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

+ **CRL.APPEAL NO.1100/2010**

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Judgment reserved on 5th July , 2013
Judgment delivered on 30th August, 2013

RAHUL KUMAR RAMAN BHAI CHOUDHARY Appellant

Through : Mr.Vijay Kumar and Mr.Rajiv Kumar,
Advs.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Richa Kapoor, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE G.P.MITTAL

G.S.SISTANI, J

1. Challenge in this appeal, filed under Section 374(2) of the Criminal Procedure Code, is to the judgment dated 27.3.2009 and the order on sentence dated 27.3.2009 whereby the appellant has been sentenced to imprisonment for life and fine of Rs.20,000/- has been imposed for the offence punishable under Section 302 IPC; rigorous imprisonment for three years for the offence punishable under Section 25 of the Arms Act 1959. The appellant has further been sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act, 1959, and in default of payment of fine simple imprisonment for a period of two months.
2. The case of the prosecution, as noticed by the trial court, is that on 30.10.2007 at about 5.30 p.m., ASI Mahender Singh of Police Station

Karol Bagh, Delhi, was patrolling on Padam Singh Road and when he reached near UTI Bank he saw two boys running out from Vaibhav Jewellers. They were being followed by Abhay Sharma, owner of Vaibhav Jewellers, whom ASI Mahender Singh knew being the Division Officer of the area, and Abhay Sharma was running and shouting “*pakro pakro chaku maar kar bhag rahe hai*”. The said incident was seen by the public persons including one Rajesh and Montu, a parking attendant. ASI Mahender Singh ran towards the boys and overpowered one of them with the help of public persons whereas the other boy escaped from the spot. The boy, who was caught, was carrying a knife in his right hand and the same was taken from him. The said boy disclosed his name as Rakesh. Abhay Sharma fell near Vijaya Bank and he was rushed to hospital by a public person, namely, Rajesh. The boy, who was caught by ASI Mahender Singh, was given beatings by the public. In the meanwhile information was recorded in Police Station Karol Bagh vide DD No.28A at about 6.15 p.m. as per which HC Om Prakash of PCR gave a message regarding stabbing of a man with knife on Padam Singh Road, Karol Bagh. After the said information was recorded SI Satyabir Singh was informed for necessary action. Inspr. H.S. Chauhan was also sent to the spot. Inspr.H.S. Chauhan, SI Satyabir Singh and Ct.Rajbir Singh reached the spot and they learnt that the injured had been rushed to Jassa Ram Hospital. SI Satyabir Singh was left at the spot while Inspr. H.S. Chauhan along with Ct. Rajbir Singh reached Jassa Ram Hospital and obtained the MLC of injured Abhay Kumar Sharma, who was declared clinically dead. Thereafter Inspr. H.S. Chauhan returned to the spot where ASI Mahender Singh handed over the appellant along with blood stained knife to him. Pursuant to the statement made by ASI Mahender Singh a case under Section 302/34 IPC was registered, post-mortem of Abhay Kumar Sharma

was conducted and dead body was handed over to his relatives. On the basis of the information given by the appellant, one, Droniel, whom the appellant named, was arrested from Panchkulla, who on seeing the appellant informed that his actual name is Rahul Kumar Raman Bhai Choudhary and he is a resident of Gandhi Nagar, Gujarat. The appellant made a second disclosure during Police custody stating that no other person except him was involved in the murder of Abhay Sharma, owner of Vaibhav Jewellers. A chargesheet was filed before the trial court. On 23.4.2008 a charge under Section 302 IPC along with Sections 25 and 27 of the Arms Act was framed against the appellant.

3. Learned counsel for the appellant submits that the case of the prosecution is based on circumstantial evidence. The prosecution has wrongly relied upon eight circumstances against the appellant, which have been noticed by the learned trial Court in the impugned judgment. It is contended that the eight circumstances do not complete the chain of events to prove the hypothesis of guilt of the appellant. Counsel further submits that the learned trial Court has committed manifest error of law, which has resulted in miscarriage of justice. Counsel contends that the circumstances against the appellant have not been proved; the FIR was concocted; the investigation was tainted; three material witnesses, namely, ASI Mahender Singh (PW-15), Rajesh (PW-3) and Manmeet @ Montu (PW-5), who were the foundation of chain of circumstantial evidence, were unreliable and their evidence did not corroborate each other. Counsel further contends that the inquest report of the dead body does not bear the FIR Number and is, thus, rendered extremely suspicious and leads to the conclusion that the FIR is antedated and tailor made and registered after the preparation of the inquest report.
4. In support of his submissions, reliance is placed by learned counsel for the

appellant in the case of *Ramesh Baburao Devaskar and Others v. State of Maharashtra*, reported at (2007) 13 SCC 501, more particularly para 18, wherein it has been held by the Supreme Court that a First Information Report cannot be lodged in a murder case after the inquest has been made. Para 18 reads as under:

“18. A First Information Report cannot be lodged in a murder case after the inquest has been held. The First Information Report has been lodged on the basis of the statements made by PW-11 to the informant himself at the spot. If the said prosecution witness who claimed himself to be the eye-witness was the person who could lodge a First Information Report, there was absolutely no reason as to why he himself did not become the first informant. The First Information Report was recorded on the basis of his information given to the first informant at the spot. All information given by him to PW-13 was made before the Investigating Officer himself. What prevented him from lodging the First Information Report is beyond our comprehension. PW-11, we may place on record, categorically stated that he had disclosed the details of information to all concerned. Therefore, it is expected that the first informant was informed thereof. We have noticed hereinbefore that the information given by PW-13 had at least been recorded by the police in the Crime Register and he categorically stated a few facts, viz., the main accused Accused No. 9 committed murder of his brother Shivaji Patil and one Baburao Patil. Even the place where the murder took place was known to him. If we are to believe the investigating officer, he recorded the statement after holding inquest. The detailed report in regard to the nature of injuries as also the place where the injuries were inflicted was known to him as inquest report had already been prepared. Such an attempt on the part of the investigating officer has been deprecated by this Court in a large number of decisions. All other witnesses including the Panch witnesses must have been present there. If despite the same, according to Panch Witnesses, at least in respect of Baburao, unknown persons are said to be his assailants, it is evident that PW-11 did not disclose the names of the assailants; at least all of them before PW-9 as also the Investigating Officer.”

5. With regard to circumstance no.3 pertaining to apprehending the appellant

by complainant PW-15, Mahender Singh, with the help of PW-3, Rajesh, and PW-5, Manmeet Singh, it is submitted that the same has not been proved for the reason that in the examination-in-chief PW-3, Rajesh, and PW-5, Manmeet Singh, clearly testify that they witnessed the appellant being apprehended from a distance and they were not along with PW-15, Mahender Singh. Counsel, thus, submits that the manner in which the appellant was apprehended has not been established by the prosecution by the evidence of PW-3 and PW-5 and, thus, circumstance no.3 cannot be relied upon. With regard to circumstance no.4, which is recovery of blood stained knife, counsel for the appellant submits that the same cannot be relied upon for the reason that not a single independent public witness was involved at the time of recovery. It is further contended that although the knife was seized immediately after the appellant was apprehended on 30.10.2007 at 5.30 p.m. yet the same was sent for forensic examination after 24 days. In these circumstances, it would be extremely risky and hazardous to place any reliance on the recovery of the knife and, thus, circumstance no.4 cannot be relied upon. Counsel next submits that circumstance no.5, being the statement made by the deceased to PW-3, Rajesh, on the way to the hospital that “the boy who was running and apprehended by Police stabbed him by knife” is hearsay evidence and cannot be relied upon. Learned counsel for the appellant contends that circumstance no.6, relied upon by the prosecution, has not been established, as the said circumstance pertains to a disclosure statement made by the accused, which turned out to be false.

6. With respect to circumstance no.7, learned counsel for the appellant submits that chance print relied upon by the prosecution, only one out of the six chance prints matched with the appellant and there was a delay of 69 days in sending the same for forensic examination. Thus, it would be

unsafe to place reliance on the forensic report with regard to the chance print.

7. With regard to circumstance no.8 learned counsel for the appellant submits that the same only proves that the blood stained earth, blood on knife and blood on the clothes of the deceased matched and that by itself cannot be a circumstance leading to the inference that the deceased was stabbed by the appellant.
8. It is contended by learned counsel for the appellant that the prosecution has failed to examine the owner/driver of the car in which PW-3, Rajesh, took the deceased to the hospital. It is also contended that the consistent case of the prosecution that two boys were running whereas the appellant was apprehended while the other boy succeeded in escaping has not been proved and is a fatal lacuna in the chain of circumstances relied upon by the prosecution. It is next contended that there is contradiction in the evidence of PW-3, Rajesh; PW-5, Manmeet Singh; and PW-15, Mahender Singh.
9. Elaborating his arguments further Mr.Kumar, learned counsel for the appellant, submits that there are material contradictions in the evidence of PW-3, PW-5 and PW-15. The version of ASI Mahender Singh, complainant, that he apprehended the appellant with the help of PW-3, Rajesh, and PW-5, Manmeet Singh, is belied as in the examination-in-chief both these witnesses deposed that they saw the appellant being apprehended by PW-15 from a distance. Another contradiction, which have been pointed out by counsel for the appellant is that PW-3, Rajesh, had made a categorical admission in his cross-examination that he did not see any weapon in the hands of the appellant whereas PW-15, complainant's version is that the appellant was running with a knife in his right hand which has not been corroborated by the evidence of PW-3,

Rajesh. Mr.Kumar has also contended that as per the evidence of PW-1 the patient was dead when brought to the hospital. Counsel, thus, contends that the deceased was not in a position to talk and, thus, he could not have made a statement to PW-3, Rajesh, that he was stabbed by the boy, who was running and apprehended by the Police nor he could shout while running behind the appellant.

10. Learned counsel for the appellant has relied upon *Dandu Jaggaraju v. State of Andhra Pradesh*, reported at (2011) 14 SCC 674 more particularly para 9 in support of his plea that in a case relating to circumstantial evidence motive is a strong circumstance which has to be proved by the prosecution whereas in this case the prosecution has failed to prove the motive. Para 9 reads as under:

“9. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story.”

11. Per contra, Ms.Richa Kapoor, learned counsel for the State, submits that the prosecution has been able to establish its case beyond any shadow of doubt. Counsel further submits that it is wrong to suggest that the FIR is antedated, tailor made and registered after preparation of the inquest report since the inquest report does not bear the FIR number. Counsel further submits that in this case there has been timely investigation and

the FIR has been registered promptly. Counsel also submits that the Investigation Officer has explained the entire procedure and there is no delay in lodging of the FIR. Ms.Kapoor further submits that the knife, weapon of offence, was seized immediately after the appellant was apprehended and blood was found on the knife, which matched with the blood group of the deceased. Counsel also submits that the delay, if any, for sending the knife for forensic investigation is not material and would have no bearing to the facts of this case as there is clinching evidence to involve the appellant for the crime committed by him on the basis of the statement of PW-15, Mahender Singh, who caught the appellant red handed with knife in his hand.

12. It is further submitted by Ms.Kapoor that the deceased had made a statement to PW-3, Rajesh, on way to the hospital that “the boy who had been caught had given him a knife blow on his neck”, which is also corroborated by the evidence of Mahender Singh, PW-15. It is next submitted by the counsel that the contradictions sought to be pointed out with regard to the appellant being apprehended on the basis of statement made by PW-15, Mahender Singh, is of no relevance as it is duly proved on record that the appellant was apprehended by PW-15, Mahender Singh, and other members of the public also gave beatings to the appellant. Presence of PW-3 and PW-5 has also been established as in fact PW-3, Rajesh, had taken the deceased to the hospital, which proves his presence at the spot. Counsel further contends that out of six chance prints relied upon by the prosecution one print matches with the appellant and the delay, if any, in sending the same for forensic examination would have no bearing in the matter. Counsel next submits that it was not necessary for the prosecution to examine the owner of the car in which PW-3, Rajesh, was taken to the hospital as the owner/driver of the car would not be a

material witness and the car, which was passing through the area, was stopped by Rajesh, PW-3, and the deceased was taken to the hospital in the said car.

13. Ms.Kapoor further submits that it is not necessary that motive becomes decisive in every case. In support of her submission, reliance is placed by Ms.Kapoor in the case of *Uday Kumar v. State of Karnataka*, reported at AIR 1998 Supreme Court 3317 more particularly para 16 which reads as under:

“16. It was then contended on behalf of the appellant that Suresh being the son of his sister (appellant's) and the relations between them being cordial and affectionate, there was no reason for the appellant to commit the present crime. We are not impressed by this submission because of our aforesaid conclusions about the guilt of the appellant. It might be, as stated earlier, the appellant appears to be very much obsessed with the superstitious beliefs and it is because of that he did this crime. However, this observation is not germane to the finding of guilt against the appellant. There is no suggestion to any of these witnesses that any outsider had entered the premises and then committed the crime. In the absence of such material on record, we do not accept this contention. It is true that in a case of circumstantial evidence, motive is one of the circumstance which assumes importance but it cannot be said that in the absence thereof other proved circumstances although complete the chain would be of no consequence. It was then contended on behalf of the appellant that he (appellant) was coaching badminton (shuttle) to number of young boys and girls. He was also distributing toffees, sweets etc. to the boys and girls. He was known for his affectionate and loveable conduct. If this was the image of the appellant, it was urged that it would be unbelievable that he would commit the crime in question. Assuming that the appellant possessed these good qualities but that would not make the prosecution evidence unbelievable which is otherwise found unimpeachable.”

14. Reliance is also placed by Ms.Kapoor in the case of *Lekhraj alias Harisingh v. State of Gujarat*, reported at AIR 1998 Supreme Court 242,

more particularly Para 5, which reads as under:

“Learned counsel for the appellant has challenged the view taken by the High Court firstly on the ground that the prosecution has failed to establish any motive for the accused to commit the murder. In support of his submission, the learned counsel relied upon the decision of this Court in *Surinder Pal Jain v. Delhi Administration* (1993) 2 JT (SC) 206: (1993 AIR SCW 1561), wherein it has been held that “in a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case.” This Court has further observed that “The absence of motive, however, puts the Courts on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof”. This Court has not held that in the absence of any motive an accused cannot be convicted under S. 302, I.P.C. Therefore, the contention raised by the learned counsel deserves to be rejected.”

15. We have heard learned counsel for the parties, carefully examined the evidence and considered the rival submissions made by the counsel for the parties. The prosecution in all examined 17 witnesses. In order to appreciate the submission of learned counsel for the appellant, it would be useful to refer to the evidence of some of the material witnesses, as noticed by the trial Court:

“**PW3 Rajesh** deposed that on 31st day of a month in the year 2007 near Diwali festival he was present outside his shop no.6/84, WEA, Karol Bagh, Delhi and saw some persons running towards the market on the Ajmal Khan Road; some police man were also running towards that side; Abhay Sharma (deceased) was also running towards that side and Abhay Sharma was holding his neck with a handkerchief and was shouting "Pakro Pakro Mar dia mar dia"; Abhay Sharma fell down at a place little ahead of Vijaya Bank. He further deposed that he noticed that police had caught hold of a person; he went to the place where the deceased was lying down; he picked up and removed the injured to Jassa Ram hospital in a car. He further deposed that "**while travelling, he (deceased)**

had told me that the boy who had been caught had given him a knife blow on his neck. At the hospital, the doctor had declared Abhay Sharma brought dead". He further deposed that Abhay Sharma (deceased) was owner of M/S. Vaibhav Jeweler on Padam Singh Road on Jamna house and the incident took place at about 5.30 P.M. In a leading question put to him by Ld APP he had stated that police had recorded his statement and incident had taken place on 30/10/2007.

In his cross-examination by Ld defence counsel this witness deposed that *the person who had been apprehended by the police was at a distance of about 20 yards from the deceased; the accused present in the court was the same person who had been apprehended by the public; infact he had seen the accused when he had passed him while running away; the accused jumped over two motorcycle which were parked there; there was only one police personnel who was chasing the accused; the police personal was deputed in their beat and was known to him by face and not by name; the car in which he had removed the deceased was passing by that side. He did not know the residential address of the deceased.* In his cross-examination he further deposed that *it had taken about 10 minutes in reaching the hospital which was less than 1 km from the place where the deceased had fallen down; he had rang up the police at number 100 before taking the injured to the hospital; he might have rang up the police at about 5.30 P.M; both the boys had run towards the same direction, but he had concentrated the accused only because the accused had jumped over one motorcycle and the other in order to escape; thereafter he had gone to help Abhay Sharma whom he had seen falling down on the ground. He did not see any weapon in the hands of the boys; police had met him in the hospital and from there they had come to the spot where his statement was recorded on 30/10/2007 at about 8.00 P.M; blood had spread over the place where Abhay Sharma had fallen.*

PW5 Manmeet Singh @ Montu has deposed that on 30/10/2007, he was working as a Parking Attendant at Padam Singh Road, Karol Bagh, Delhi; on that day at about 5:30 P.M, he Saw the accused present in the court, running away having a knife in his hand; the accused had come out of the shop M/s Vaibhav Jewellers located at Padam Singh Road and was being chased by the injured

who was shouting "Pakro, Pakro, Chaku Maar Ke Bhaga Hai". He further deposed that one ASI was also chasing the accused and the accused was apprehended at some distances by the said ASI and public and at that time also he was carrying a knife in his hand. In his cross examination by Ld. Defence Counsel, the witness stated that *he had stated whatever was seen by him and he was at a distance of about 25 yards when he had first seen, the accused who was running towards his side. He further deposed that his statement was recorded on the same day after about half hour and he had first seen the accused when the accused had come in front of the hotel where he was standing. He further deposed in his cross examination that accused was carrying the knife in his right hand but he did not notice whether the knife was stained with blood.*

PWI5 ASI Mahender Singh has deposed that on 30/10/2007, he was posted at Police Station Karol Bagh and at about 5:30 P.M when he was present opposite UTI Bank on the Padam Singh Road, he saw two boys running away who had come out of M/s Vaibhav Jewellers; those boys were being followed by Ahhay Sharma, the owner of M/s Vaibhav Jewellers who was crying "Pakro Pakro, chaku Maar Ke Bhag Rahe Hain". He further deposed that he had apprehended the accused with the help of one Montu, a parking attendant and another person namely Rajesh; the accused who disclosed his name as Rakesh was having a blood stained knife in his right hand; he took away the said knife from the possession of the accused and Abhay Sharma, owner of M/s Vaibhav Jewellers had fallen down in front of M/s Vijaya Bank; Abhay Sharma was removed to hospital by aforesaid Rajesh; in the meanwhile SI Satbir alongwith Inspector H.S. Chauhan and Ct. Rajbir had reached the spot; he had handed over the blood stained knife recovered from the accused to inspector H.S. Chauhan who had taken the same into his possession vide memo Ex.PW14/X. He further deposed that the Inspector had prepared the sketch of the knife and had sealed it with the seal of SB and thereafter Inspector H.S. Chauhan had recorded his statement Ex.PWI5/A; the said statement was endorsed and Ct. Rajbir was sent to police station for registration of the case; Inspector H.S. Chauhan had prepared site plan Ex. PWI5/A at his instance and the crime team lifted earth control; blood stained earth from the spot vide memo Ex.PWI5/C; Inspector H.S. Chauhan had arrested the accused vide memo Ex.PWI5/D and conducted his personal search vide memo

Ex.PW15/E; the Investigating Officer had also recorded disclosure statement of the accused which is Ex.PW15/F. He further deposed that another named accomplice Droniel was brought to Police Station Karol Bagh from Panchkula and he had told the Investigating Officer the correct name of accused as Rahul Kumar Raman Bhai Chaudhary and the accused admitted that he had given false name to the police. This witness further deposed that Investigating Officer had taken into possession the clothes worn by accused which were stained with blood and had correctly identified the knife as Ex.P1, T-Shirt Ex.P2 and Black Pants Ex. P3 stating that the same were worn by the accused at the time of his apprehension.

In his cross examination by Ld defence Counsel, he has stated that he had seen two persons running away and one of them was the accused; on being apprehended the accused tried to confuse him by saying that there was another person with and he was not the real culprit; he was present in front of UTI Bank on Padam Singh Road from where M/s Vaibhav Jewellers might be at a distance of 100 yards; the accused was running towards Ajmal Khan Road. He further deposed that he had heard the cries of Abhay sharma; he had apprehended the accused while he was carrying the knife Ex.P1 in his right hand; he was on duty in the said division for the last one year and he knew the deceased by his name and the deceased was resident of Gurgaon; the knife was measured with the help of a scale at Padam Singh Road.

PW1 Dr. Mirajul Haque Siddique, CMO Jassa Ram hospital deposed that on 30/10/2007 at about 6.10 P.M when he was working as CMO in RB. Seth Jassa Ram and Brothers hospital Karol Bagh Delhi, Abhay Kumar Sharma, 49 years old male was brought to hospital by Rajesh with the alleged history of cut injury throat region with sharp instrument at around 5.30 P.M at his shop in Karol Bagh as reported by the attendants; the patient was unconscious, bleeding from the throat region, clothes soiled with blood; on local examination, neck anteriorly incised wound 20 X5 cm upto muscle deep SCM (Left) cut (right) carotid cuts bleeding (right chest) 5 x 3 cm profusely, left thigh medially NW 25X 5 cm curved; the patient could not revive despite efforts and was declared dead. He has proved the MLC Ex. PW1/A and given his

opinion about the nature of injuries as dangerous at point-B on the ML Ex.PW1/A.

In his cross-examination he has deposed that *the patient was clinically dead at the time he was brought to the hospital; he did not know how the, patient was brought to the hospital.*

PW4 Dr. Vijay Dhankar, Sr. Resident Maulana Azad Medical College has conducted the postmortem on the dead body of the deceased and deposed that he had conducted the postmortem on the dead body of Abhay Kumar Sharma as was requested by Inspector Har Mohan Chauhan, Police Station Karol Bagh; it was a case of alleged history of assault with knife *at a shop in Karol Bagh* at about 5.15 P.M on 30/10/2007. On examination he found following injuries on the body:

External Injuries:-

- (1) Cut throat injury 10 X 4 cms present over the left side of front of neck with neck structures exposed and clean cut margins.
- (2) Incised stab wound 5 X 2.5 cms with lung tissue protruding out present over the right side of front of chest 6 cms. From the midline and 3 cms from the right nipple. The margins were clean cut, upper angle was obtuse and lower angle acute.
- (3) Incised stab wound 2 X I X 4 cms present over upper part of left side of chest with clean cut margins and upper angle obtuse and lower angle acute.
- (4) A curved incised wound 13 X 2 cms X muscle deep present over medial aspect of left knee.

Track of wounds:-

- (1) Injury no. 2 starts from the skin cuts through the subcutaneous tissues, pectoral muscle, rib cage, enters the pleural cavity cuts the right lung and goes upto a 'depth of 7 cms. The direction was backwards, downwards and medially. Total depth of wound was 12 cms.

- (2) Injury no. 3 starts from the skin cuts through the subcutaneous tissues to a depth of 4 cms. In backwards, downwards and medial direction.

Internal injuries:-

- (1) Neck-- the neck structures were cut beneath injury no.1 including larynx Sternocleidomastoid and other neck muscles.
- (2) Chest-- gap in the chest wall From III intercostal space to IV intercostal space cutting the fourth rib beneath injury no.2. Chest cavity contained about 2000 ml of fluid and clotted blood on the right side.

The opinion, the death occurred due to haemorrhage and shock consequent upon stab injury to the chest via injury no. 2. All injuries were ante-mortem, fresh and would be caused by one side sharp edged weapon. Injury no. 1 and 2 were sufficient, to cause death in the ordinary course of nature, individual as well as combined, lie further deposed that the clothes of the deceased which included a white shirt, a white vest, black pant, black leather belt, blue underwear and pair of socks were sealed alongwith a blood sample of gauge were handed over to the 10 alongwith the inquest papers. The post mortem report is proved as Ex. PW4/A.

This witness has given his opinion regarding the weapon of offence when he was requested to do so by the IO on 22/11/2007. He has received a blood stained knife sealed with the seal of SB and after opening the seal sketch was prepared as Ex. PW4/13. After examining the weapon of offence in co-relation to the injuries mentioned in the postmortem report he had given the opinion that injury no. 1 to 4 were possible with the knife sent to him for examination. His opinion in that regard is Ex.PW4/C. He has also identified the knife Ex. P1 stating that it was the same which was produced before him for giving opinion.

In his cross-examination the doctor has deposed that *the larynx cut is usually fatal. There are various muscles in the neck and in this case the sternocleidomastoid alongwith other neck muscles like*

strap muscles of the neck were cut beneath injury no.1. The person died due to haemorrhage. A question was put by Ld defence counsel as under:-

"Question: The person shall become unconscious after receiving cut injury on the larynx as in this case?

Answer: The person will not become unconscious **by a partial cut on the larynx as in this case.** Same is my reply to the injury of the deceased in the present case.

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After receiving the injury of this nature, a patient can remain conscious for a period of some time. But exact period cannot be stated. It may vary from a few minutes to hours depending upon person to person. I cannot comment on the time of survival between injury caused to the person and death. A person will not always die immediately by a partial cut on the larynx as in this case. It is correct that such injury may cause suffocation and breathing problem. The vagal nerve branches are not always cut in a partial cut of larynx."

Question: Once larynx is cut, negative pressure shall be built, air shall suck into larynx due to building of negative pressure and a person shall feel difficulty in speaking and breathing?

Answer: Once the larynx is cut there is no negative pressure, however, due to loss of pressure in the trachea the person may have difficulty in speaking and breathing. However, a person can even shout/cry in a loud voice with the injuries as is in the case.

I cannot comment whether the cut on the larynx was below or above the vocal cord. however, even if there is a partial larynx cut below the vocal cord, the person can shout/cry in a loud voice."

In his further cross-examination he has denied the suggestion that on receiving a partial cut on the larynx a person can only whisper.

He clarified that if there is a large or complete cut on the larynx below the vocal cord, the person can only whisper and will not be able to shout/ cry. A person having injury no. 1 to 4 as in the present case, may survive for a variable period from few minutes to few hours and may be able to run and shout for a short distance. For how much time a person can survive after such injuries and what distance he can run depends upon person to person and is highly variable. He further deposed that *all the wounds were clean cut incised wounds and there were no ragged margins or bruising. On side of the knife Ex P1 is blunt. On seeing the clothes of the deceased the doctor has correctly identified the same stating that the clothes were sealed and handed over to the IO at the time of postmortem examination and the same find mention in his report. He had not given opinion regarding cuts on the clothes of the deceased.* During his cross-examination the shirt and pant Ex.P18 worn by the deceased were seen and it was observed that:-

"Court observation:- The shirt and pant of the deceased Ex.P8 are seen. The shirt is smeared totally with blood and is having cut marks on right side near the third button from the collar. The pant is also having cut on the left side between thigh to knee and is smeared with blood”."

16. As far as the submission made by learned counsel for the appellant that FIR is antedated and tailor made and the same was registered after the preparation of inquest report is concerned, the same is without any force on account of the fact that inquest report does not bear the FIR number. Merely because the inquest report does not contain the FIR number that by itself cannot lead to the conclusion that the FIR is antedated. We find that the prosecution has carried out timely investigation and the FIR has been registered promptly. PW-17, Insp.H.S. Chauhan, in his testimony has explained the entire procedure which would show that there was no delay in recording the FIR. PW-17 after reaching the spot had recorded the statement of ASI Mohinder Singh (Exhibit PW-15/A). He made his endorsement on the statement (Exhibit PW-17/A) and thereafter sent

Ct.Rajbir Singh with rukka to the Police Station for registration of the case. He also took possession of the knife and prepared the sketch. He has also explained that the blood lying on the spot was taken as a sample, the blood stained piece of floor, a piece of carpet and the earth controls were seized and they were converted into separate cloth parcels and sealed. The crime team had also reached the spot. PW-17 has also testified that Ct.Rajbir reached the spot after registration of the case and handed over a copy of FIR and rukka to him. Further in his testimony PW-17 has also deposed that he recorded the statement of the relatives of the deceased, the dead body was identified and thereafter he filled Form No.25.35 (1)(B) inquest papers (Exhibit PW-17/E). We find that there is nothing in the cross-examination, which would shake the testimony of this witness.

17. As per the prosecution following circumstances against the appellant do not leave any reasonable ground for the conclusion consistent with the innocence of the accused. Relevant portion reads as under:

“i) As per version of complaint and FIR, complainant ASI Mahender Singh (PW15) had seen accused running who had come out of shop Vaibhav jewellers at 5.30 P.M on the day of incident i.e. 30/10/2007.

ii) Accused was followed by deceased Abhay Kumar Sharma in injured condition and shouting “pakro pakro chaku maar ke bhag rahe hai”.

iii) Accused was apprehended by complainant with the help of one Rajesh and Manjeet Singh @ Montu (PW3 and PW5) while escaping after committing alleged offence.

iv) Recovery of blood stained knife from hand of accused by complainant and followed by recovery of blood stained clothes worn by accused.

v) Statement made by PW3 Rajesh that while removing deceased to hospital by car deceased told to PW3 Rajesh that the

boy who had been caught hold by police had stabbed the deceased.

vi) Disclosure statements made by accused and recorded by two different IOs on the day of 30/10/2007 after apprehension by police and on 1/11/2007 during police remand.

vii) Out of 6 chance prints taken by crime team just after incident had happened, one chance print is similar to specimen left hand palm print of accused.

(viii) Blood stained earth controls, blood stained earth picked up from spot, blood on knife and the blood group found on clothes worn by deceased.”

18. The law with regard to conviction on the basis of circumstantial evidence is well settled. Onus is on the prosecution to prove that the chain is complete and the facts so established should be consistent only with the hypothesis of the guilt of the accused.
19. The star witness in this case is PW-15, Mahender Singh, who has deposed that on 30.10.2007 he was posted at Police Station, Karol Bagh. At about 5.30 p.m., when he was present opposite UTI Bank on the Padam Singh Road, he saw two boys running away who had come out of M/s Vaibhav Jewellers and those boys were being followed by Abhay Sharma, the owner of M/s Vaibhav Jewellers, who was crying "Pakro Pakro, chaku Maar Ke Bhag Rahe Hain'. PW-15 apprehended the appellant with the help of one, Montu, parking attendant and another person, namely, Rajesh. The accused disclosed his name as Rakesh. He had a blood stained knife (P-1) in his right hand. Knife was taken from him. The victim was removed to the hospital by Rajesh. The appellant was caught at the spot. His blood stained clothes were taken into possession. PW-15 has also deposed that public had given beatings to the appellant.
20. We find that the defence has not been able to shake the evidence of this

witness in the cross-examination. His evidence was consistent that he apprehended the appellant with the knife in his right hand and the deceased was shouting “*pakro pakro chaku maar kar bhag rahe hai*” on 30.10.2007 at about 5.30 p.m.

21. The material portion of the evidence of PW-15, ASI Mohinder Singh, stands duly corroborated by the evidence of two public witnesses i.e. PW-3, Rajesh, and PW-5, Manmeet. PW-3, Rajesh, had deposed that Abhay Sharma, deceased, was running towards the market on the Ajmal Khan Road. Abhay Sharma was holding his neck with handkerchief and was saying “*pakro pakro maar diya mar diya*”. He has fallen down at the place a little ahead of Vijaya bank and public had caught hold of a person and given beatings to him. PW-3 picked up the deceased who was lying down and removed him to Jassa Ram hospital in a car. While travelling, the deceased had told PW-3 that the boy who had been caught had given knife blow on his neck.
22. In his cross-examination, PW-3 had deposed that the appellant present in the court was the same person who had been apprehended by the public; in fact he had seen the appellant as he had passed him while he was running away; the appellant had jumped over two motorcycle which were parked there. One police personnel was chasing the appellant who had been deputed in the Beat. He had concentrated on the appellant as he had jumped over the motorcycle and the other in order to escape. Thus, the evidence of this witness has fully corroborated the version of the complainant PW-15, Mahender Singh.
23. PW-5, Manmeet Singh @ Montu, has stated that on 30.10.2007 at 5.30 p.m. he saw the appellant present in the Court, running away having knife in his hand and he had come out of the shop M/s Vaibhav Jewellers located in the Padam Singh Road. Appellant was being chased by the

injured who was raising a noise “*pakro pakro chaku maar ke bhaga hai*”. An ASI was also chasing the appellant, who was apprehended at some distance by the said ASI and the public. At that time the appellant was carrying a knife in his hand. In his cross-examination PW-5 has deposed that he had not seen the appellant stabbing the injured and he had stated whatever was seen by him. He also deposed that he was at a distance of about 25 yards when he had seen the appellant who was coming and running towards his side. The appellant was carrying knife in his right hand but he did not notice whether the knife was stained with blood. Thus the presence of this witness and his deposition while corroborating the complainant, PW-15, stands proved from the deposition in his cross-examination.

24. We are unable to agree with the argument of counsel for the appellant that evidence of PW-15 is unreliable as he is a police officer. We see no reason to disbelieve the evidence of PW-15 and merely because he is a Police officer his evidence is not to be discarded. We find the evidence of PW-15 to be trustworthy and reliable.
25. It is settled law that no infirmity can be attached to the testimony of Police Officials merely because they belong to the Police force. However, the rule of prudence requires careful scrutiny of their evidence and in case the Court is convinced that what has been stated by a Police witness is otherwise reliable and trustworthy and the Court is convinced that what was stated by a Police witness has a ring of truth, conviction can be based on such evidence.
26. In the case of *Girja Prasad v. State of Madhya Pradesh*, AIR 2007 Supreme Court 3106, it has been held that “*there is no rule of law, which lays down that no conviction can be regarded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy*”.

27. Further in the case of *Govindaraju alias Govinda v. State By Sriramapuram Police Station*, reported at (2012) 4 SCC 722, it is was held as under:

“30. It cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness.

31. This Court in the case of *Girja Prasad* (supra) while particularly referring to the evidence of a police officer, said that it is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person. There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.

32. Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. The courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction.

33. Rather than referring to various judgments of this Court on this issue, suffices it to note that even in the case of Girja Prasad (supra), this Court noticed the judgment of the Court in the case of *Aher Raja Khima v. State of Saurashtra* AIR, 1956 SC 217, a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor. This principle has been referred to in a plethora of other cases as well. Some of the cases dealing with the aforesaid principle are being referred hereunder.

34. [In Tahir v. State \(Delhi\)](#) [(1996) 3 SCC 338], dealing with a similar question, the Court held as under:-

“6. In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.”

35. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record.”

28. In this case, the presence of PW-15 is established at the spot as he was the beat officer of the said area. On 30.10.2007 at about 5.30 p.m. the appellant was seen running out of the shop, M/s Vaibhav Jewellers. He was being followed by Abhay Sharma, owner of M/s Vaibhav Jewellers,

who was shouting '*pakro pakro chakoo maar ke bhag raha hai*'. The blood stained knife i.e. the weapon of offence, Exhibit P-1, was the same knife which was used by the appellant for causing injury on the body of the deceased. The said knife was recovered from the right hand by PW-15, who chased him and apprehended the appellant.

29. We are satisfied that the evidence of PW-15 is reliable and trustworthy and moreover the evidence of PW-15 is duly corroborated by the evidence of PW-3 and PW-5. Even otherwise during the cross-examination nothing material has been brought to discredit the evidence of this witness.
30. As per the testimony of PW-4 it is proved that the deceased died on account of injuries on his body caused by the weapon of offence i.e. Exhibit P-1. His testimony proves that injuries no.1 and 2 were sufficient to cause death in the ordinary course of nature. He has further proved that he had examined the weapon of offence i.e. a blood stained knife, Exhibit P-1, in co-relation to the injuries mentioned in the post-mortem report and had given his opinion, Exhibit PW-4/C, to the effect that the injury nos.1 to 4 were possible with the knife, Exhibit P-1, examined by him.
31. It has been strenuously argued before us that there are certain discrepancies and contradictions in the statement of PW-3, PW-5 and PW-15. Some of the contradictions, which have been pointed out, are that different language was used by each of the witness when the injured was running after the appellant. Another contradiction pointed out is that as per the evidence of PW-5 and PW-15 the appellant was running with a knife in his hand whereas this does not find mention in the evidence of PW-3. Another discrepancy, which has been pointed out is that as per PW-15 the appellant was apprehended with the help of PW-3 and PW-5 whereas this fact does not find mention in the evidence of PW-3 and PW-5. It has also been pointed out that PW-15 had deposed that Abhay

Sharma was crying 'pakro pakro chakoo maar ke bhag rahe hai'. PW-3 had also deposed on the same lines that Abhay Sharma was holding his neck with a handkerchief and was shouting 'pakro pakro mar dia mar dia' whereas different language has been used by different witnesses. We also find that merely because different language was used by PW-3, PW-5 and PW-15 as to what the deceased, Abhay Kumar Sharma, was shouting is not a material discrepancy as the evidence of the three witnesses is to be read as a whole and what was emerged upon a holistic reading of the evidence of these three witnesses is that Abhay Kumar Sharma was shouting as to what has been stated by PW-3 is "pakro pakro maar dia maar dia" and what PW-5 has stated that "pakro pakro maar ke bhaga hai". We find that there is no material difference and with the passage of time there can be some interchange of words.

32. We may, however, notice that there is some variation in the evidence of PW-3, PW-5 and PW-15 but what is required to be considered is whether the aforesaid variations are material and would affect the case of the prosecution substantially it is settled law that every variation may not adversely affect the case of the prosecution.
33. The appellant was caught at the spot red-handed by PW-15. The knife was recovered from him. Both PW-5 and PW-15 have testified to this effect. No doubt this has not been stated by PW-3. This would in fact go on to show that PW-3 is a truthful witness as he deposed what he saw and what he remembered. Moreover this variation will not adversely affect the case of the prosecution, nor the contradiction that PW-3 and PW-5 helped in apprehending the appellant as stated by PW-15. For the reason, presence of PW-3, PW-5 and PW-15 is clearly established and it is also established that appellant was caught red handed at the spot with the knife. Thus, in our view this would also not adversely affect the case of the prosecution.

34. Learned counsel for the appellant has also submitted before us that having regard to the nature of injuries the deceased was in no position to talk. There is no force in this submission as well. In the cross-examination, PW-4, Dr.Vijay Dhankar, has categorically stated that a person having injury nos.1 to 4 as in the present case may survive for a variable period from few minutes to few hours and may be able to run for a short distance and shout. For how much time a person can survive after such injuries and what distance he can run depends upon person to person and is highly variable.
35. A careful analysis of the testimony of PW-4 leaves no room for doubt that it was possible for the deceased to make a statement and also shout as deposed by PW-3, PW-5 and PW-15. Thus, in our view the prosecution has established beyond reasonable doubt that the appellant had intentionally caused injuries on the person of the deceased with knife Ex.P-1 and that the injuries no.1 and 2 were sufficient in the ordinary course of nature to cause death. The appellant has been rightly convicted for the offence punishable under Section 302 IPC. We find no infirmity in the judgment rendered by the trial court. Accordingly, there is no merit in the appeal and the same is dismissed.

G.S.SISTANI, J

G.P. MITTAL, J

AUGUST 30, 2013

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