

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRIMINAL APPEAL NO. 768/2011**

Reserved on : 20th March, 2014
Date of decision: 28th May, 2014

SHISHPAL @ SHISHU

..... Appellant

Through Mr. K.K. Manan, Mr. Ankush Narang,
Mr. Nipun Bhardwaj & Ms. Anjali Rajput,
Advocates.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through Ms. Rajdipa Behura, APP for the State.

CRIMINAL APPEAL NO. 993/2011

AMIT

..... Appellant

Through Ms. Manisha Bhandari, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Ms. Rajdipa Behura, APP for the State.

CRIMINAL APPEAL NO. 839/2011

ROSHAN

..... Appellant

Through Mr. K.K. Manan, Mr. Ankush Narang,
Mr. Nipun Bhardwaj & Ms. Anjali Rajput,
Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent
Through Ms. Rajdipa Behura, APP for the State.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

SANJIV KHANNA, J. :

Shishpal @ Shishu, Amit and Roshan by the impugned judgment dated 23rd May, 2011 stand convicted for murder of Ram Chandran @ Ramu. The aforesaid conviction arises out of FIR No. 8/2010, Police Station Mayur Vihar. By order on sentence dated 25th May, 2011, the appellants have been sentenced to undergo life imprisonment and pay fine of Rs.2,000/- each, in default of which, they have to suffer Simple Imprisonment for two months. Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C for short) has been granted.

2. The factum that the deceased Ramu had died a homicidal or unnatural death as a result of stab wound was not questioned and challenged before us. The same is duly established and is not within the realm of any debate in view of the MLC (Exhibit PW-14/A) and the post-mortem report (Exhibit PW-19/A). Dr. K. Tyagi (PW-14) had proved the MLC (Exhibit PW-14/A) and deposed that on 10th January, 2010 at 9 P.M. Ramu was brought by ASI Lalji Tiwari of PCR with history of assault. He

examined the patient and opined that he had died. The patient had an incised wound on left side of abdomen approximately 4cm x 2 cm (length into width). The post-mortem report (Exhibit PW-19/A) was proved by Dr. Vinay Kumar Singh (PW-19) and it refers to incised wound, 5.5 x 2.5 cm, obliquely present over the left side of lower abdomen. On internal examination, about 1 to 1 ½ litre blood was present in the cavity and there was descending colon incised wound, 3 x 0.5 cm, and spleen incised wound, 2.5 cm x 0.5 cm, lower border. Cause of death was shock and haemorrhage consequent upon the incised wound No. 1. The said injury was sufficient in ordinary course of nature to cause homicidal death. The time since death was 36 to 44 hours. The post-mortem examination was conducted on 12th January, 2010 at L.B.S Hospital. The clothes worn by the deceased and blood sample in gauze piece were seized.

3. The primary issue and question raised before us relates to the involvement of the three appellants in the crime, resulting in the death of Ramu. On the said aspect, the prosecution has relied upon the testimonies of Swami Nath Pandey (PW-3), the informant, who, as is the prosecution's case was an eye witness and Nitin (PW-4), who was present at the place of occurrence but once the fight started, had left the place to call Laxmi (PW-1) stated to be wife of the deceased. We shall begin with the testimony of Swami Nath Pandey (PW-3).

4. Swami Nath Pandey (PW-3) has deposed that he was running a *paan-bidi* stall in front of Police Station Mayur Vihar near English Wine Shop and was present at his stall on 10th January, 2010 when at about 8.20 P.M. he saw the appellants- Amit and Roshan quarrelling with the deceased Ramu. He identified the appellants-Amit and Roshan, who were produced through video-conferencing, but refused to identify Shishpal @ Shishu, the third appellant. PW-3 in his court deposition recorded on 1st June, 2010 stated that Amit and Roshan dragged the deceased Ramu from the wine shop towards his rehri/stall and Amit then stabbed Ramu. Crowd of about 150 persons had gathered but no one intervened even after stabbing. The appellant Amit had challengingly raised the knife in the air and Amit and Roshan slipped on his western side. After about 5-7 minutes, wife of Ramu reached the spot and started crying. She went towards the police station and at about 8.30 P.M., PCR vehicle reached the spot, as someone had made a call at No. 100. ASI Kali Charan (PW11) and the local police reached the spot and inquired from him. He had then narrated the facts. Subsequently, Pandit Subodh Kumar Sahai (PW20), SHO Police Station Mayur Vihar reached.

5. PW-3 was cross-examined by the Additional Public Prosecutor and confronted with portions of his statement made under Section 161 Cr.P.C. marked Exhibit PW-3/A, wherein it was recorded that three boys were

present and two of them had caught hold of deceased Ramu, while the third had taken out a knife from his pocket and stabbed Ramu and also that the three slipped away in a car which was parked at the corner of the road. He refused to identify Shishpal @ Shishu, who was shown to him through video-conferencing as the third person along with Amit and Roshan. In cross-examination, PW-3 has stated that the deceased had tried to pick pocket on either Amit or Roshan. When wife of Ramu reached the spot, she was weeping. PW-3 accepted as correct that the deceased Ramu was a pick pocket and a person of bad character (pakka badmash of the area). We shall be referring to his testimony subsequently as well when we deal with the evidentiary value and credibility of his deposition. However, we reject the contention that PW-3 was a planted witness and not an eye witness. Mohd. Murtuja Khan (PW-10), ASI Kali Charan (PW-11), Sonu Kaushik (PW-17) and Inspector Subodh Kumar (PW-20) have all deposed as to the *paan biri* shop outside the police station and adjacent to the wine shop. Location of the *paan biri* shop is clearly indicated in the unscaled site plan (Ex.PW3/B) and scaled site plan (Ex.PW17/A). Thus, the presence of PW-3 at the place of occurrence was normal and natural and he was not a chance witness, who was accidentally at the spot at the time of the occurrence.

6. Learned counsel for the appellant has highlighted a small discrepancy or contradiction between the statement made by ASI Kali Charan (PW-11) and HC Soran Singh (PW-15). The latter has deposed that when he reached the spot of occurrence, ASI Kali Charan (PW-11) and Constable Kheta Ram (PW-21) were already present, but in the cross-examination, he voluntarily stated that Swami Nath Pandey (PW-3) was not there, whereas ASI Kali Charan (PW-11) has stated that PW-3 was present but initially Swami Nath Pandey (PW-3) did not tell him that he was an eye witness to the occurrence and only subsequently upon return from the hospital, PW-11 recorded Swami Nath Pandey's statement and rukka (Ex.PW11/A) was written and FIR was registered.

7. To our mind this discrepancy in the two statements is immaterial as after the occurrence, it was expected that the persons present would have disbursed and moved away. No one wants to come forward and depose about a matter in which knife was used to inflict injuries and the person injured had fallen on the road with blood oozing. It was natural for PW-3 to take a backseat and avoid interrogation.

8. Nitin (PW-4)'s deposition was recorded partly on 1st June, 2010 and concluded on the next day, i.e., 2nd June, 2010. PW-4, aged about 10-12 years on the date of deposition, has stated that he had never been to school. On 10th January, 2010 at 8 P.M. he along with the deceased Ramu, who

was like his brother went to the wine shop in Trilokpuri. He was asked to sit down on the foot path, while deceased Ramu stood in the queue to purchase liquor. He identified the three appellants when they were produced through video- conferencing stating that they had dragged deceased Ramu from the queue. Thereafter, appellant-Amit, whom he identified as the person present in the centre, took out a knife. On seeing this, he ran to his house and narrated the facts to the wife of Ramu (his bhabhi) and Rahul, his brother. He along with Rahul and wife of Ramu rushed to the spot and found that the deceased- Ramu was lying in a pool of blood. He along with wife of Ramu went to the Police Station but were not given due attention (no one heard them). Wife of Ramu made a call to the police after taking phone from a person present. After 10-15 minutes, a police vehicle reached the spot and took Ramu to the LBS Hospital, where he died. Thereafter, he, Rahul and wife of Ramu came to the police station and his statement was recorded. Thus, Nitin (PW-4) has identified the three appellants, who were present at the place of occurrence when the quarrel had started and Amit had taken out the knife. PW-4 had not seen the actual stabbing incident but was present when the occurrence had begun.

9. Laxmi (PW-1) admits and states that Nitin and deceased Ramu had gone out at 8 P.M. on 10th January, 2010. Nitin came back running and

had stated that three persons were beating Ramu in front of Mayur Vihar Police Station. Accordingly, PW-1, Rahul and Nitin had rushed to the spot and there they found Ramu lying on the road, smeared in blood. She made a call at No. 100 and PCR van reached there and took Ramu to the hospital. She had also gone to the hospital where Ramu was declared brought dead.

10. Laxmi (PW-1) had deposed that after Ramu had left the house at about 8 P.M., three boys had come to the jhuggi, i.e., the house and enquired about Ramu. One of them had angrily asked where was Ramu (Ramu Kahan Hai?) and she informed him that he had just gone out with Nitin (PW4). She deposed that the person who had asked about Ramu had given his name as Amit but identified the person who had spoken said words as Shishpal @ Shishu. She testified that only Shishpal had entered the house whereas the other two were standing outside the house and she had not seen their faces. However, she identified the three appellants in the court.

11. We are inclined to accept the argument of the appellants that Laxmi's (PW-1) deposition mentioned in the above paragraph is an exaggeration and her identification of the appellants in the court is questionable. The said identification cannot be relied upon as a circumstance incriminating the appellants. The reason being, that PW-1 has deposed that only one of the three boys had come inside, while the two

others remained outside and she had not seen their faces. Thus, Laxmi's (PW1) identification of the two, who remained outside the house, remained a doubtful assertion. We further believe and accept the submission on behalf of the appellants that there was no reason and cause for any of the three appellants to go inside the house, i.e., jhuggi of the deceased. There is no evidence or material to indicate or show that the three appellants had quarrelled or knew the deceased Ramu from before or were aware of his address. Pre occurrence familiarity is not established and there is no ground to accept any previous acrimony. As noticed above, Swami Nath Pandey (PW-3) has deposed that there was a quarrel at the wine shop as the deceased had pick pocketed one of the appellants, which indicates and reinforces the factual position that the deceased was not already known to the appellants. Nitin (PW-4) has also not deposed that the appellants were known to him or were known to the deceased prior to the incident. His deposition is to the effect that when the deceased was standing in the queue to purchase liquor, they started quarrelling. Shivam (PW-5) whose mobile phone was used to make a call on number 100, has deposed that he had seen a man lying on the road in an injured condition and on enquiry was informed that the said person was trying to pick pocket and was beaten by the some person. The said deposition, though not a direct evidence, corroborates PW3's version.

12. However, this does not mean that we should disregard and not accept the identification of the three appellants Amit, Roshan and Shishpal by Nitin (PW-4) and identification of Amit and Roshan by Swami Nath Pandey (PW-3) or we should only accept identification of Amit and Roshan by Swami Nath Pandey (PW-3) and disbelieve identification of Amit, Roshan and Shishpal as deposed to by Nitin (PW-4).

13. It was highlighted that Nitin (PW-4) in his cross-examination had falsely asserted that he did not have an elder brother named Vipin and our attention was drawn to the cross-examination of PW-4 after lunch on 2nd June, 2010 by the counsel for Shishpal, wherein the said Vipin was produced and shown to the witness, but Nitin (PW-4) denied that he was his real brother. At that stage, one lady named Indra, who was sitting in the Court, was called by the counsel for the defence, Shishpal. She confronted PW-4 and stated that she was the mother of Nitin (PW-4) and Vipin was her eldest son, Rahul was her middle son and Nitin was the youngest. Our attention is also drawn to the fact that Indra has deposed as defence witness (DW-8) and reiterated the said factual position and had stated that she was residing in Jhuggi No.22, Block Market Trilokpuri, Delhi with her sons. She knew deceased Ramu, who used to be treated like a son by her husband. Ramu had not married Laxmi and she claimed that they were not living in the *Jhuggi* as husband and wife, but Laxmi (PW-1)

used to visit her *Jhuggi* for meeting deceased Ramu as a friend. On 10th January, 2010, no one came to the *Jhuggi* in the evening hours to meet Ramu and that on 10th January, 2010, Nitin (PW-4) and Rahul had remained in the *Jhuggi* and all of them had gone to sleep. Next day police came and took Rahul (PW-2) and Nitin (PW-4) with them. She even deposed that Nitin (PW-4) had made a complaint to DCP and the Commissioner of Police that PW-4 had deposed in the Court under pressure and threat from Raja and Adi, brothers of the deceased. She has accepted as correct that the deceased Ramu had pending criminal cases against him but could not give details. She accepted that she had not put thumb impression or signed on the complaint made to DCP, but she had accompanied Nitin (PW-4). She denied that deceased Ramu and Laxmi were residing as husband and wife in the *Jhuggi* permanently, but accepted as correct that she had no concern as to who used to come and meet Ramu. She, however, denied the suggestion that she was deposing falsely in order to save Shishpal.

14. Subsequent application by Nitin (PW-4) has been dealt with separately below, but at this stage, while dealing with the testimony of Indra (DW-8) as well as the observations of the Court made at the time of deposition of PW-4 on 2nd June, 2010, we would like to record the following observations. It is rather surprising that Indra (DW-8) deemed it

appropriate and proper to come and sit in the Court on 2nd June, 2010 and at the instance of the counsel for the accused Shishpal get up and vociferously contradict Nitin (PW-4). It is, therefore, clear that when PW-4's deposition was being recorded on 2nd June, 2010, he was under tremendous pressure and was being compelled not to state the facts. PW-4 on 2nd June, 2010 accepted and admitted that Indra was his mother, but remained steady on his deposition that Vipin was not his eldest brother. We do not think that we can rely upon the testimony of DW-8 that she was present in the *Jhuggi* of Ramu on 10th January, 2010 and Nitin (PW-4) had not gone out with Ramu and has accordingly made false and untruthful statement as to the occurrence on 10th January, 2010 at 8 p.m. The exact and precise details given by PW-4 as to the occurrence and what had transpired clearly belies and negates the deposition of DW-8 to the said effect. Further, he had deposed that his mother had gone to the village about one and a half months back i.e. before the occurrence. This assertion was made by Nitin (PW4) on being questioned by Ld. Defence Counsel of Shishpal, in his testimony recorded before lunch on 02.06.2010.

15. Laxmi (PW-1) has been candid in her deposition that she was residing and living with the deceased-Ramu as husband and wife, though she was married before and had two children, namely, Aman and Sania aged about 8 and 4 years. She got married to Ramu in a temple. She has

given the name of the land lady as Indra (reference is apparently to DW-8).

16. We are inclined to accept the relationship between Laxmi (PW-1) and the deceased-Ramu, as deposed to by Laxmi (PW-1) and Nitin (PW-4). Presence of Nitin (PW4) has not only been deposed to by Laxmi (PW-1) but also as noticed below, even by the Police officers who had conducted the investigation. Nitin (PW4) repeatedly called Laxmi (PW1) as *bhabhi*, an indication of a close and affectionate relationship between them.

17. Rahul, the other son of Indra (PW-8), has appeared as PW-2 and did not support the prosecution version i.e. he along with his brother Nitin (PW-4) and Laxmi (PW-1) had gone to the place of occurrence stating that he did not know anything about the case and his statement was never recorded by the police, though at the instance of Raja, brother of the deceased, his thumb impressions were taken on blank papers by the police. Aforesaid deposition of Rahul (PW-2) is *ex facie* false and untruthful. It is apparent that he had scammed and renegaded. Rahul (PW-2) in his cross-examination by the Ld. Additional Public Prosecutor accepted that Laxmi (PW1) was the wife of Ramu and they were living in the *jhuggi*, but not as tenants. However, in the cross-examination by the Ld. Defense Counsel for Shishpal, Rahul (PW-2) again vacillated and stated that Laxmi never used to come and sleep during the night with Ramu. Thus, PW2 is completely unreliable and has given different versions.

18. We have no reason to doubt and disbelieve the presence of Nitin (PW-4) at the wine shop and his deposition that after seeing the quarrel and the knife being flashed, he had rushed to call Laxmi (PW-1) and thereupon they had returned at the place of occurrence and the Police PCR came thereafter. Our affirmation on testimony of Nitin (PW4) is corroborated by contemporaneous Police Control Room form marked Exhibit PW-16/A, which records that at 2033 hours a call was made from mobile telephone No. 9910381966 stating that in front of Mayur Vihar Police Station one man had been stabbed with a knife. The call was attended to and a message was conveyed to the Police Control Room at 2102 hours that the information was correct. The form Ex PW16/A records that the injured was known as Ram Chandran, aged 26 years and was resident of 20/208, Trilokpuri. It was also recorded that his condition was serious. The MLC (Exhibit PW-14/A) was recorded at 9 P.M. on 10th January, 2010 and mentions the name of the injured/deceased as Ramu Chandran S/o Palani, aged 25 years, resident of 20/144, Trilokpuri, Delhi and that he was brought by ASI Lalji Tiwari of the PCR. The said details could have been given by a person known to the deceased. Thus, we accept the version of Laxmi (PW-1) and Nitin (PW-4), who have stated that Nitin (PW-4) had rushed back home and then Laxmi along with Nitin and Rahul had gone to the spot. This version of PW-1 and PW-4 was accepted by Shivam (PW-

5), the person whose mobile phone was used to make the call at number 100. He has deposed that two calls were made at No. 100 by a lady and after the second call the police arrived within 2-3 minutes. PW-5 further deposed that a woman was crying near the injured and on her request he had given the mobile phone to her. No doubt the PCR form (Exhibit PW-16/A) names the informer as Ravindra Singh but PW-5 has not deposed to the said effect. Categorical statements of PWs-1 and 5 were that information was given by PW-1 to the Police Control Room.

19. Another contention raised was that the address of the deceased Ramu mentioned in the MLC was “20/144, Timarpur, Delhi” and not “Jhuggi No.22, Block Market Trilokpuri, Delhi” where Laxmi (PW-1) used to reside. As discussed above, it has come on record that Jhuggi No.22, Block Market Trilokpuri, Delhi belonged to Indra (DW-8). The address 20/144, Trilokpuri in fact appears to be the address of Ramu’s brothers as per the trial court record.

20. Nitin (PW-4), no doubt a young child aged about 10-12 years of age when his testimony was recorded on 1st June, 2010, has been authoritative and categorical on identification of the appellants as the perpetrators and killers of Ramu. He treated and regarded Ramu as his elder brother and was residing with him in jhuggi No 22. He has deposed that Laxmi (PW-1) was his bhabhi being the wife of the deceased Ramu. Before his cross-

examination was recorded on 2nd June, 2010, Nitin (PW-4) had informed the court that brother of appellant-Shishpal came to his house 10-15 days back and offered him Rs.5,000/- stating that he should not depose true facts in the court. PW-4 however, did not accept the money and refused to accept command of the brother of the appellant-Shishpal, who was accompanied by three-four boys. On 16th May, 2010, brother of Shishpal along with three-four boys had again caught hold of Nitin (PW-4) while he was coming from a public toilet but he managed to escape. PW-4 had also moved an application before the trial court, which resulted in order dated 17th May, 2010 passed by the Additional Sessions Judge. In the application, similar averments regarding the incident of 16th May, 2010 were made and it was stated that brother of the deceased had brought this information to the knowledge of the counsel. ACP/DCP East District was directed to look into the matter immediately and to take steps. Similar application was moved by Swami Nath Pandey (PW-3), which resulted in order dated 15th May, 2010. In the said application it was mentioned that PW-3 was threatened that he would be killed. Order dated 15th May, 2010 records that PW-3 was trembling when his application was taken up for consideration. It was stated that three-four days back, some boys with muffled faces had come to PW-3's shop and threatened and asked him not

to depose. Application was marked to ACP Mayur Vihar with directions to look into the matter. Subsequently order dated 18th May, 2010 was passed.

21. It was brought to our notice that the appellants had filed applications for recall and re-examination of Swami Nath Pandey (PW3) and Nitin (PW4). Orders rejecting the applications have to be read along with earlier orders passed by the Trial Court on the threats being extended to the two witnesses and the order dated 18th May, 2010 that both of them were being threatened and, therefore, they had made a written complaint. By this order dated 18th May, 2010, it was directed that PWs-3 and 4 would be escorted to the court and back to their residence and division/beat staff should be briefed to keep vigil in that regard. Subsequently, on 29th September, 2010 an application was filed by PW-3 along with his affidavit. Similarly, Nitin had purportedly filed an application on 21st August, 2010. In our opinion, the Trial Court rightly vide orders dated 4th September, 2010 and 25th September, 2010, rejected the said submission/applications on the ground that the said witnesses cannot be allowed to change their stance after having made statements under oath in the court. At the time of recording ocular evidence of PW3 and PW4, the presiding officer was aware of the threats and the earlier orders. He had the opportunity to notice demeanour and closely observe the conduct and behaviour of the witnesses.

22. It was submitted that Swami Nath Pandey (PW-3) was a stock witness of the police as he has accepted in the cross-examination that he had earlier deposed in one murder case in 1984 and five other cases of Police Station Patparganj and two cases of Police Station Mayur Vihar. He accepted that he had good relations with officers of Police Station Mayur Vihar and that he was deposing because SHO Pandit Subodh Kumar Sahai was a good man. It would be incorrect and wrong to hold that Swami Nath Pandey (PW-3) was a planted witness in the present case, who had not seen the occurrence. PW-3 had a *paan-bidi* stall in front of the Police Station Mayur Vihar near the English Wine Shop. Thus, his presence at the said spot on the date and time of occurrence is per se believable and should be accepted. He was not a chance witness but his presence was normal and natural. The rukka in the present case was made on the basis of information and details given by Swami Nath Pandey (PW-3) being Exhibit PW-3/A to ASI Kali Charan (PW-11). This was because of the fact that he had seen the occurrence. In Exhibit PW-3/A the rukka, PW-3 has not named any of the appellants but as stated has referred to the involvement of three persons. Personal grudge or animosity of PW3 towards Asif and Roshan was not there or alleged.

23. Contesting the testimonies of PWs-1 and 4, it was submitted that none of the police officers, i.e., ASI Kali Charan (PW-11), Head Constable

Soran Singh (PW-15), Somi Kaushik (PW-17) or Inspector Subodh Kumar (PW-20) have deposed about the presence of Laxmi (PW-1) and Nitin (PW-4). At the outset, we observe that the witnesses PW-11, 17 and 20 have affirmed that they had seen PW-3, who had *paan-bidi* shop in front of the police station. It is clearly established that the deceased-Ramu was taken to the hospital in the PCR van. Details and particulars regarding identity of Ramu were given and furnished by PWs-1 and 4 and the same are reflected in Exhibit PW-16/A, i.e., PCR form and the MLC (Exhibit PW-14/A). It is apparent that during the said period and initially when ASI Kali Charan (PW11) swung into action, he did not notice and get in touch with PWs-1 and 4. PW-11 has deposed that on reaching the spot, he learnt that the injured had been taken to LBS Hospital and accordingly asked Constable Prashant and Constable Soran to stay back and he went to the said hospital with Constable Khetram. He procured MLC of Ramu, who was declared as brought dead (Ex PW14/A). The dead body was kept in mortuary. He (PW11) returned to the spot where he met PW-3 and recorded his statement and rukka was prepared and sent to the police station for registration of the FIR. In the hospital, PW-11 did not meet any eye witness which shows that by that time PWs-1 and 4 had left the hospital. In cross-examination, PW-11 has stated that he had reached the hospital at 8.50 P.M. and left the hospital at 9.15 P.M. This according to

us is not correct and is a proximate time. The MLC itself was recorded at 9 P.M. and it is apparent that PW-11 reached the hospital subsequently. The FIR (Exhibit PW-7/A) was registered at 2250 hours. However, PW-11 hardly remained in the hospital and came back to the site of occurrence within about 20/25 minutes.

24. We have also gone through the statements of defence witnesses DW-1 to DW-7, but do not find any reason to refer to their depositions in detail as the versions given by Bala (DW-1), Mahipal (DW-2), Anil Kumar Pandey (DW-3), Vijender (DW-4) and Anil Bhatia (DW-5) do not inspire confidence and further the case and defence of the appellants. DW-6 and DW-7 have only deposed with regard to the complaints received from Nitin (PW-4) etc., which aspect has been discussed above.

25. On the basis of the disclosure statement made by Shishpal marked Ex.PW9/C, the police vide seizure memo (Ex.PW9/G) recovered a knife stated to be the weapon of offence from the house of Shishpal at 28/271, Trilokpuri. Sketch of the knife (Ex.PW9/H) was prepared. As per the CFSL report (Ex.PW20/I), human blood was found on the said knife/dagger, but blood group could not be ascertained on account of no reaction. The said knife/dagger was examined by Dr. Vinay Kumar (PW-19), who has deposed that the injury and cuts on the deceased's clothing

could have been caused by the weapon examined or by some similar weapon.

26. It is in these circumstances, we partly accept the statement of PW-3 to the extent that he identified appellants-Amit and Roshan but disbelieve and disregard PW3's testimony regarding non-identification of Shishpal and accept the version of Nitin (PW-4), who identified Amit, Shishpal and Roshan in the court. It is interesting to note that Amit and Shishpal refused to participate in the Test Identification Parade (TIP) as per report (Exhibit PW-18/A to 18/C). The submission that appellants-Amit and Shishpal were justified in refusing to participate in the TIP proceedings as they had already been shown to Swami Nath Pandey (PW-3) is an obscure plea, which is not acceptable. The plea taken by appellants-Amit and Shishpal while refusing to participate in the TIP proceedings was that the complainant, i.e., PW-3 resided in their locality and there was every possibility that they might have been shown to PW3 by the police. As per the police version, appellants-Amit and Shishpal were arrested vide arrest memos Exhibits PW-9/A and 9/B at 7.10 P.M. and 6.50 P.M. respectively on 11th January, 2010, which is less than a day after the occurrence. TIP proceedings Ex PW18/A to C were to be conducted on 12.1.2010. PW-3 in the TIP proceedings (Exhibit PW-13/B) when conducted on 18th March,

2010 had identified appellant-Roshan, who was arrested vide arrest memo Exhibit PW-10/B on 15th March, 2010 at 3.25 P.M.

27. In view of the aforesaid discussion, we have no hesitation in dismissing the present appeals and we uphold the conviction and sentence of the appellants. The appeals are accordingly dismissed.

-sd-

(SANJIV KHANNA)
JUDGE

-sd-

(G.P. MITTAL)
JUDGE

MAY 28, 2014
VKR/NA