinesh was located at a distance of about 70 feet and the actual place of occurrence as mentioned in the two site plans was not visible from the residence of Mangi (PW-4). It is stated that there were a number of houses in between the house of the deceased, PW-4 Mangi and the place of occurrence therefore, from the house of Mangi it was not possible to view or see the occurrence. It is stated that there is a dispute whether Mangi (PW-4) was actually present at the spot of occurrence as her presence is not recorded or mentioned in the MLC of Dinesh (Ex.PW17/A). It is urged that the prosecution did not produce Head Constable Suraj Bhan or any other police officer from the PCR van to establish the presence of PW-4 Mangi at the spot or in the hospital. It is also pointed out that rukka was prepared on the basis of Mangi's statement Ex.PW4/A which led to the registration of FIR No. 615/2007 (Ex PW-2/A) initially under Section 307/34 IPC and not on the statement Ex PW-9/A furnished by PW-9 Shushila under Section 161 Cr. P.C. With regard to the registration of FIR, the Counsel for the appellants submitted that the statement (Ex PW-4/A) of Mangi was recorded by the police officers at police post at 2 a.m. past midnight on 25th June, 2007. However, the FIR in question (Ex PW-2/A) had been recorded at 12.45 a.m. and accordingly, it is contended that FIR has been ante-timed making the prosecution case is

inherently unreliable. It is next contended the investigation is vitiated on two counts. Firstly, it is highlighted that the crime team was not called to the spot as no crime team report is on record. Secondly, before the trial court the so-called disclosure statements of the appellants Kartar, Rajesh and Ramkishan recorded by the Investigating Officer, were not filed or were not traceable. On the question of arrest of the four appellants, the Counsels for the appellants have drawn our attention to the arrest memos Ex.PW11/C1 to Ex.PW11/C4. It is submitted that the arrests have been shown to be made between 5 p.m. to 5.25 p.m. on 26th June, 2007 whereas per the prosecution the appellants were arrested between 5:00 a.m. to 5:25 a.m. near Badarpur on the 26th June, 2007. Our attention is also drawn to the statements made by the defence witnesses i.e. DW-1 to DW-5 for disputing the place from where the appellants were apprehended. It is also contended that the identification by the alleged eye-witnesses should be disbelieved as no public witness or neighbours, who were residing in the said locality where the alleged incident took place, were joined in investigation and their statements were not recorded by the police.

8. On the question of occurrence, the prosecution case relies upon the testimony of Mangi (PW-4) and Sushila (PW-9). Mangi (PW-4) is also the complainant on whose statement the rukka (Ex PW-4/A) and

the FIR No (Ex.PW2/A) was registered. PW-4 Mangi was residing at B 334, Chungi No.2, Lal Kuan, Delhi and has deposed that on the date of occurrence at about 9.30 p.m. she was present in her house. Deceased Dinesh, brother of her husband, was residing in a house just in front of her house in the same street. On the date of incident, the appellant Ram Kishan, whom she identified correctly in the court, along with his two brother-in-laws namely Sunder and other unnamed, were present in the house of the deceased Dinesh. At about 9.00-9.30 p.m. while she was in her house, she heard noise and cries of deceased Dinesh saying “Maar Diya, maar diya” which was when she came out of the house. She saw that the four appellants whom she knew from before along with unknown assailants were causing injuries to Dinesh by chhuri, knife, swords, stones, etc. PW-4 correctly identified the four appellants namely Ram Kishan, Kartar, Pawan and Rajesh in the court. PW-4 deposed that Sushila (PW-9), wife of Dinesh was also present there. PW-4 made a telephone call to police on number 100. The appellants ran away from the spot. It rained thereafter. The police removed deceased Dinesh to AIIMS Hospital. She has deposed that motive for committing the offence was that daughter of Bulli, brother-in-law (*saala*) of Dinesh, had got married to the younger brother of deceased Dinesh against the consent and wishes of the parents of the couple. This marriage had caused annoyance to the appellants as

Appellant Pawan is son of Bulli. PW-4 testified that she had also gone to the hospital and from the hospital she went to police post Prahaldpur where her statement was recorded by the police and the same is Ex PW-4/A. PW-4 has further deposed that she had seen the appellant Rajesh holding a chhuri (knife), appellant Pawan was holding a sword and appellant Ram kishan had hit Dinesh with a stone on the back side of his head. However, as it was night time, she deposed that she could not observe the specific weapon used by each of the appellant. She identified the knife, which was produced and shown to her, as the same which was used by the appellants. The knife was marked Ex.P1.

9. We have gone through the examination-in-chief and the cross-examination of PW-4. In the cross-examination as well as the in the examination-in-chief, PW-4 has mentioned names of Sunder and another person, whom she described as the brother-in-laws of the appellant Ram kishan. However, examination in chief she could not recollect the name of the other person who was subsequently identified by PW-4 in her cross examination as Vinod. Sunder and Vinod were not charge-sheeted and have not been prosecuted. However, on the question of involvement of the four appellants, PW-4's statement is clear and categorical which has not been demolished in cross examination. The four appellants, as per PW-4, were involved in the

occurrence and had actually caused injuries to Dinesh. She has seen the said occurrence in which injuries were caused.

10. In the examination-in-chief as noted above, PW-4 has stated that she had gone to the hospital and from the hospital she came back to the Police Post Prahladpur where her statement (Ex.PW4/A) was recorded by the police. Similar statement has also been made in the cross-examination by PW-4. In cross examination, Mangi PW-4 further stated that her statement (Ex PW-4/A) was recorded by the police around 2:00 am past midnight. In this premise it is urged by the counsel for the appellants that the FIR which was registered at about 12:45 am on the statement of Mangi PW-4 is ante timed. Statement (Ex.PW4/A) of PW-4 was recorded by SI Ramesh Singh (PW-3). PW-3 SI Ramesh Singh has deposed that on 25.06.2007 he was posted as sub inspector at police post Prahaladpur when he received DD No 31 and 32 (Ex PW-14/A and B). He along with Ct Pratham (PW-11) reached House No. D-334 Chungi No.2 Lal Kuan where considerable amount of blood was lying on the road. No eye witness was present on the spot and PW-3 was informed that injured Dinesh had been removed to the hospital by a PCR Van. PW-3 along with Ct. Pratham (PW-4) and Ct. Tej Ram (PW-15) reached AIIMS hospital where they found injured Dinesh admitted in the hospital. In the hospital, he met Mangi (PW-4) who identified herself as an aunt of Dinesh. PW-3 has

deposed that he recorded the statement, Ex PW-4/A of PW-4 Mangi at AIIMS Hospital and when he had reached there, he found that the deceased Dinesh was admitted in the hospital in an injured condition. He has further deposed that he prepared rukka by making endorsement (Ex PW-3/A) on the said statement (Ex.PW4/A) made by PW-4 Mangi. Thereafter, rukka was sent to police station through Constable Tej Ram for registration of FIR, which was initially registered under Sections 307/34 IPC. Thereupon, PW-3 went to the spot and met SI Nirbhay Kumar (PW-20), who took over investigation of the case after the registration of the FIR.

11. Similarly, Constable Pratham Singh (PW-11) has deposed that on 25th June, 2007, after DD Nos. 31 and 32 were received, he along with SI Ramesh Singh (PW-3) had reached House No. B-334, Chungi No.2, Lal Kuan and at the spot they came to know that the injured Dinesh had been removed to the hospital. He along with PW-3 and Constable Tej Ram (PW-15) went to the AIIMS Hospital where injured Dinesh was admitted, but was declared unfit for statement by the doctor. Mangi (PW-4) was present in the hospital and her statement (Ex.PW4/A) was recorded by SI Ramesh Singh (PW-3). Thereafter, PW-3 made an endorsement on the said statement and 'rukka' was dispatched through Ct. Tej Ram (PW-15) to the police

station for registration of FIR. After registration of FIR, the investigation was handed over to SI Nirbhay Singh (PW-20).

12. Constable Tej Ram appeared as PW-15 and has testified that he along with SI Ramesh Singh (PW-3) and Constable Pratham (PW-15) had gone to the AIIMS Hospital where they met Mangi (PW-4), the aunt of Dinesh. SI Ramesh Singh made inquiries from PW-4, recorded her statement and made endorsement on the said statement and gave it to him for getting the FIR registered at police station Sangam Vihar. As directed by the investigating officer, he came back at the spot along with rukka and copy of the FIR.

13. Ex.PW3/A clearly records that rukka was sent to the police station at 12.20 a.m. on 26th June, 2007 for registration of FIR and the statement (Ex.PW4/A) of Mangi (PW-4) was recorded in the AIIMS Hospital. Thereupon, FIR No.615/2007 (Ex PW-2/A) dated 26th June, 2007 was recorded at 12.45 a.m. under Sections 307/34 IPC at police station Sangam Vihar vide DD No.36A.

14. Afore noted testimonies of the police officers clearly show that the statement (Ex.PW4/A) of PW-4 Mange was recorded in the AIIMS Hospital. This is corroborated from the official records in form of FIR and DD entry and the time mentioned/recorded therein. With respect to the dispute in time and place of recording statement Ex PW-4/A, it is noticeable that statement of PW-4 was recorded in the court on 11th

November, 2008 nearly one and a half years after the occurrence. Further, PW-4 had remained with the police for sometime in the hospital and may be thereafter. It is noteworthy that PW-4 is an illiterate lady and had put her thumb impression on the statement recorded in the court. PW-4 has affirmed that she had gone to the hospital. It is quite possible that PW-4 may not fully remember the intricacies as to where and at what time her statement was recorded by the police officials. What is important and relevant is that in Ex.PW4/A, PW-4 had undoubtedly mentioned and named the four appellants as the perpetrators of the crime/offence. Thus, if for the sake of argument we accept and believe that the statement of PW-4 was recorded at police post Prahaladpur and not in the hospital, it would not dent or destroy the contents of her statement. The incorrect mentioning of the place where the statement was recorded will not nullify the contents of the statement ExPW-4/A.

15. In this background, the Counsel for the appellants contends that the PW-4 Mangi was never present at the hospital as her name does not find mention in the MLC of Dinesh, Ex PW-17/A. PW-4's visit and presence in the hospital cannot be doubted. Dinesh was taken to the hospital in PCR Van and therefore, name of the police officer Ct. Suraj Bhan is mentioned in

MLC of Dinesh(Ex PW 17/A) but this does not show and establish that PW-4 did not reach the hospital.

16. Shushila, the other eye witness appeared as PW-9, is the wife of the deceased Dinesh. She deposed that she used to reside with her husband deceased Dinesh at B-34, Lal Kuan, Badarpur, New Delhi. Mangi (PW-4) also used to reside in the same locality and her house was situated in front of their house. She has deposed that Manoj (PW-10), her husband's brother had married sister of the appellant Pawan and this was objected to by the girl's family. Marriage had taken place one year prior to the alleged occurrence. The girl's family had given threat to her kill her husband Dinesh as well as to Manoj (PW-10). She has deposed that Mangi (PW-4) had got Dinesh arrested in a criminal case so that appellants could not harm the deceased Dinesh who remained under detention. Dinesh was released from the jail on Saturday and remained in the house on Sunday. The occurrence, in which Dinesh was killed, had taken place on Monday. She has deposed that the appellant Ram kishan along with his brother-in-laws namely Vinod and Sunder were demanding money from her husband for settlement of the issue of marriage between Manoj (PW-10) and the appellant Pawan's sister against the wishes of the girl's family . On Monday, deceased Dinesh had given the demanded money to appellant Ram kishan at about 2.30 p.m. or 3.00 p.m. At that time Vinod,

Sunder and one Veer Singh were also present. Thereafter, they all sat together and kept on eating and drinking. PW-9 cooked food for them and they continued sitting there till the evening. Appellant Ram kishan left the house and came back with the other appellants. Appellant Ram kishan, Vinod and Sunder with use of force took her husband Dinesh out of the house in the street where appellants Pawan, Kartar and Rajesh were already present. The later three were armed with weapons like sword, knife and chhuri. Appellant Ram Kishan had hit Dinesh with a stone on the back side of his head. The four appellants assaulted Dinesh and caused serious injuries by the weapons which they were carrying. When she saw her husband being assaulted, she raised hue and cry. She had also received injury on her left hand palm. The appellants were assaulting Dinesh badly and when she tried to save her husband, the appellants pushed her aside. She has deposed that the appellant Pawan was first to assault and was holding a button actuated knife and whereas Rajesh and Ram kishan were holding sword and Chhuri, respectively. She deposed that in the meanwhile Mangi (PW-4) also arrived at the spot and made a telephone call to the police. PW-9 became unconscious on seeing the occurrence.

17. Reliance placed by the learned counsel for the appellants on the statement (Ex.PW9/A) of Shushila recorded under Section 161 Cr.P.C. for contending that PW-4 Mange was not present at the scene of crime

when the alleged incident took place does not help them. In the said statement, Shushila (PW-9) has referred to the occurrence and in the end she had stated that her relative Mangi (PW-4), who was residing in front of her house, came running and her husband was lying there in a pool of blood. She has also deposed that while her husband was being beaten, PW-9 had shouted. It may be relevant to state that PW-9 in her cross-examination was not specifically confronted with the said portion of Ex.PW9/A, which is being highlighted and shown to us. PW-9 was confronted with certain other portions of her statement. It is an accepted and admitted position that the house of Mangi (PW-4) was in front of the house of deceased Dinesh. The occurrence, in which the four appellants had participated, had resulted in hue and cry being raised. Presence of Shushila (PW-9) at the spot being the wife of Dinesh is natural and usual. On hearing commotion and noises, it was also natural and normal for PW-4 to rush to the spot to ascertain as what has happened. Sushila (PW-9), who was already present at the spot, could not tell when and at what time exactly Mangi (PW-4) had reached the spot. Sushila (PW-9) has even stated that on seeing the occurrence she became unconscious. We do not think that in these circumstances, the statement of Mangi (PW-4) should not be disbelieved and disregarded on the ground that she was not an eye

witness to the actual occurrence and had wrongly identified the four appellants as perpetrators of the crime.

18. PW-9's statement that Mangi PW-4 had made a complaint against deceased Dinesh and got him arrested for a period of months to protect Dinesh has to be taken with a pinch of salt. The deceased Dinesh was apparently involved in other criminal cases and had been detained several times in the past. Mangi (PW-4) it appears had also made a complaint leading to the arrest and detention of the deceased Dinesh for a considerable period but now PW-4 has deposed before court implicating and attributing the injuries suffered by the deceased on the Appellants. PW-9 Shushila in her testimony, therefore, had tried to justify the detention of Dinesh on the complaint filed by Mangi PW-4. However, mere lodging of the complaint by Mangi PW-4 against the deceased Dinesh cannot be a ground to disbelieve and disregard statement of Mangi (PW-4). PW-9 is the wife of the deceased who has clearly implicated and stated that the appellants herein were the author of the crime and had committed the said offence. She has also stated and mentioned the motive and reason behind the commission of the said crime. As per PW-9, Manoj PW-10, brother of deceased Dinesh had got married to the sister of appellant-Pawan and this was being objected to and was not acceptable to the family of the girl. The contention of the appellant that Sushila (PW-9) wanted to and has

falsely implicated the appellants instead of Mangi (PW-4) has to be rejected. Shushila (PW-9) is the wife of the deceased and she had no reason or cause to falsely implicate the appellants and protect/shield Mangi (PW-4). Here it is pertinent to note that the appellant Ram kishan and Sushila (PW-9) are related. Sushila and wife of appellant Ram kishan are first cousins. This is clear from the cross-examination of Mangi (PW-4) wherein it was suggested and she had accepted as correct that the deceased Dinesh and the appellant Ram kishan were married in the same village i.e. village Tigot, Palwal, Haryana and their wives are sisters (cousins). Appellants Pawan, Rajesh and Kartar are also residents of the same village and they are related to each other. Appellant Pawan, in other words, is the nephew of Sushila (PW-9). Except for the marriage of Manoj (PW-10) with the sister of appellant Pawan there appears to be no other dispute between the appellants and PW-9 Shushila. No such suggestion with regard to existence of any other dispute has been given to Shushila (PW-9) and Mangi (PW-4) in their cross-examination.

19. In order to establish motive the prosecution produced Manoj, who appeared as PW-10. PW-10 has deposed that he had married to Veermati, the sister of the appellant Pawan. He has stated that family members of Pawan were not agreeable and did not accept the said marriage. He has further deposed that marriage had taken place 10-11

months prior to the occurrence. Family members of appellant Pawan were threatening him through their relatives. Manoj (PW-10) was cross-examined, but in his cross-examination also, no suggestion has been given to him to show or suggest that there was some other dispute between deceased Dinesh, Sushila (PW-9) and the family member of appellant Pawan or the appellants.

20. The contention raised by the appellants that Shushila (PW-9) was not medically examined in spite of the injuries suffered by her in left palm is without merit. PW-9 has stated that she became unconscious on seeing the ghastly act. PW-9 has not claimed that she had gone to the hospital and it is PW-4 who states that she had immediately gone to the hospital after the occurrence. Although PW-9 testified that she had received injuries on her palm but these do not appear to have been serious in nature. In fact, the assailants appellants were related PW-9 and there was good reason not to cause serious injuries to PW-9 Shushila.

21. The Counsels for the Appellants have also contended that Constable Suraj Bhan was not examined by the prosecution. No doubt, Constable Suraj Bhan, who had taken Dinesh to the hospital, has not been examined, but this does not mean that we should ignore testimony of the eye witnesses PW-4 Mangi and PW-9 Sushila who as discussed above are worthy of credence. Constable Suraj Bhan was not an eye

witness to the actual occurrence. Further, the fact that name of Mangi (PW-4) is not mentioned in the MLC of Dinesh Ex PW-17/A does not prove that Mangi was not present at the spot. Her presence at the spot was natural and normal as she was residing just in front of the house of deceased Dinesh both of which were in very close proximity to the place of occurrence. The distance between the house of Mangi (PW-4) and the place of occurrence is hardly 60 meters. As noticed above, Dinesh's house was situated at a distance of about 21 meters from the house of Mangi (PW-4). Further, the presence of Sushila (PW-9), wife of Dinesh in her house is natural and should be accepted as the occurrence in question had taken place at about 9 p.m. in the early night of 25th June, 2007.

22. Now we shall deal with contention regarding the difference in two site plans. We have examined the two site plans Ex.PW 20/A and Ex.PW5/A. Ex.PW20/A is an unscaled and rough site plan, which was prepared by the Investigating Officer SI Nirbhaya Kumar (PW-20). The said site plan indicates the location of the house of Mangi (PW-4), the location of the place where the deceased Dinesh was stabbed and attacked as also the place from where he was dragged outside in the street. The scaled site plan Ex.PW5/A is more detailed/elaborate and shows that there was a park between the residence of Mangi (PW-4) and the deceased Dinesh. The total length of the park has been shown

as 2155 cms or about 21 meters. Thereafter, there is a small street and then there is the house of the deceased Dinesh. We do not think that the distance between the two houses is long enough or such that it was not possible for PW-4 Mangi to come and see the occurrence when hue and cries were raised. The place where the actual stabbing had taken place is also near the residence of deceased Dinesh. It was possible for PW-4 to come out from her residence and then have a clear look at the occurrence, in which the deceased Dinesh was stabbed and hit by stones by the four appellants. We do not think that the two site plans as such show and negate the prosecution version or create doubts that Mangi (PW-4) and Sushila (PW-9) were not the eye witnesses to the said occurrence.

23. The contention of the appellants that Mangi (PW-4) and Sushila (PW-9) could not have been properly identified the assailants as there was no electricity in the said area, cannot be a ground to disbelieve the statement and identification of the appellants by the said witnesses. It is clear from the statement of PW-4 Mangi and PW-9 Sushila that they knew the assailants from before. The name of the assailants is clearly mentioned in the statement (Ex.PW4/A) of PW-4, which was recorded nearly after three hours of the occurrence. The four appellants were arrested immediately thereafter. It is also contended that other public witnesses from the locality have not deposed about alleged incident. In

this regard it is sufficient to state that it not the quantity but quality of evidence which is required to be produced by the prosecution. A sole eye witness who is worthy of credence is sufficient for convicting an accused guilty of a crime.

24. The next contention on behalf of the appellants that Mangi (PW-4) could also be the executor of the crime is palpably incorrect and merits rejection. It is difficult to visualize and accept that Mangi (PW-4), a woman had inflicted grievous injuries as projected by the post mortem report Ex. PW-12/A on the deceased and thereafter had the courage and did a daring act to go to the hospital to ascertain and inquire about the well being of Dinesh. It is implausible that PW-4 Mange after assaulting the deceased in such a brutal manner would have run the risk of staying around the deceased and actually pay him a visit at the hospital or make the complaint Ex.PW4/A.

25. The contention that no crime team was called to the spot also does not help the appellants in as much as the lapses in conducting the investigation must shake the core prosecution case. We also note that initially the FIR in question was under Section 307 IPC and only after death of Dinesh Section 302 IPC was invoked. The testimony of eye witnesses PW-4 Mangi and PW-9 Shushila is not dented either by non-summoning of a crime team or non presence of a crime team report.

Both the eye witnesses have stated in clear terms that the appellants were the perpetrators of the crime.

26. As regards disclosure statements not having been placed on record during the investigation, it is noted that disclosure statement Ex PW-11/E of the appellant Pawan is on record but disclosure statements of other appellants namely Ram kishan, Rajesh and Kartar were not traceable in trial court even when the evidence was being recorded. The result is that the prosecution cannot rely upon the said disclosures. We do not think any advantage because of this factual position can accrue to the appellants. It has not come on record whether any recovery of a physical object was made pursuant to the purported disclosures statements. On the basis of the disclosure statement (Ex. PW-11/E) of appellant Pawan, a pant was recovered from a bucket in Boutique International but as per the FSL report no blood stains were found. Recovery of pant is, therefore, not an incriminating fact. Except for the broken knife Ex P-1 and stones Ex P-2 which were seized from the spot no other weapons like swords, churri were found. From the nature of injuries found on the body of the deceased, it is clear that a sharp edged weapon was used. It is pertinent to note that opinion of the Dr. Sukhdeep Singh on the weapon of offence (Ex PW-12/B) clearly records that injuries nos. 1-8, 10-12,16, 18, 20-25 could have been caused by knife with a broken handle Ex P-1. The ocular testimonies

of PW-4 Mangi and PW-9 Shushila on the alleged incident are clear and categorical. Failure of the police to recover any other weapon does not fatally destroy or dent the prosecution case.

27. On the issue of arrest of the appellants, we have examined the arrest memos Ex.PW11/C1 to Ex.PW11/C4. It is the submission of the counsel for the appellants that the appellants were arrested between 5.00 p.m. to 5.25 p.m. on 26th June, 2007. However, as per the prosecution version the appellants were arrested between 5.00 a.m. to 5.25 a.m. on 26th June, 2007. At the very outset, we may state that we have examined arrest memos Ex.PW11/C1 to Ex.PW11/C4 and it is not possible to say with clarity whether the time of arrest on the arrest memos has been written in a.m. or p.m. The trial court record, however, shows that the four appellants were produced before the Metropolitan Magistrate on 26th June, 2007 and were remanded to judicial custody on the same day. Therefore, it cannot be doubted that the appellants were produced before the court of concerned Metropolitan Magistrate and not before a duty Magistrate. Production before the concerned Metropolitan Magistrate has to be before 4.30 p.m. on 26th June, 2007. Moreover, the Investigating Officer SI Nirbhay Kumar (PW-20) has deposed that he had arrested the appellants near Badarpur Border between 12 midnight and 1 a.m. in the night. This statement was made by PW-20 in the cross-

examination by the advocate for the appellant Ram kishan. However, PW-20 was not cross-examined or questioned specifically with regard to the arrest memos Ex.PW11/C1 to Ex.PW11/C4 and it was not put to him that the appellants were arrested on 26th June, 2007 between 5.00 p.m. to 5.25 p.m. and not at night or in the morning. The factum of arrest of the four appellants in the intervening night between 25th and 26th June, 2007 is also deposed to by Constable Pratham Singh (PW-11) and Constable Tej Ram (PW-15). Both of them were also not confronted or questioned on the arrest memos Ex.PW11/C1 to Ex.PW11/C4 and it was not suggested that the appellants were arrested in the evening of 26th June, 2007 between 5.00 p.m. to 5.25 p.m. and not in the night intervening between 25th and 26th June, 2007, as stated by them. It may be relevant to state here that that the four appellants in their statements under Section 313 Cr.P.C. have stated that they were arrested in the morning of 26th June, 2007. They have not stated that they were arrested in the evening of 26th June, 2007. It is, thus, clear that the appellants were arrested soon after the occurrence and in fact within few hours, after the FIR was registered at about 1 a.m. on 26th June, 2007. As noticed above, the names of the appellants were clearly and specifically mentioned in the present FIR, Ex PW-2/A.

28. Appellant Ram kishan produced DW-1 Anang Pal, DW-2 Anil and DW-3 Vijay Bakshi in his defence to canvass the point that he was

arrested by the police not from Badarpur but from his place of work. Similarly appellants Pawan and Rajesh examined DW-4 Vijender to show that they were lifted by the police officials from Boutique International. The three witnesses DW-1, DW-2 and DW-3 have accepted that inspite of arrest of appellant Ram Kishan, they did not make any statement/write to the police officials or appropriate authority that Ram Kishan was with them at the purported time when the occurrence had taken place. DW-2 accepted that he had deposed at the instance of the family members of appellant Ram Kishan. DW2 also accepted that there was strained relationship between the deceased Dinesh and the appellant Ram Kishan on a girl. DW3 has similarly deposed that he had come to the court at the instance of the family members of the appellant Ram Kishan and there was dispute between deceased Dinesh and the appellant Ram Kishan on a girl. DW4's statement is not reliable. DW-4 has accepted that the police officer did not make any inquiry in his presence. He could not even till the date when he had started working in the Boutique Company. He did not make any complaint to appropriate authority or court regarding innocence or the arrest of the appellants Pawan and Rajesh. He had come to depose at the instance of the family members of the said appellants. DW5 Rohtas has deposed that the appellant Kartar's brother was sick and they i.e. appellant and DW-5 had taken him to a

Doctor at 6 p.m. and came back at 7 p.m. Thereafter, he went to the appellant's house and looked after his ailing brother till 1.30 AM. In between 1 AM to 1.30 AM police officers came and forcibly took appellant Kartar with them. In the cross-examination, he accepted that he was called by the appellant Kartar from his village to depose in his favour and that he had not made any complaint to Senior Officers, authority or the court. We have no doubt that the statement of DW1 to DW5 are unreliable and not worthy of credence. Their testimonies do not inspire confidence.

29. In view of the aforesaid position, we do not find any merit in the present appeals. Conviction and sentence of the appellants are upheld and maintained. The appeals are dismissed.

(SANJIV KHANNA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

APRIL 02, 2013
NA/VKR