

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

Reserved on: February 20, 2014

Decision on: March 7, 2014

**CRIMINAL APPEAL No. 1314 of 2011**

MOHD. SALEEM & ORS

..... Appellants

Through: Mr. Siddharth Aggarwal with Mr. Hilal Haider, Mr. Adit S. Pujaria and Mr. Vaibhav Sethi, Advocates for A-1 to 3.

Mr. Sanjeev Singh, Advocate for A-4.  
Mr. M.Z. Chaudhary, Advocate for A-5.

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP.

**AND**

**DEATH SENTENCE REF No. 3 of 2011**

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP.

versus

MOHD. SALEEM & ORS

..... Respondents

Through: Mr. Siddharth Aggarwal with Mr. Hilal Haider, Mr. Adit S. Pujaria and Mr. Vaibhav Sethi, Advocates for A-1 to 3.

Mr. Sanjeev Singh, Advocate for A-4.

Mr. M.Z. Chaudhary, Advocate for A-5.

**CORAM:**

**HON'BLE DR. JUSTICE S. MURALIDHAR  
HON'BLE MS. JUSTICE MUKTA GUPTA**

**J U D G M E N T  
07.03.2014**

**Dr. S. Muralidhar, J.**

***Introduction***

1. By the judgment dated 3<sup>rd</sup> September 2011 passed by the Additional Sessions Judge-02 (North), Delhi in SC No. 35/11. Mohd. Saleem (Accused No.1), Shaheen Abbas @ Shanu (Accused No.2), Sajid Wasim @ Raza (Accused No.3), Shaheen Zargam Ali (Accused No.4) and Shabbir Kasim @ Kasim Raja (Accused No.5) have all been convicted of the offences under Sections 302 and 307 read with 34 IPC and Section 27 of the Arms Act, 1959. By the order on sentence dated 7<sup>th</sup> September 2011, all five accused were sentenced to death for the offences under Section 302 IPC read with 34 IPC and to fine of Rs.10,000 and in default to suffer simple imprisonment ('SI') for ten months. For the offence under Section 307 read with 34 IPC all the accused were sentenced to 10 years rigorous imprisonment ('RI') and fine of Rs.10,000 and in default to suffer SI for five years and to fine of Rs.5,000 each and in default to suffer SI for five months.

2. Death Sentence Reference No. 3 of 2011 has been preferred by the State seeking confirmation of the death sentence awarded to the convicts under Section 366(1) of CrPC. The accused have preferred Criminal Appeal No. 1314 of 2011 challenging their conviction and sentence.

3. The accused have been found guilty of committing the murder of Mohd. Tariq and causing grievous injuries and attempting to murder his younger brother Mohd. Tayyab (PW-21).

***The case of the prosecution***

4. According to the prosecution, Mohd. Sadiq (PW-3), the brother of the deceased Tariq and injured PW-21 married Rubina (PW-10), real sister of Sajid Wasim (A-3) and Shabbir Kasim (A-5). PW-3 belongs to the Sunni community whereas PW-10 and the Appellants belong to Shia community. Shaheen Abbas (A-2) is a cousin of PW-10. Mohd. Saleem (A-1) and Shaheen Zargam Ali (A-4) are the uncles of PW-10. Both families lived in the same area i.e. Ballimaran, which is part of the walled city in Delhi.

5. The case of the prosecution is that on account of the marriage of PW-3 and PW-10 against the wishes of the family of PW-10, enmity had developed between the Appellants and the family of PW-3. It is stated that PWs-3 and 10 were living away from the family in order to avoid the wrath of the Appellants. The marriage between PW-3 and PW-10 took place on 1<sup>st</sup> May 2007, more than one year prior to the date of the incident, i.e. 7<sup>th</sup> July 2008. About 10 days prior to the date of incident, PW-3 and PW-10 returned to Ballimaran and began residing in the parental home of PW-3.

6. What transpired on the evening of 7<sup>th</sup> July 2008 is elaborated by Mohd. Shariq (PW-8), a brother of the deceased who also lodged the First Information Report ('FIR') (Ex. PW-8/A). PW-8 states that he saw Zargam Ali (A-4) taking Mohd. Sadiq (PW-3) on a motorcycle at around 10:30 pm on

7<sup>th</sup> July 2008. PW-8 stated to the police in Hindi that '*Aaj raat karib 10:30 pm par maine gali main dekha ki Zargam mere bhai Sadiq Ko m/cy par bitha kar gali kuppe wali main le ja raha tha*'. After PW-8 noticed PW-3 being taken away by A-4 on his motorcycle, PW-8 reached Hari Masjid, which is not very far away from the place where he lived i.e. near Punjabi Phatak in Ballimaran, along with his brothers Mohd. Tahir (PW-12), Mohd. Tayyab (PW-21) who was later seriously injured and the deceased Mohd. Tariq.

7. PW-8 stated that he saw A-4 had taken PW-3 to one side of the road near Hari Masjid and was talking to him. PW-8 then asked A-4 as to why he had brought PW-3 and A-4 is stated to have replied that he wanted to talk to PW-3 "for the last time". The words in Hindi as told to the police by PW-8 were: '*Zargam ne kaha tum jao mujhe is se akele main aakhri baar baat karni hai*'. PW-8 stated that at that place he also saw Mohd. Saleem (A-1) and the nephews of Zargam i.e. Shaheen Abbas @ Shanu (A-2), Sajid Wasim (A-3) and Shabbir Kasim (A-5). The deceased Tariq then told Zargam that whatever he wanted to say to PW-3 should be in their presence but Zargam was adamant that he wanted to talk to PW-3 in private. Meanwhile, Tariq took Zargam to another side to pacify him and PW-8 then told PW-3 to immediately return home and thereupon PW-3 left for Gali Kuppe Wali.

8. PW-8 stated that thereafter he along with his brothers Tahir (PW-12), Tayyab (PW-21) and deceased Tariq also returned home through Gali Kuppe Wali. According to PW-8, the five accused started following them and at around 11 pm and when they reached near the *chowk* at Gali Kuppe Wali, A-4 is stated to have exhorted '*maaro saalo ko, khatam kar do, bachne na*

*payein'*. When PW-8 and his brothers turned back they saw that all the five accused had pistols in their hands. A-4 is stated to have fired a shot which hit PW-21 and at the same time the four other accused also fired shots. PW-8 stated that on seeing PW-21 hit by a bullet, all of them ran away to save their lives. He then stated that the five accused surrounded the deceased Tariq in Gali Kahar Wali, Ballimaran and shot him. PW-8 stated that he escaped by running towards Punjabi Phatak. When the sound of the bullets stopped after some time, PW-8 came back to Gali Kahar Wali to see that the deceased Tariq was lying in a pool of blood. With the help of one Mohd. Wasim (PW-7), PW-8 took deceased Tariq to the LNJP Hospital in a rickshaw. He found that PW-21 was already admitted there with bullet injuries.

#### ***Events after the incident***

9. From the police record it transpired that at about 11.15 pm on 7<sup>th</sup> July 2008, Woman Constable Rekha (PW-15) was posted in the Police Control Room ('PCR'). She received an anonymous call from a Mobile No. 9873839916. The caller disclosed that PW-21 had sustained three bullet injuries and was being taken to LNJP Hospital. The information was recorded as part of DD No. 28A at 11.25 pm on 7<sup>th</sup> July 2008 at PS: Lahori Gate. The said DD (Mark A1) also recorded the information from another Mobile No. 9911336060 that there was firing going on in Ballimaran. This information was given telephonically to Sub Inspector ('SI') Prakash Chand Sharma (PW-25). Head Constable (HC) Kewal Krishan (PW-23) is stated to have handed over DD No. 28A to PW-25 who then reached the spot i.e. inner circle of Gali Kahar Wali and Gali Kuppe Wali.

10. PW-25 states that when he reached the spot he found blood in Gali Kuppe Wali and Gali Kahar Wali and also certain live cartridges lying there. According to PW-25, in the meanwhile Station House Officer ('SHO') Prem Singh Hooda (PW-37) and Constable Samar Pal (PW-5) reached the LNJP Hospital.

11. The medico-legal certificate ('MLC') (Ex.PW27/A) of the deceased Mohd. Tariq reveals that he was brought by (B/B) Mohd. Shariq (PW-8) and the date and hour of arrival are shown therein as 7<sup>th</sup> July 2008 at 11.35 pm. In the column titled 'particulars of injuries' it is written "Alleged H/o physical assault with firearm injury at Gali Patna Wali at around 11.00 pm today as told by B/B and patient. No H/o LOC/Vomiting/seizure". The 'observation notes' state: "Patient conscious. Pulse Rate 80/min and blood pressure is 110/80." The Junior Resident who signed the MLC at that stage was Dr. Priyanka who was not examined as a prosecution witness. On the said MLC there are endorsements made on 8<sup>th</sup> July 2008 (X-3), 9<sup>th</sup> July 2008 (X-2) and 10<sup>th</sup> July 2008 (X-1) that the patient was not fit for making a statement.

12. PW-25 recorded the statement of PW-8 at around 2 am. The *rukka* was Ex.PW-8/A on which PW-25 made his endorsement (Ex. PW25/AA). He handed over the *rukka* to PW-5 with direction to register it as an FIR. HC Bhim Singh (PW-1) registered the FIR No. 134 of 2008, PS: Lahori Gate and the FIR was given by PW-5 to PW-34 for investigation. The *rukka* recorded *inter alia* the statement of PW-8 naming the five accused as the assailants.

13. The MLC of Mohd. Tayyab (Ex.PW-27/B) shows that he was brought in

at 11:30 pm on 7<sup>th</sup> July 2008. The name of the B/B was given as Faeem Ahmed (PW-11). The 'observation notes' state: "Alleged H/o physical assault with firearm near his residence at around 11.15 pm today as told by patient and B/B." The examination notes state: "patient conscious with pulse rate of 100/min and BP 100/70". Then MLC was recorded by Dr. Satya who again was not examined as a prosecution witness. There are endorsements on 8<sup>th</sup> July 2008, 9<sup>th</sup> July 2008 and 10<sup>th</sup> July 2008 that the patient is unfit for making a statement. There is an endorsement of 11<sup>th</sup> July 2008 which states that "patient is unable to speak but his higher functions are normal, patient is fit for written statement".

14. On 11<sup>th</sup> July 2008 PW-34 recorded the following statement of PW-21 at the hospital:

"On the night of 7<sup>th</sup> at 10:25 'O' clock I was sitting in my house with my brothers when Shariq came and told that Zargam had taken away Sadiq on his motorcycle whereupon, we, all the brothers, reached Main Road, Ballimaran. (We saw) Sadiq was standing there in the company of Zargam. When we were returning to home, Zargam, Saleem, Shanu, Wasim and Kasim shot fire at me and my brother Tariq in Gali Kuppe Wali".

#### ***At the scene of crime***

15. Meanwhile, to go back to the events of the intervening night of 7<sup>th</sup>/8<sup>th</sup> July 2008, the case of the prosecution as elaborated upon by SI Braham Singh (PW-4) and Constable Ramesh (PW-6), Photographer of the Crime Team, is that at around 2.30 am the Mobile Crime Team arrived at the spot. According to PW-25, however, even prior thereto Duty HC Kailash (PW-20)

handed over to PW-25 two *pullandas* sealed with the seal of JPN Hospital stated to be containing blood stained clothes of Mohd. Tariq and Mohd. Tayyab (PW-21). He then took both parcels into his possession by memo Ex. PW-20/A and returned to the spot with PW-37. Meanwhile, PW-5 also reached the spot to hand over the *rukka* and copy of the FIR to PW-34. According to PW-25, PW-8 also reached the spot.

16. PWs-5 and 6 stated that between 2.30 am and 4 am on 8<sup>th</sup> July 2008, the recoveries took place of the shoes (Ex. PW-5/B), cartridges (Ex. PW-5/C) and blood stained clothes (Ex. PW-5/A). As per the seizure memo, blood was found in front of Shop No. 899, Gali Kuppe Wali and in front of Shop No. 316 Gali Kahar Wali. Blue coloured cloth shoes were found in the chaotic and wet condition in the Gali thoroughfare. Three empty cartridges made of brass bearing the words 8mm and KF on the bottom, two empty cartridges of red colour bearing the words Shaktiman and 12 on the bottom, one live round made of brass bearing the word 8mm and KF on the bottom and one lead made of brass which is the front part of the round was recovered from Gali Kuppe Wali and Gali Kahar Wali, Punjabi Phatak, Ballimaran by the Mobile Crime Team.

17. PW-8 states that he reached the spot only at 8.30 am on 8<sup>th</sup> July 2008 along with the police officers. This is corroborated by PW-37 in his cross-examination, who states that he arrived at the spot at 7 am. It appears that an unscaled rough site plan (Ex. PW-34/A) was prepared. According to PW-34 this was prepared at the instance of PW-8. On 24<sup>th</sup> September 2008 a scaled

site plan was prepared by SI Mahesh Kumar (PW-26). He states that this was prepared at the instance of PW-8 and Mohd. Tahir (PW-12).

***Version of the public witnesses***

18. The prosecution produced three public witnesses to speak of the events of the night of 7<sup>th</sup> July 2008. The first is Faem Ahmed (PW-11) who took PW-21 to the hospital. He states that he was wandering around in the area with the deceased Mohd. Tariq after returning home from work around 8.30 pm to 9 pm on 7<sup>th</sup> July 2008. When PW-11 was first examined on 23<sup>rd</sup> April 2010 in the forenoon he stated that he had come back home at around 8.30 to 9 pm on the date of the incident. He could not recall the date of the incident. PW-11 then stated that he was not feeling well. The trial Court observed that the “witness is trying to feign some illness and it appears that he is not willing to depose in this case.” The trial Court then directed the witness “to sit at one corner outside the court under police escort”. When PW-11 was recalled for examination after lunch he stated that when he was coming from his shop on 7<sup>th</sup> July 2008 and reached Gali Kuppe Wali he saw at the *chowk* PW-21 lying in an injured condition. He then called up the 100 number and informed the police from the mobile phone of PW-21. In his cross-examination PW-11 confirmed that Tariq was his friend and that “Tariq had left much earlier and as I was coming home, I found Tayyab injured”.

19. The second public witness is Mohd. Wasim (PW-7) who helped to take Mohd. Tariq in a rickshaw to the hospital. Mohd. Shariq (PW-8) states that he saw PW-7 place Mohd. Tariq on to a rickshaw. PW-7 states that he was having a stroll after his meals at Punjabi Phatak when he met PW-8 who

asked him to take Mohd. Tariq to the hospital. However, PW-7 does not speak about hearing any gun shot or the presence of the accused persons.

20. The third public witness is Mohd. Nazir (PW-9), the President of the Residents Welfare Association ('RWA') of Ballimaran. He states that he was present in his office at 11 pm when he heard some cracker type sound in Gali Patna Wali. Upon coming out of his office, PW-9 saw Mohd. Tariq lying in a pool of blood and he then helped Mohd. Shariq (PW-8) brother of injured Mohd. Tariq and another person namely Wasim (PW-7) in removing the injured Mohd. Tariq to the hospital. He stated that he informed the SHO, Lahori Gate about the incident from his Mobile No. 9911336060.

***Version of the injured eye witness PW-21***

21. The principal prosecution witness is PW-21 who was injured in the shooting. PW-21 stated that PW-8 informed his brothers i.e. deceased Mohd. Tariq, Mohd. Tahir (PW-12) and PW-21, that A-4 had taken PW-3 on his motorcycle. PW-21 stated that the other accused were present at the Hari Masjid when A-4 was talking to PW-3. PW-21 stated that deceased Tariq took A-4 to one side and meanwhile PW-8 asked PW-3 to return home. According to PW-21 for about 10 to 15 minutes after the departure of PW-3 discussions took place between A-4 and Mohd. Tariq. PW-8 also stated to the same effect.

22. PW-21 stated that the distance between the house at Gali Patna Wali in which his family and PW-3 resided and the mosque on the main Ballimaran Road could be covered in 2 to 3 minutes. He stated that the deceased Tariq

was 5 feet ahead of him and PWs-8 and 12 were about 7 to 8 steps ahead of Tariq. PW-21 stated that as soon as they reached the Chowk Gali Kuppe Wali, A-4 gave the exhortation: '*maaro saalo ko, khatam kar do, bachne na payein*'. In his examination-in-chief PW-21 stated "As I immediately look back, I saw that all the accused persons were having *banduke* in their hands and accused Zargam Ali fired at me and the bullet hit me on the right back/rear of my head. Then I saw accused Wasim firing at us and the bullet hit me on the right side of my chest. Accused Shanu then fired which hit me on my stomach. As my brother Mohd. Tariq tried to come to my rescue, accused Zargam Ali fired at my brother Mohd. Tariq which hit him and Mohd. Tariq fled away from the spot in order to save himself. My brother Mohd. Shariq was already much ahead of us. As I was left alone at the spot, accused Saleem and Kasim fired at me and then they ran after my brother Mohd. Tariq. I was lying in injured condition at *chowk Kuppe wali* and I heard some shots being fired".

23. In his cross-examination PW-21 stated "It is correct that the first bullet that hit me in the right back of my head was fired from behind. I had immediately fallen on the ground. It is incorrect that the second bullet was also fired at me from behind. Vol. It was fired when I was facing the assailant. It is incorrect that when I was fired at second time, my brother Tariq was behind me. Vol. He had come on one side of me. He had come to my left and also tried to drag me out of the range of the fire. We could not run away as I was hit. I was standing all the time when I was fired at five times. It is correct that except for the first bullet, the other four were fired when I was facing the accused persons. It is incorrect that Tariq was present

when I was fired at five times. Vol. He ran away immediately after I was hit the third time. I was standing when Tariq was running. The shutters of the shops at the chowk were down and there was no hiding place so that I could save myself”.

24. PW-21 further explained “Accused Zargam Ali had come to my right after firing at me. Accused Wasim was on one side of Zargam Ali followed by Shanu, Saleem and Qasim. I could hear sound of 4-5 shots that were fired after I fell down. It is correct that I was conscious all the time. It is correct that none of the accused persons fired at me twice. Vol. but I saw accused Zargam Ali re-loading weapon. Gali Kaharwali is not visible from the chowk of Gali Kuppewali”.

25. The third eye witness is PW-12 who apparently ran away from the spot and hid himself. He too states that he heard A-4 giving the exhortation. In his examination-in-chief PW-12 stated: “As I looked back, I saw that all the accused persons were having pistols in their hands. All the accused persons started firing upon us at the main *chowk* and my brother Mohd. Tayyab was badly injured by the firing. I ran away from the spot saving myself from the accused persons. They all continued firing there and in order to save myself, I hid myself in a staircase of a house falling in Gali Kaharwali. While hiding myself in the staircase, I saw that the accused persons had cornered my brother Mohd. Tariq and he was also fired at by the accused persons. I was frightened and went up further in the staircase to hide myself and after about 10 minutes or so, I came out and view the spot where my brother Mohd.

Tariq was lying and he was being carried by my brother Mohd. Shariq along with another boy to the hospital”.

26. However since the three witnesses are related to the deceased their evidence has to be evaluated carefully. They could also be said to be interested witnesses since the animosity between the families of PW-3 and PW-10 on account of their marriage has been spoken of by not only the PWs but even the accused in their statements under Section 313 Cr PC. PW-21 is an interested witness, a related witness but above all he is also an injured eye witness whose testimony would have an additional weight on that score.

***Law relating to related and interested witnesses***

27. The approach of the Court to the evidence of related witnesses who may or may not be interested witnesses was explained by the Supreme Court in ***Darya Singh v. State of Punjab AIR 1965 SC 328*** in the following words:

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the

said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye-witnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. That is not to say that the evidence of such witnesses should be accepted light-heartedly without very close and careful examination, and so, we cannot accept Mr. Bhasin's argument that the High Court committed an error of law in accepting the evidence of the three eye-witnesses without corroboration.”

28. In *Masalti v. State of U.P. (1964) 8 SCR 133* the Supreme Court observed:

“But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan, would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

29. In *State of U.P. v. Ballabh Das AIR 1985 SC 1384* the Supreme Court held:

“3. It was contended on behalf of the appellant that the High Court erred in setting aside the conviction of the respondents on the ground that all the witnesses examined to prove the occurrence were interested persons and hence no reliance could be placed on their evidence. To begin with, we dare say that this was doubtless an absolutely wrong and perverse approach. There is no law which says that in the absence of any independent witness, the evidence of interested witnesses should be thrown out at the behest or should not be relied upon for convicting an accused. What the law requires is that where the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication. We might also mention that the evidence of interested witnesses is not like that of an approver which is presumed to be tainted and requires corroboration but the said evidence is as good as any other evidence. It may also be mentioned that in a faction ridden village, as in the instant case as mentioned by us earlier, it will really be impossible to find independent persons to come forward and give evidence and in a large number of such cases only partisan witnesses would be natural and

probable witnesses This Court in *Badri v State of U.P. 1975 Cri LJ 1739* made the following observations:

“In case where a murder takes place in a village where there are two factions bitterly opposed to each other, it would be idle to expect independent persons to come forward to give evidence and only partisan witnesses would be natural and probable witnesses to the incident. In such a case, it would not be right to reject their testimony out of hand merely on the ground that they belonged to one faction or another. Their evidence has to be assessed on its own merits.”

30. The principles relating to appreciation of the evidence of interested and related witnesses, as explained in the above decisions, may be summarised as under:

(a) Once the Court is satisfied that the witness who is related to the victim is not a chance witness, then the evidence of such witness would have to be examined from the point of view of probabilities. The version of such witness as to the assault has to be carefully scrutinised.

(b) Though the witness may be hostile to the assailant, it is not likely that such witness would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice.

(c) It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses.

(d) Merely because a witness is shown to be a relative of the deceased, and it is also shown that the witness shared the hostility of the victim towards the assailant, it cannot be said that the evidence of such witness would never be accepted unless it is corroborated on material particulars.

(e) Where the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication.

***Analysis of the evidence of PWs 8, 12 and 21***

31. In light of the law as explained in the above decisions, the Court proceeds to examine the evidence of the three eye witnesses, PWs 8, 12 and 21. It is seen that they more or less corroborate each other as regards the following sequence of events:

- (i) The fact of PW-3 being taken by A-4 on his motorcycle;
- (ii) The meeting of the accused and PW-3 and his brothers outside Hari Masjid;
- (iii) PW-3 being asked by PW-8 to leave and PW-3 thereupon leaving for his residence;
- (iv) Deceased Tariq trying to pacify A-4;
- (v) All the brothers of PW-3 their leaving the place after 10-15 min of

discussion during which there were no heated words exchanged, through Gali Kuppe Wali followed by the accused;

(vi) Their hearing A-4 give the exhortation to kill the brothers of PW-3;

(vii) Their turning around to find all the accused having pistols and all the accused opening fire.

32. Therefore, for the purpose of Section 34 IPC, the presence of all the accused, each of them wielding a firearm, and their opening fire is spoken of consistently by all the three eye witnesses.

33. Two of the eye witnesses, PW-21 and PW-8, corroborate each other as regards A-4 opening fire to injure PW-21. Further, as regards the firing on deceased Tariq, PW-21 speaks of A-4 firing and hitting him in the presence of PW-21 after which Tariq ran away. Then we have PW-8, the complainant, noticing as he turned back while running on Gali Kaharwali towards Gali Punjabi Phatak that Tariq had been surrounded and was being fired upon by all the accused. This is corroborated by PW-12 who says that while he hid in the stairs of a building close to the end of Gali Kaharwali, he saw Tariq being surrounded and being fired upon by all the accused.

34. It was submitted on behalf of the appellants that the injuries on PW-21 remain unexplained. According to the MLC, there were five injuries sustained by PW-21. The first was a punctured wound over the occiput, the second a punctured wound 4 cm below right clavicle, the third a punctured

wound over right lower chest, the fourth a punctured wound over umbilicus and the fifth a lacerated wound in the middle of the jaw. The submission on behalf of the appellants is that if PW-21 was, according to his testimony, fired at five times, one by each accused, it does not explain how there were only four punctured wounds and no exit wound. It was submitted further that except for the first injury, none of the other shots could have been fired at from the rear. If the accused persons were following PW-21, the other three punctured wounds could not have been as a result of their firing because those wounds could have been inflicted only by firing from the front. Since PW-21 stated that he fell down after the first shot, it was not possible for PW-21 to remain standing after being hit on the first occasion and to notice who was firing at him. It was unlikely that if PW-21 fell down after being hit behind his right ear that he was able to see who was firing upon Mohd. Tariq thereafter and that too from behind. It was further submitted that his version also fails to explain the bullet entry wounds from his front side. It is unlikely that he would have turned around to receive those bullet hits and notice who was firing those bullets at him.

35. A perusal of the cross-examination of PW-21 shows that the supplementary questions put to him after he said that he had fallen to the ground, elicited the following answer: "I was standing all the time when I was fired at five times. It is correct that except for the first bullet, the other four were fired when I was facing the accused persons." He was not asked whether he fell on his back and whether he remained like that throughout. In particular there is no question ruling out the possibility of his again standing up or facing the assailants after falling down. The above answers of PW-21

do not rule out the possibility of the three bullet entry wounds on his front side if he fell on his back. As regards Tariq being fired upon, PW-21 is clear that when Tariq came to his rescue, A-4 fired at Tariq and the bullet hit Tariq after which he ran away. PW-21 was not shaken in his cross-examination on these statements. He stated: "It is incorrect that when I was fired at second time, my brother Tariq was behind me. Vol. He had come on one side of me. He had come to my left and also tried to drag me out of the range of the fire."

36. The other criticism of PW-21 is that he did not give any statement when he was first brought to the hospital on the intervening night of 7<sup>th</sup> /8<sup>th</sup> June 2008. The MLC only states that he was 'conscious'. It is not the same thing as being fit to make a statement. The first date on which an opinion is given by the doctor that PW-21 is fit to give a written statement is 11<sup>th</sup> July 2008 and on that date PW-21 did give a statement in his own writing naming all the accused. This was four days after the event. By this time PW-8 had already made a statement at 2 am on 8<sup>th</sup> July 2008 naming all the accused.

37. As regards PW-12, it is submitted that in his cross-examination PW-12 was confronted with his previous statement Ex.PW-12/A where he had not stated about hiding himself in Gali Kahar Wali and seeing the accused cornering deceased Tariq and firing on him. The previous statement of PW-12 (Ex. PW-12/DA) appears to be an incomplete statement. It does not even reach the stage where A-4 was seen confronting PW-3 outside the Hari Masjid. However, no question was put to the IO on this aspect. It is true therefore that there is no previous statement of PW-12 about his having seen

the accused firing at Tariq when he was hiding himself in the staircase of a house.

38. PW-12 was running on Gali Kahar Wali towards Gali Punjabi Phatak and hid himself in the staircase of a house at the corner of Gali Kahar Wali. It is quite possible that he could not recall the number of the house where the staircase was located. Also since he was fleeing it is possible that he could not tell who was immediately behind him or which of his brothers was following and in what order. Although the place where PW-12 is supposed to have hidden is shown specifically in the scaled site plan Ex. PW-26/A as point 'O', PW-12 states that there were two spots: one from where he noticed the accused surrounding Tariq and firing upon him and another, higher in the stairs, where he ultimately hid, and which was marked as point 'O'. The answer by PW-26, the Draftsman of the scaled site plan, that it is not possible for PW-12 to have seen from point 'O' the place where the deceased Tariq was shot at (point D), does not rule out his seeing the shooting from the place under the staircase where he first was and which has not been marked in the scaled site plan. In any event, no question was asked of PW-12 or PW-26 about the spot from where he noticed the firing.

39. The appellants have not been able to point out any material contradictions in the evidence of PWs 8, 12 and 21. The Court has not been shown any good reason why they should be disbelieved. In particular, the evidence of PW-21, the injured eye witness, is corroborated in material particulars by PWs 8 and 12 till the stage when PW-21 was injured. PWs 8 and 12 have corroborated each other on what transpired thereafter.

***Non-examination of public witnesses***

40. It was submitted on behalf of the Appellants that none of the public witnesses produced by the prosecution i.e. PWs-7, 9 and 11 have mentioned the presence of the accused persons. It is further submitted that around the time and the date when the incident took place i.e. 11 to 11.30 pm on 7<sup>th</sup> July 2008, Ballimaran was a busy place with people still on the streets and some shops still open. PW-21 himself stated that the area was busy up to 2 am in the morning. Even in and around the Hari Masjid where the discussions took place between the parties, there were people moving around. It is submitted that apart from the related witnesses not a single public witness has been produced to speak of the firing by the accused upon the deceased Mohd. Tariq or even upon PW-34.

41. The three public witnesses who have been examined speak of the events post the shooting. PW-11 helped carry PW-21 to the hospital and PW-7 helped carry deceased Tariq to the hospital. PW-9 who was the President of the local RWA emerged after the firing stopped. None of them actually saw the incident of firing. Their not mentioning about the presence of the accused in the area is therefore not helpful to the Appellants. The failure to examine other public witnesses is also not fatal to the prosecution as has been explained in several cases by the Supreme Court.

42. In ***Darya Singh v. State of Punjab***, the Supreme Court observed:

“It is necessary to bear in mind that there is nothing on the record to show that any person in the locality who actually witnessed the incident had been kept back. No such suggestion has been made to the investigating officer and no other evidence has been brought

by the defence in support of such a plea. It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits”

43. In *Mahesh v. State of Maharashtra (2008) 13 SCC 271*, the accused was convicted under Section 302 IPC and sentenced to life. The accused had murdered the deceased and had injured her husband, who was also one of the witnesses in the case. It was contended that the witnesses in the case were all interested witnesses, and since no independent witness was examined, the conviction was liable to be set aside. Rejecting the contention, the Supreme Court affirmed *Masalti* and held that though the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible, it cannot disregard the evidence of interested witnesses. Further, as regards the contention that independent witnesses were not examined, the Court held that the testimony of an injured eye witness (who was an interested witness), if found to be trustworthy, cannot be disregarded merely for non-examination of the public witnesses.

44. Consequently, in the present case it is not possible to conclude that the non-examination of the public witnesses is fatal to the case of the prosecution.

***Ballistic evidence and recoveries***

45. The Court finds that the FSL reports have proved that the bullets recovered from the bodies of the deceased Tariq and the injured PW-21 matched the revolvers recovered. It was also shown that the cartridges recovered from the scene of crime were shown to have been fired from the weapons recovered at the instance of four of the accused. The evidence of the ballistic expert (PW-36) has gone unchallenged by the Appellants. Therefore, it can be safely concluded that the ballistic evidence fully corroborates the prosecution case that firearms were used on the intervening night of 7<sup>th</sup>/8<sup>th</sup> July 2008 as a result of which one person was killed and another injured as a result of the bullets fired from the firearms. It corroborates the fact that the cartridges recovered from the scene of crime were fired from the weapons recovered. The version of the eye witnesses that Tariq and PW-21 were fired upon using the revolvers and fire arms recovered at the instance of four of the accused also stands corroborated.

46. The Appellants have assailed the recovery of the firearms and the motorcycle as being wholly unbelievable. To recapitulate, on 11<sup>th</sup> July 2008 deceased Mohd. Tariq succumbed to his injuries and expired. On 12<sup>th</sup> July 2008, Karan Singh Rana (PW-35) left to search for the accused in Bulandshahar. They returned on the morning of 17<sup>th</sup> July 2008 after failing to

apprehend anyone. During the said visit the police party including PW-5 had visited the house of Wasim (A-3) twice and on both occasions nothing was recovered from the said house. On 17<sup>th</sup> July 2008, PW-5 joined investigation in the case along with PW-35, PW-25, Constable Bhupender, HC Jagbir (PW-16) and Constable Imtiaz. They reached the ISBT, Anand Vihar at about 11:15 am in a private vehicle along with PW-8. On being pointed out by PW-8, they apprehended A-1, A-2 and A-3. On 20<sup>th</sup> July 2008, PW-5 along with PW-25 HC Jagbir (PW-16), Constable Imtiaz and Inspector PS Hooda (PW-37) reached the house of Wasim (A-3) at village Sakhni, PS Jahangirabad, Distt. Bullandsahar in a private vehicle. According to the prosecution, the three accused A-1, A-2 and A-3 helped the police recover three firearms from that house. One *katta* (country revolver) was recovered from the almirah and two *kattas* from the *Tand* (loft) on the ground floor of the same house.

47. It is pointed out by the Appellants that the driver of the said private vehicle was not examined. The diary entries for departure of the police although stated to exist were not produced before the Court. At village Sakhni no public witness was associated. Neither the Pradhan of the village nor the local police officials from PS Jahangirabad were informed. It also appears that no documents were collected to show that the accused persons were residing in the said house in village Sakhni. It is submitted that there is nothing to show, in fact, that the house which was stated to be from where the firearms were recovered did exist in village Sakhni and no public witness was produced from the village Sakhni, and with there being no photographs produced of the said house, it is difficult to assume that recoveries of firearms

were made in fact from a house in village Sakhni from where the accused were staying.

48. As regards the search and recovery of the firearm at the instance of A-4, the case of the prosecution is that on 27<sup>th</sup> July 2008 a secret information was received that A-4 was expected to go to Gautam Puri to meet his brother between 4 and 5 pm on that day. It is stated that PW-37 along with PW-25, PW-5 and HC Jagbir and Constable Imtiaz reached Gautam Puri along with the informer. When A-4 climbed on a motorcycle he was overpowered and arrested. The motorcycle on which he was riding was seized under seizure memo Ex. PW-5/P. A-4 is said to have made a disclosure statement (Ex.PW-5/M) and then taken the police to his residence at Gali Jamun Wali, Punjabi Phatak, Ballimaran and from inside the sofa set placed at the second floor of the house is supposed to have taken out a *desi katta* allegedly used at the time of the incident. On 28<sup>th</sup> July 2008, A-4 is stated to have disclosed to the police about the whereabouts of Kasim (A-5) who was supposedly residing in a friend's house at Agra. However, Kasim could not be traced in Agra.

49. In his cross-examination, PW-37 stated that he had approached the head of the village Sakhni and also met an ex-Pradhan and although both were requested to become witnesses, they refused. He stated that he did not remember the name of the driver of the private vehicle and also that that they did not include the driver in any proceedings conducted at village Sakhni. He stated that on 27<sup>th</sup> July 2008 when recoveries were made of the firearms from the house of A-4 he asked public witnesses to join the proceedings but no one

agreed. He stated that in the house of A-4 a number of persons were present but they refused to join the proceedings.

50. The issue of recoveries pursuant to statements made by an accused under Section 27 of the Evidence Act 1872 while in police custody has been the subject matter of several decisions of the Supreme Court. As regards recovery from an open place, the Supreme Court in ***State of Himachal Pradesh v. Jeet Singh (1999) 4 SCC 370*** held that “the crucial question is that whether the object was ordinarily visible to others”. Further, in ***State v. Sunil 1 SCC 652*** it was held as under:

“Hence when a police officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the Court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the truthfulness of such records of the police the Court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

51. In ***Kashmiri Lal v. State of Haryana (2013) 6 SCC 595*** the Supreme Court held:

“There is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinising the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle of quality of the evidence weighs over the quantity of evidence.

52. In ***Govindaraj v. State (2012) 4 SCC 722***, it was held:

“36. Certainly, we should not be understood to have stated that a police officer by himself cannot prove a recovery, which he has effected during the course of an investigation and in accordance with law. However, it is to be noted that in such cases, the statement of the investigating officer has to be reliable and so trustworthy that even if the attesting witnesses to the seizure turn hostile, the same can still be relied upon, more so, when it is otherwise corroborated by the prosecution evidence, which is certainly not there in the present case.”

.....

“46. We are certainly not indicating that despite all this, the statement of the Police Officer for recovery and other matters could not be believed and form the basis of conviction but where the statement of such witness is not reliable and does not inspire confidence, then the accused would be entitled to the benefit of doubt in accordance with law. Mere absence of independent witnesses when the Investigating Officer recorded the statement of the accused and the article was

recovered pursuant thereto, is not a sufficient ground to discard the evidence of the Police Officer relating to recovery at the instance of the accused.”

53. In light of the legal position explained in the above decisions, it is held that in the present case the recoveries cannot be held to be bad in law only because public witnesses were not associated with the recoveries. The explanation offered by the police for this appears plausible. It is, therefore, not possible to reject the entire evidence of PW-37 as unbelievable. While the failure to produce the driver of the private vehicle taken by the police to recover the weapons at the instance of the accused is a lapse, it does not *per se* falsify the recoveries. No doubt the police could have handled better the purported recovery of the motorcycle allegedly used by A-4. However, these lapses do not by themselves negate the evidence of the eye witnesses and the ballistic evidence which have been discussed earlier.

***Lapses by the police***

54. The Appellants have pointed out the lapses in the investigations which according to them make the case prosecution doubtful. First, they point that although he did not say so in the *rukka* PW-8 during his examination in chief used the word ‘forcibly’ to describe A-4 taking away PW-3 on the motorcycle. PW-8 appears to have added the said word during his deposition in Court. Secondly, there were discrepancies as to the time when the IOs and SHOs were at the crime scene. PW-5 stated that PW-34 and PW-37 were present at the spot but that he never met PW-25 at the spot. PW-5 stated that he reached the hospital with PW-37 where he found that PW-25 was already present. The evidence of PW-34 seemed to suggest that PW-8 came to the

spot at 2.30 am and remained till 9.30 am. Thirdly, the seizure memo of the round, empty cartridge and lead does not indicate exactly where the aforementioned articles were found. The time at which the aforementioned recoveries took place is not very clear. Even the photographs do not give a clear indication as to the place of recovery. PW-4 confirmed that the seizure memos did not bear his signatures. He was unsure whether they had the signatures of the members of the Mobile Crime Team. The DD entries regarding presence of the Mobile Crime Team at the spot were not placed on record by the prosecution. PW-8 himself does not support this. The unscaled site plan does not indicate that it was prepared at the instance of PW-8.

55. Before dealing with the above submissions, the Court would like to refer to decisions which explain the general approach of the Courts to appreciation of evidence. In *State of UP v Krishna Master (2010) 12 SCC 324*, the Supreme Court held:

“Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the

root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case.”

56. In *State of U.P. v. Anil Singh 1988 Supp SCC 686*, the Supreme Court observed:

“.... If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.”

57. In *Mohan Singh v. State of Madhya Pradesh (1999) 2 SCC 428* the Supreme Court pointed out:

".... Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So, it is a solemn duty of the courts not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth. It means on the one hand that no innocent man should be punished but on the other hand to see that no person committing an offence should go scot-free. If in spite of such effort, suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused. For this, one has to comprehend the totality of the facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of eye witnesses including the medical evidence, of course, after excluding those parts of the evidence which

are vague and uncertain. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretized. It would depend on the evidence of each case including the manner of deposition and his demeanor, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So courts have to proceed further and make genuine efforts within the judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt."

58. Viewed in light of the law explained in the above decisions, the discrepancies pointed out by the appellants cannot be said to be significant enough to create a reasonable doubt on the case of the prosecution. The police could have done a better professional job of tying up the loose ends of the case and in particular on the aspects of preparation of site plans and effecting recoveries. That, however, does not in the instant case dilute the evidence that is on record in the form of the depositions of the eye witnesses which adequately bring home the guilt of the accused beyond all reasonable doubt.

59. Consequently, the Court is of the view that the impugned judgment of the trial Court convicting the appellants for the offences with which they were charged does not call for interference.

***Not a case for capital punishment***

60. The question that next arises is whether the trial Court was justified in awarding death sentence to all the accused for the offence under Section 302 read with Section 34 IPC. The trial Court has proceeded on the basis that

since there was enmity between the families of PW-3 and 10 as a result of their marriage, the crime in this case was that of an 'honour killing'. Basing its opinion on the observations of the Supreme Court in ***Bhagwan Dass v. State (2011) 6 SCC 396*** regarding honour killing having become commonplace in many parts of the country and that "in our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment", the trial Court was of the view that it had no option but to award the death penalty to the accused.

61. In the facts and circumstances discussed hereinbefore, the present case cannot possibly be termed as involving the crime of an 'honour killing'. The incident took place more than 1½ years after the marriage of PW-3 with PW-10. Both families were staying in the same area Ballimaran. Yet there is no evidence to show that there was any incident of a quarrel between them prior to 7<sup>th</sup> July 2008. In the absence of any concrete evidence, it was not possible to conclude that the animosity between the two families developed to such an extent that members of one family wanted to eliminate the members of the other or even PW-3. If indeed the target was PW-3 then it does not stand to reason why PW-3 would be allowed to walk away from the meeting outside Hari Masjid. In a case of honour killing it is normally the young couple who become the target of the attack. In this case PW-3 and PW-10 have remained unhurt. There is no evidence that they were threatened by the accused at any point of time. PW-10 too states that her marriage with PW-3 was a love marriage which was done against the consent of her family members and that her uncles and parents were annoyed with her. However, she does not speak of receiving any threat during the period between 1<sup>st</sup> May 2007 when she and

PW-3 got married and the last week of June 2008 when they came to reside in Ballimaran with the family members of PW-3.

62. The other reason that perhaps weighed with the trial Court for concluding that it was an honour killing was that A-4 'forcibly' took away PW-3 on his motorcycle. The word 'forcibly' does not occur in the *rukka* containing the first statement given by PW-8 on the basis of which FIR was registered. PW-3 states in his examination-in chief that A-4 stopped his motorcycle in front of him and "then asked me to sit on his motorcycle saying that he wanted to talk to me". Therefore it is not possible to conclude that the incident in question was a crime of honour killing.

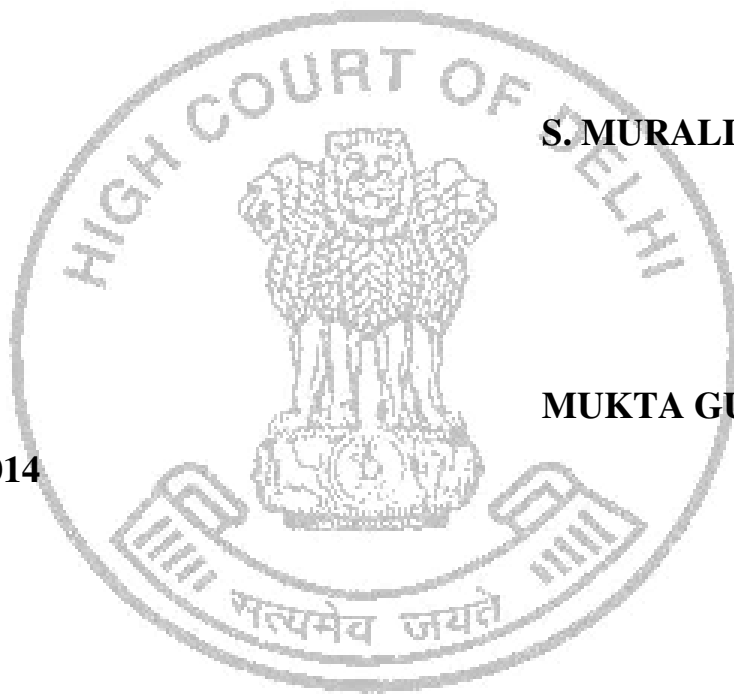
63. On the aspect of sentence apart from concluding that it was an honour killing which therefore falls in the category of rarest of rare case, the trial Court has not analysed the role of each of the accused and the mitigating factors *vis-a-vis* each of them. The accused were of different ages and differently related to PW-10. By putting all the accused in the same basket, the trial Court has overlooked the legal requirement of carefully weighing the aggravating and mitigating circumstances *qua* each of them before awarding the extreme penalty. In the considered view of the Court, the present case is not one which can be termed as a rarest of rare case deserving the award of death penalty to any of the accused.

64. For the aforementioned reasons, the Court declines to confirm the death sentence awarded to each of the accused. The impugned order on sentence is modified by sentencing each of the accused to life imprisonment for the

offence under Section 302 IPC read with 34 IPC and to fine of Rs.10,000 and in default to suffer SI for ten months. As regards the offence under Section 307 read with 34 IPC, the punishment awarded to the appellants by the trial Court is maintained.

65. Death Sentence Reference No. 3 of 2011 and Criminal Appeal No. 1314 of 2011 are accordingly disposed of.

**MARCH 7, 2014**  
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**S. MURALIDHAR, J**

**MUKTA GUPTA, J**