

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

Reserved on: 11th March, 2014

Pronounced on: 3rd April, 2014

+ CRL. A. 807/2010

GIANSHREE

..... Appellant

Through: Ms. Anu Narula, Advocate

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. Appellant Gianshree impugns the judgment dated 12.10.2009 and the order on sentence dated 23.10.2009 whereby she along with one Dharambir @ Dharmender @ Kala (subsequently held to be a juvenile and released after his conviction was upheld) was convicted for the offence punishable under Section 302/201/34 of the Indian Penal Code, 1860 (IPC). For the offence punishable under Section 302/34 IPC, the appellant was sentenced to undergo imprisonment for life and to pay fine of Rs.1500/- or in default to undergo Simple Imprisonment for two months. For the offence punishable under Section 201/34

IPC, the appellant was sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- or in default to undergo Simple Imprisonment for two months. Both sentences were to run concurrently.

2. DD No.14-B, dated 31.08.2004 was recorded in Police Station (PS) Sultan Puri at about 6:35 a.m. to the effect that a dead body was lying in a well near Block No.32, MCD Flats, Sector 20, Rohini, Delhi. SI Devi Singh who was assigned the said DD entry for the purpose of enquiry preceded to the spot along with other police officials. In the meanwhile, PW-23 Inspector Sukhvinder Singh, SHO PS Sultan Puri also followed SI Devi Singh. On reaching the spot, dead body of one Chela Ram was found lying in a well. Crime team and dog squad were requisitioned. The dead body was taken out from the well. On inspection of the dead body, serious injuries were noticed on its neck, chest and chin. The clothes worn on the dead body were stained with blood. Sudha (PW-20), the elder daughter of deceased Chela Ram met PW-23 and gave her statement Ex. PW-20/A. The statement is translated in English in the opening paragraph of the impugned judgment which is extracted hereunder:-

“That she was residing at the said address alongwith her mother, father, brothers and sisters and her father was

cultivating the land adjoining their house and in the absence of her father one boy Dharmender often used to come to their house and used to talk to her mother and her father used to object to the said talks and due to this there used to be constant quarrels between her father and mother, despite that her mother used to meet Dharmender and she was having two brothers and three sisters and her youngest brother Mahesh was only 6 months old and her father used to say to her mother that said Mahesh was not his child and Dharmender was his father and her father often used to beat up her mother and used to have suspicion on her character and due to this her mother was very perturbed.

Around 4/5 days ago Dharmender and her mother had said that they would kill their father and also counselled them that they should not worry as Dharmender and her mother will look after them and on 31.8.04 (on the day of Raksha Bandhan) at around 11 p.m. in the night when all of them along with Dharmender and their mother were present inside the house, at that time their father came and on seeing Dharmender with her mother got angry and started abusing her. At this Dharmender exhorted her mother “Bhabhi Isko Pakar Le Aaz Iska Kaam Kar Dena Hai” and thereafter, her mother caught hold of her father and Dharmender attacked her father with knives and when her father fell down, her mother attacked her father with Kulhari (axe) and thereafter her father got unconscious and her mother and Dharmender removed the body of their father in a plastic sheet and threw the same into a nearby well and thereafter her mother and Dharmender counselled them that they should not disclose about this incident to anyone and they also took knife and kulhari with them.”

3. PW-23 made an endorsement Ex. PW-23/A on the statement and transmitted it to the PS for registration of the FIR. During the course of investigation, it transpired that the appellant and the co-convict

might proceed to their village on the same day and they might be present at Anand Vihar, Bus Terminus. Consequently, PW-23 along with police officials and Sudha (PW-20) reached Anand Vihar Bus Terminus. There, the appellant and her co-convict were apprehended at the instance of PW-20 around 07:30 p.m. PW-23 requested some public persons to join the proceedings but none was willing to come forward. Thereafter, the appellant and her co-convict made disclosure statements Ex. PW-12/A and PW-12/B. In pursuance of the disclosure statements, the appellant and her co-convict led the police party to village Pooth Kalan. A blood stained knife Ex. P-1 and a blood stained axe Ex. P-2 were recovered at the instance of the co-convict. Sketches of the knife Ex. PW-18/C and axe Ex. PW-18/D were prepared. They were seized and sealed vide seizure memos Ex. PW-12/F and Ex. PW-12/G. The appellant and her co-convict then led the police party to the fields and got recovered one blood stained plastic sack Ex.P-6 which was seized vide memo Ex. PW-12/K. After completion of the investigation, report under Section 173 Cr.P.C. was presented against the appellant and her co-convict.

4. On appellant pleading not guilty to the charge, the prosecution in order to establish its case examined 24 witnesses. Gautam (PW-19), Sudha (PW-20) and Madhu (PW-21) were set up as eye witnesses to the

incident. The prosecution also examined Insp. Sukhvinder Singh (PW-23), Lady Constable Anita (PW-12), Constable Rakesh (PW-18) and the other police officials as the witnesses to the disclosure statements and recoveries in pursuance thereof.

5. In her examination under Section 313 Cr.P.C., the appellant denied that she along with her co-convict had inflicted injuries on the deceased with the recovered knife and axe. She also denied that any recovery was effected in pursuance of her disclosure statement. The appellant stated that the three eye witnesses (PWs-19, 20 and 21) have not deposed against her. They were forced to be witnesses against her by the police as the police could not reach the actual culprit and wanted to solve a blind murder. The appellant declined to produce any evidence in defence.
6. Homicidal death of deceased Chela Ram has not been disputed by the appellant. The same is also established from the testimony of Dr. V.K. Jha (PW-22) who conducted post mortem on the dead body and found two incised wounds on the left front of its chest and a cut throat injury on the front of its neck just below the thyroid cartilage apart from some abrasions and bruises. He opined that the cause of death was respiratory embarrassment and haemorrhagic shock as a result of cut

throat injury which was sufficient to cause death in the ordinary course of nature.

7. Apart from relying on the eye witnesses, the Trial Court took the aid of Section 106 of the Evidence Act, 1872 (the Act) and placed onus on the appellant to offer an explanation as to how her husband's (the deceased's) dead body was found dumped in the well in the morning hours though in the normal course the deceased should have been present at their house. Although PWs-19, 20 and 21 did not fully support the prosecution version and were declared hostile, yet the Trial Court relied upon certain portions of their testimonies which were incriminatory against the appellant holding that part of the testimony of a hostile witness, if found to be reliable and believable can be taken into consideration to base the conviction of the accused. Although the Trial Court did not believe the prosecution version to the extent of appellant's arrest at Anand Vihar Bus Terminus and the alleged disclosure statement made by her, yet relying on the testimony of three witnesses coupled with the circumstantial evidence, Trial Court held the appellant and her co-convict guilty and sentenced them as stated earlier.
8. We have heard Ms. Anu Narula, learned counsel for the appellant and Mr. Rajat Katyal, learned APP for the State and have bestowed our

thoughtful consideration to the contentions raised on behalf of the parties.

9. Relying on *Ramnaresh & Ors. v. State of Chhattisgarh*, (2012) 4 SCC 257, the learned counsel for the appellant urges that the appellant was entitled to maintain silence or complete denial in her statement under Section 313 Cr.P.C. She argues that initial onus is always on the prosecution to prove the case and it is only if some facts are proved which are required to be explained by an accused that on non-explanation, the Court is entitled to draw an adverse inference as may be permissible in accordance with law. In the instant case there was no such material which casts an obligation on the appellant to come forward with any explanation as to her whereabouts at the time of the murder of her husband. The Trial Court, it is argued, acted illegally in drawing an adverse inference against the appellant with the aid of Section 106 of the Act. The learned counsel for the appellant further contends that although the proposition of law that a portion of the testimony of a hostile witness which is found to be believable can be used against an accused cannot be disputed, yet, in the instant case there was no material evidence produced by the prosecution through any of the three projected eye witnesses to fasten any criminal liability

upon the appellant with the aid of Section 34 IPC. Referring to PW-20's testimony in cross-examination by the learned APP for the State that the appellant had caught hold of the deceased while the co-convict Dharambir stabbed him with a knife, the learned counsel urges that this was simply to save the deceased from the clutches of the co-convict and this stray statement was not sufficient to hold that the deceased's murder was committed by the co-convict in furtherance of the appellant's common intention or that the co-convict's intention was shared by the appellant. In support of her contention, the learned counsel for the appellant places reliance on report of Madras High Court in *Rajendran and etc. v. State of Tamil Nadu, 1997 Cr.L.J. 4344 (Mad.)*.

10. The learned counsel contends that PWs-19, 20 and 21 were consistently shifting their stands and thus, their testimonies were unreliable and unworthy of reliance. The Trial Court erred in relying on a certain part of the testimony of PW-20 to base the appellant's conviction for the offence punishable under Sections 302 and 201 read with Section 34 IPC on the basis of constructive liability.
11. In order to establish its case, the prosecution apart from relying on ocular evidence in the shape of testimonies of PWs-19, 20 and 21, also

pressed into service the evidence on the motive, *i.e.* illicit relationship between the appellant and her co-convict and deceased's objection to the co-convict's visit to their house as well as the disclosure statements Ex. PW-12/A and Ex. PW-12/B made by the appellant and her co-convict and the pursuant recoveries of a bloodstained knife Ex. P-1 and an axe Ex. P-2 and presence of human blood of B group on the *saree* Ex. P-3 and blouse Ex. P-4 worn by the appellant at the time of her arrest.

12. We shall deal with the circumstances and the evidence one by one.

MOTIVE

13. Although, Master Gautam (PW-19), who must be aged about 7-8 years at the time of the incident, did not state anything about the illicit relationship between her mother (the appellant) and her co-convict, perhaps he was too young to depose about the same, however, at the same time, he did state that there used to be quarrels between his father and mother.
14. On this aspect, Sudha (PW-20), the appellant's eldest daughter in cross-examination by learned APP testified that her father suspected Dharambir (co-convict) to be maintaining illicit relationship with her

mother and therefore hated him. She admitted that co-convict Dhambir used to visit their house frequently which was not liked by her father. She also admitted that despite her father's resistance, Dhambir used to meet her mother. She stated that her youngest brother Mahesh was aged about six months and her father used to say that Mahesh was born from the loins of co-convict Dhambir. This part of the testimony of PW-20 was not challenged in cross-examination.

15. Madhu (PW-21) corroborated Sudha (PW-20) to the limited extent that Dhambir used to visit their house to meet their mother.
16. It is true that PWs-19, 20 and 21 are child witnesses. There is always a danger of the child witness being tutored by an interested person. In *State of M.P. v. Ramesh and Anr., (2011) 4 SCC 786*, the Supreme Court while analysing a number of earlier judgments on the subject reiterated that where deposition of a child witness inspires confidence, the Court may rely upon his/her evidence even without any corroboration. The Supreme Court held that every witness is competent to depose unless the Court considers that he/she is prevented from understanding the question put to him or from giving rational answers by reason of tender age, extreme old age, disease

whether of body or mind or any other cause of the same kind. It was held that evidence of a child must be evaluated more carefully with greater circumspection because a child is susceptible to be swayed by what others tell him. It was laid down that testimony of a child witness can be accepted even without any corroboration provided it inspires confidence.

17. In the instant case, the Trial Court put a number of questions to PW-19 and PW-21 to discern whether the child witnesses were capable of understanding the questions and understand the sanctity to speak the truth. The Court was satisfied that PW-19 and PW-21 could understand the questions and gave rational answers and therefore, it proceeded to examine them.
18. In the instant case, there was no possibility of these three witnesses being tutored to falsely depose anything against the appellant who was their own mother; rather they had sympathy with their mother and wanted her to be out of jail. In fact, Master Gautam (PW-19), who is a small child aged about 7-8 years was candid enough to admit that he loved his mother and wanted that she should live with him. At the same time, he denied the suggestion that he was tutored by his maternal uncle (Rinku) to exclude the name of his mother. Thus,

whatever has been stated by the three child witnesses against the appellant was the diluted role played by her (the appellant). It appears that in order to save her from the long term of imprisonment, some concession was given by them to the appellant. In any case, the testimony of these three child witnesses on motive is very much reliable and convincing. We do not find any reason to disbelieve the same. Thus, it is established that the deceased suspected the appellant to be having illicit relationship with her co-convict Dharambir and objected to Dharambir's visit to their house and often used to quarrel with the appellant on this issue.

OCULAR EVIDENCE

19. The prosecution has produced Master Gautam (PW-19), Sudha (PW-20) and Madhu (PW-21) as three eye witnesses to the incident. They are the children of the deceased and the appellant.
20. It is urged by the learned counsel for the appellant that PWs-19, 20 and 21 were vacillating their stands and thus, it will be very dangerous to rely upon their testimonies. The learned counsel argues that the Trial Court erred in relying on the testimonies of the three child witnesses to hold the appellant guilty for the offence punishable under Section 302 IPC with the aid of Section 34 IPC. She urges that even if

testimonies of PW-19, PW-20 and PW-21 are taken on their face value, it will be difficult to prove the common intention and criminal intent to commit the deceased's murder.

21. We have already observed earlier that PW-19 and PW-21 in spite of being child witnesses were competent to understand the questions and give rational answers as held by the Trial Court. Sudha (PW-20) was aged about 14 years on the date of her examination in the Court. From her testimony it is evident that she was quite mature and could understand everything including the fact that her father suspected that her youngest brother Mahesh was conceived from the loins of co-convict Dharambir.
22. It is very unfortunate that the three children had to make a choice between the devil and the deep sea. As per the prosecution version, their father was killed in their own presence in their own house and the perpetrator of the crime was none other than their own mother in complicity with her paramour.
23. In any case, the law requires the same standard of proof irrespective of the relation of the witnesses with the deceased or the accused. The Court while trying a criminal case has to form an opinion on the basis of the evidence produced and conclude whether the offence is proved

against a culprit beyond shadow of reasonable doubt or not.

24. In his examination-in-chief, Gautam (PW-19) testified that his father was killed by Dharambir by stabbing him with a knife and an axe. He deposed that his mother (the appellant) was not present at the time of the offence rather the father of the co-convict was present. He deposed that the co-convict first stabbed his father with a knife and then with an axe. In response to a leading question put by the learned APP for the State, PW-19 denied that his mother had caught hold of his father and then the co-convict stabbed him or that his mother (the appellant) hit his deceased father with an axe when he had fallen down. The witness, however, admitted that he loved his mother and wanted that she should live with him. He denied that he was tutored by his mother's brother Rinku to exclude the name of his mother from the prosecution version.

25. Sudha (PW-20) on the other hand, testified as under:-

“We are four sisters and two brothers. About three years ago, I along with my parents, brothers and sisters was living at Nursery in Sultanpuri. My father and my mother used to quarrel. Accused Dharambir present in Court had told my mother that he will kill my father and then maintain my mother and her children. On the day of Raksha Bandhan, Dharambir alongwith his father killed my father. They put the dead body in a sack and threw the same in a well, during the night.

Dharambir had first stabbed my father with a knife in the neck and then his father had hit him with an axe.

I was awake whereas all my brothers and sisters were sleeping at that time. My mother was also present in the house. She woke up when there was commotion and asked Dharambir as to why he had come. He said that he had come to kill my father. My mother tried to save my father. Police came on the next morning and my statement was recorded.....”

26. In cross-examination by the learned APP for the State, this witness, who was aged 14 years on the date of recording of her statement and was aged about 11 years on the date of the incident deposed as under:-

“I am not literate. It is correct that my father suspected Dharambir to be maintaining illicit relations with my mother and therefore, hated him. It is correct that despite resistance from my father, accused Dharambir used to meet my mother, often. My youngest brother namely Mahesh was six months old at that time. It is correct that my father used to say that Mahesh has been conceived from the loins of accused Dharambir. It is correct that Dharambir was present with my mother on the day of occurrence. It is correct that my father lost his temper and started abusing Dharambir. It is correct that Dharambir said that he should be caught hold of and killed. It is correct that my mother then caught hold of my father and Dharambir stabbed my father with knife. It is incorrect that when my father fell down, my mother hit him with an axe.....”

27. She further denied that her mother had joined the co-convict in disposing off the dead body. She was confronted with the incriminating part of her statement made to the IO. She admitted that

on the next day of the incident, she accompanied the police to Anand Vihar Bus Terminus and pointed out her mother and her co-convict and that they were arrested by the police vide memos Ex. PW-18/A and Ex. PW-18/B. She, however, denied that any knife or axe was got recovered by her mother (the appellant). In cross-examination by the learned *Amicus Curiae* on behalf of the appellant, the witness again admitted that she was sleeping at the time of the incident.

28. It may be noticed that the FIR Ex. PW-8/A was recorded in this case on the statement Ex. PW-20/A made by Sudha (PW-20). Although, PW-20 did not support her entire statement, Ex. PW-20/A, incriminating her mother (the appellant), yet in her cross-examination by the learned APP she admitted that her father used to say that co-convict Dharambir was father of Mahesh. Dharambir was present with her mother on the date of the occurrence. She went on to add that her father had lost his temper and started hurling abuses on co-convict Dharambir. She admitted that co-convict Dharambir had stated that her father should be caught hold of and killed. She admitted that her mother then caught hold of her father and Dharambir stabbed him (the deceased) with a knife. All these statements are very crucial and are corroborated by the statement Ex. PW-20/A. It is well settled that the

statement on the basis of which FIR is registered can be used for the purpose of corroboration of the testimony of the maker of the FIR. (See: *Nisar Ali v. State of U.P.*, AIR 1957 SC 366; *Aghnoo Nagesia v. State of Bihar*, AIR 1966 SC 119 and *State of Gujarat v. Anirudh Singh & Anr.* (1997) 6 SCC 514).

29. We are convinced that PW-20 wanted to help her mother (the appellant) and that is why she did not initially support her statement Ex. PW-20/A. She being a child was very innocent and she being unable to weave a false story, truth came out when she was questioned by the learned APP. She clearly admitted that her mother had caught hold of her father after co-convict Dharambir had asked her mother (the appellant) to catch hold of the deceased as he (the deceased) was to be killed.
30. We have already observed above that Sudha (PW-20) was aged about 14 years on the date of her examination and was quite mature to understand not only the questions put to her and to give rational answers but also to understand the intricacies of the family life. It is also well settled that part testimony of a child witness, if found to be reliable, can be used for the purpose of conviction of an accused. (*State of M.P. v. Ramesh and Anr.*, (2011) 4 SCC 786).

31. Madhu (PW-21), although did not support the prosecution version fully but she did corroborate the prosecution version as also Sudha (PW-20) to the limited extent that the appellant was present in the room when the deceased was killed by Dharambir with a knife.
32. PW-21 also made a half hearted attempt to save the appellant being her mother when she deposed that her father was stabbed by co-convict Dharambir in their house. She deposed that when Dharambir stabbed her father with a knife, her mother was present in the same room. She stated that after killing her father, co-convict Dharambir and her mother (the appellant) threw the deceased's dead body in a well in the agricultural field. In her cross-examination by the learned APP, the witness admitted that her mother had caught hold of her father when he (the deceased) was stabbed by co-convict Dharambir. She, however, denied having told the police that her mother hit the deceased with an axe, when he (the deceased) had fallen down. In cross-examination on behalf of co-convict, the witness admitted that she spoke to the I.O. on the day the dead body was found. She also admitted that the IO had explained her statement to her. On a Court question put to the witness, she deposed that the statement made by her was truthful.

33. Thus, from the testimonies of these three witnesses (PW-19, PW-20 and PW-21), it is clear that all the three wanted to dilute the role of the appellant who was their mother. They wanted her to be out from the jail. In fact, PW-19 had stated in his examination-in-chief that his mother (the appellant) was not present in the house when his father was stabbed by co-convict Dharambir, which was discernable illusion to save the appellant. The truth is palpable and intelligible, when we scan and scrutinize their deposition with care and caution.
34. Similarly, in the cross-examination on behalf of the appellant, PW-20 stated that she was sleeping when the occurrence took place. At the same time, she denied the suggestion that she had deposed as tutored by the police. Although PW-21 deposed about the presence of their mother in the room where their deceased father was stabbed by co-convict Dharambir, but in cross-examination on behalf of co-convict Dharambir she stated that they had gone to sleep.
35. In cross-examination on behalf of the appellant, she denied the suggestion that she did not see the occurrence herself. Thus, in spite of the fact that the three witnesses (PW-19, PW-20 and PW-21) wanted to save their mother at one or the other stage of their testimony, it was established that the appellant was very much present

at the spot of the incident and she had atleast held the deceased at the instance of co-convict Dharambir when the co-convict had inflicted fatal injuries on the deceased.

36. The learned counsel for the appellant argues that the evidence adduced is not sufficient to prove the prosecution case against the appellant beyond all reasonable doubt. It is difficult to infer common intention. She urges that the suspicion however strong cannot take place of proof and that the burden of proving the guilt is always on the prosecution and that the appellant could not have been required to give any explanation about the deceased's murder unless the prosecution case had been proved. In support of her contention, the learned counsel for the appellant places reliance on *Vikramjit Singh @ Vicky @ State of Punjab, (2007) 1 SCC (Cri.) 732*.

37. We are unable to be swayed by the contention raised on behalf of the appellant. From the testimony of PW-20, which is corroborated by her statement Ex. PW-20/A and to some extent by the testimony of PW-21, it is established that on an exhortation being given by the co-convict, the appellant held the deceased when the knife blows were inflicted by co-convict Dharambir. *Rajendran (supra)*, a decision of the Madras High Court relied upon by the appellant is not attracted to

the facts of the present case. In that case, the second accused had not done anything by way of holding the deceased while the first accused was attacking the deceased with an iron rod. In the instant case, as stated earlier, the appellant held the deceased at the instance of co-convict Dharambir and the co-convict inflicted several knife injuries with an intention to kill the deceased. Thus, the common intention can very well be inferred from the appellant's conduct of holding the deceased in pursuance of the exhortation given by her co-convict further coupled with the motive to do away with the deceased.

38. The appellant's presence at the spot is established not only from the testimony of PW-20 but also from the testimony of PW-21. In view of this, the appellant also owed an explanation as to how the deceased suffered fatal injuries. The appellant's silence is to be taken as a circumstance which fortifies the ocular evidence with regard to appellant's role in the commission of the crime.
39. Moreover, Surender Kumar's (PW-15's) testimony that on the date of the incident at about 05:45 a.m., the appellant came to his house and informed him that her husband had been murdered and thrown in a well has not been challenged by the appellant in cross-examination. In fact, the learned counsel for the appellant referred to this testimony to

bely the prosecution version regarding appellant's arrest at Anand Vihar Bus Terminus (to which we shall advert a little later). Once the appellant stated that her husband had been murdered and thrown in a well, it was incumbent upon her under Section 106 of the Act to have stated as to how she came to know that her husband had been murdered , whether she knew who had murdered him and then thrown in a well. Presence of the appellant in the house at night was natural and normal. Her children PW-19, PW-20 and PW-21 have affirmed her presence and co-convict Dharambir, but the appellant's conduct is reflective. The appellant's silence is a circumstance to corroborate the ocular evidence that the deceased was knifed while he (the deceased) was being held by the appellant and then thrown in a well. She shared common intention with the co-convict Dharambir.

RECOVERIES OF BLOODSTAINED KNIFE AND AXE, PRESENCE OF BLOOD ON APPELLANT'S CLOTHES

40. The Trial Court had disbelieved the appellant's arrest at Anand Vihar Bus Terminus mainly on the testimony of Surender Kumar (PW-15) which is also heavily relied upon by the learned counsel for the appellant. The learned counsel urges that the PCR form Ex. PW-23/DA clearly reveals that the appellant was present at the spot at the

time of recovery of the dead body. Thus, it is established that the appellant was very much available at the spot and to the police. Hence, it is contended that there was no question of the appellant escaping after the alleged murder and her subsequent arrest in the evening at 07:00 p.m. at Anand Vihar Bus Terminus along with co-convict Dharambir.

41. We are in full agreement with the learned counsel for the appellant that the appellant had informed PW-15 about the murder of her husband and throwing of dead body in the well and that she was also present at the spot at the time of recovery of the dead body when the police reached the well.
42. However, we are unable to subscribe to the view of the Trial Court that if the appellant had informed PW-15 about throwing of the dead body in the well and if she was present at the well at the time of arrival of the police, she could not have subsequently left the spot.
43. We do not know as to what was there in the mind of the appellant when she informed PW-15 about deceased's murder and throwing of his dead body in a well. May be that the appellant simply wanted to mislead the police and put the blame of the deceased's murder on an unknown person. Possibly she never thought that her own children

will implicate her and tell the truth to the police. At that time, there could not be any suspicion on the appellant as she herself had disclosed the information to PW-15 at 05:45 a.m. that her husband had been killed and his dead body had been thrown in a dry well. Obviously, the police was busy in retrieving the dead body from the well. It was only after the dead body had been taken out and the statement Ex. PW-20/A of PW-20 had been recorded after 10:00 a.m. (as the *rukka* was sent at 10:45 a.m.) that the police came to know that the appellant was the perpetrator of the crime along with co-convict. Thus, there was no question of the appellant being taken into custody immediately after the police had reached the dry well. At this juncture, we would like to refer to the testimony of Inspector Sukhvinder Singh (PW-23), I.O. of the case. He testified that on receipt of DD No.7-A (Ex. PW-13/A), he left the Police Station at about 06:45 a.m. and reached village Pooth Kalan. SI Devi Singh who was also present along with staff briefed him about the facts and that dead body of one Chela Ram was lying in the well. Crime team, dog squad and crime team photographer were summoned to the spot. The dead body was taken out from the well and on inspection of the dead body, injuries were found on its neck, chest and chin. It was only after all these proceedings had been conducted and the statement of PW-20 (Ex.

PW-20/A) was recorded and immediately thereafter *rukka* was sent to the PS at 10:45 a.m. that it transpired that the appellant herself was one of the perpetrators of the crime. PW-23 deposed that he recorded statement of Surender Kumar, Baby Madhu and Master Gautam and reached the P.S. and deposited the case property. He returned to the spot and on local inquiry came to know that both the accused (*i.e.* the appellant and co-convict) might go to their native place and they might be available at Anand Vihar Bus Terminus. PW-23 deposed that he along with staff and PW-20 (appellant's daughter) reached Anand Vihar Bus Terminus, leading to the appellant and co-convict's arrest at Sudha's (PW-20's) instance. In cross-examination on behalf of the appellant, no suggestion was given to PW-23 that the appellant was apprehended from inside the house or outside it near the well. No suggestion was given to PW-23 that the appellant was not apprehended from Anand Vihar Bus Terminus. PW-23's testimony regarding appellant's apprehension at Anand Vihar Bus Terminus is not only corroborated by the testimony of Lady Constable Anita (PW-12) but also by PW-20. In her cross-examination by the learned APP, PW-20 deposed as under:-

“.... It is correct that on the next day, I went to Anand Vihar Bus Stand alongwith police officials. It is correct that I had

pointed out my mother and accused Dharambir and on my pointing out they were arrested by the police vide arrest memos Ex. PW-18/A and 18/B which bear my thumb impression at point B.”

44. PW-20's testimony with regard to appellant's apprehension at Anand Vihar Bus Terminus was also not challenged in her cross-examination. Thus, from the testimony of PW-23, which is duly corroborated by PW-12 and PW-20, it stands established that the appellant was arrested from Anand Vihar Bus Terminus.
45. Insp. Sukhvinder Singh (PW-23) and Lady Constable Anita (PW-12) deposed about making of disclosure statement Ex. PW-12/A by the appellant. Although, there is no independent witness to the disclosure statement Ex. PW-12/A made by the appellant, but we do not find any conceivable reason to disbelieve the testimony of PW-23 which is duly corroborated by PW-12 that disclosure statement Ex. PW-12/A was made by the appellant and Ex. PW-12/B was made by the co-convict regarding concealment of the knife (Ex. P-1) and the axe (Ex. P-2) used in the commission of the offence.
46. In pursuance of the disclosure statements, the knife (Ex. P-1) and the axe (Ex. P-2) were recovered from the house of co-convict Dharambir. The Trial Court has believed the recovery of the knife and the axe

from the house of co-convict. We see no reason to take a different view as the knife and the axe were found to be stained with human blood as per the CFSL report Ex. PX and Ex. PY, although blood group could not be deciphered.

47. The recovery of bloodstained knife (Ex. P-1) and bloodstained axe (Ex. P-2) can at least be used as corroborative circumstance regarding their use in the commission of the crime in spite of the fact that the blood group on exhibits P-1 and P-2 was not deciphered. In *State of Rajasthan v. Teja Ram & Ors.*, (1999) 3 SCC 507, even the presence of the blood on *kulhadi* discovered at the instance of the accused was taken as a corroborative circumstance. While rejecting the arguments that the blood group or the origin of the blood was not proved, the Supreme Court held as under:-

“23. The facts discovered from the aforementioned statements and recovery of the axes are that those weapons were concealed by the said two accused.

24. Normally, the above circumstance should have been given weighty consideration in the evaluation of circumstantial evidence. But the High Court downstaged it on a reasoning which is difficult to sustain. This is what the High Court has observed regarding the evidence relating to the recovery of the two axes (kulhadis):

“The evidence of the bloodstained kulhadi is not sufficient as the prosecution has not been able to prove that kulhadi which

was stained with human blood was recovered from whom. Thus it is not clear whether the recovered kulhadi was of Teja Ram or of Ram Lal. The other infirmity in the chemical examiner's report is that it does not mention the extent of blood seen on the kulhadi. It has not been established clearly as to which particular accused the incriminating axe belonged. As such, it cannot be used against any one of these two accused.”

25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

26. Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in Prabhu Babaji Navle v. State of Bombay AIR 1956 SC 51 and Raghav Prapanna Tripathi v. State of U.P. AIR 1963 SC 74. In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that “blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the

judgment". In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the bloodstain is not proved to be of human origin the circumstance has no evidentiary value "in the circumstances" connecting the accused with the murder. The further part of the circumstance in that case showed that a shirt was seized from a drycleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for drycleaning, it was not bloodstained.

27. We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case where the facts are materially different."

48. Admittedly, the appellant as well as her co-convict was not present at the time of the recoveries of the bloodstained knife and the axe (the weapons of offence). However, in view of the judgment of the Supreme Court in *State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600, these recoveries would be admissible against the appellant. In para 142, the Hon'ble Supreme Court held as under:-

"142. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information

furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence.”

49. There is another important incriminating circumstance established against the appellant. Appellant's saree (Ex. P-3) and blouse (Ex. P-4), which she was wearing at the time of her arrest were seized, as deposed by Lady Constable Anita (PW-12) and Inspector Sukhvinder Singh (PW-23). They were found to be stained with human blood of B group tallying with the blood group of the deceased. PW-12's testimony regarding seizure of appellant's saree and blouse was not seriously challenged in her cross-examination. Testimony of PW-12 regarding seizure of saree (Ex. P-3) and blouse (Ex. P-4) was corroborated by Constable Rakesh (PW-18) and PW-23 (IO). In the absence of any explanation about the presence of blood of B group on her clothes, this circumstance goes against the appellant. Thus, she

was present and was either a participant or a witness to the violence.

In the present case, we have reached that she was the co-perpetrator.

50. Thus, in our view, ocular evidence produced by the prosecution is sufficient to bring home the appellant's guilt that she had held the deceased while the deceased was being given knife blows by the co-convict. As stated earlier, this ocular evidence is corroborated by the evidence of motive and the circumstance of recoveries of blood stained knife and the axe and presence of blood of B group on her *saree* and blouse. The prosecution case against the appellant was therefore, established beyond reasonable doubt.
51. The appeal is devoid of any merit. We accordingly affirm and uphold the judgment of conviction and order on sentence passed by the Trial Court and dismiss the appeal.

(G.P. MITTAL)
JUDGE

(SANJIV KHANNA)
JUDGE

APRIL 03, 2014

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