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

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**Date of Decision: 30.08.2018**

% CRL.A. 62/2015

SURESH @ KALA

..... Appellant

Through: Mr. K. Parameshwar and  
Mr. M.V.Mukunda, Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) ..... Respondent

Through: Mr. Rajat Katyal, APP for State.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**VIPIN SANGHI, J. (ORAL)**

1. Mr. Anil Dabas, Advocate seeks discharge. Since Mr. K. Paramashewar, Advocate appears on behalf of the appellant as appointed a legal aid, the power of attorney of Mr. Anil Dabas is discharged.

2. We have heard learned counsels and proceed to judgment.

3. The appellant has preferred the present appeal to assail his conviction under Section 302/34 IPC by the learned Additional Sessions Judge/Special

Judge (NDPS), North District, Rohini Courts, Delhi in Sessions Case No.68/2012 arising out of FIR No.162/2012, registered at Police Station-AmanVihar, under Sections 302/34 IPC. The appellant, upon his aforesaid conviction, has been sentenced to life imprisonment with a fine of Rs.10,000/-. In default of payment of fine he has been directed to undergo further simple imprisonment for a period of one year.

4. We may observe that the co-accused Monu-being a juvenile, was tried by the JJB separately.

5. The trial Court has noticed the relevant facts relating to the incident in paragraph 2 of the impugned judgment. The same reads as follows:

*“2. Facts are that accused Suresh @ Kala and deceased Narender had common ancestors. Their houses were abutting each other. Some repair work was in progress in the house of the accused, so he had erected ballies outside his house and to some extent the ballies were hampering the free egress and ingress to the house of deceased. On 15.06.12 at 7.30 am, Narender asked accused to remove ballies and due to that reason there was an altercation and grappling between them. Kanwar Singh father of deceased visited the house of his son on coming to know of the quarrel. He met his son Narender and nephew Suresh @ Kala to make them understand but*

*accused asked Kanwar Singh to ask his son Narender to mind ways otherwise he would be taught a lesson for which they would have to repent. Kanwar Singh went to his fields as he used to grow vegetables. He sensed danger to the life of his son and hence, he was returning from his fields at 10 am. When he reached Rajiv Gandhi Chowk, Bhagwya Vihar, Village Ranikhera, he saw that accused Suresh @ Kala and Monu were grappling with Narender. Narender got himself released and started running towards village Ranikhera but he was chased by both persons. Kanwar Singh also ran behind them in order to intervene in the quarrel. Narender was caught by Monu after some distance and accused Suresh @ Kala stabbed him in the waist and both accused ran away towards fields. Kanwar Singh brought his son in the village and made him to lie on the stairs in front of the house of Roop Chand Pradhan. Rajiv gave intimation of the incident to the PCR. In the meantime, Jagmurti w/o Narender also reached the spot. She and Kanwar Singh took Narender to MB hospital where he was declared brought dead.*

*Clothes of Jagmurti and Kanwar Singh were taken into possession. Blood stained clothes of the deceased and blood scattered near the house of Roop Chand Pradhan were also seized. Accused was arrested on*

*16.06.2012 and in pursuance to disclosure statement, he got recovered knife. Clothes of Jagmurti, Kanwar Singh and deceased were sent to FSL which opined that shirt and salwar of Jagmurtis, Kurta and pyjama of Kanwar Singh and blood stained gauzed cloth piece of deceased were having stains of the blood group B.”*

6. From the aforesaid it is evident that the case of the prosecution was premised on eye witness account of PW-3 Kanwar Singh - father of the deceased Narender. PW-3 deposed before the Court that the accused was his nephew. The accused and his deceased son Narender were neighbours. He also resided in the same gali, in a separate house. The accused Suresh @ Kala had installed pads with the help of ballies in the gali for raising construction in his house which was causing obstruction in the entrance of the house of the deceased Narender since the pads were very low. On 15.06.2012 in the morning at about 7.30 am, while PW-3 was working in the fields, he received a telephone call from his other son Hawa Singh. He was called to the house of his deceased son Narender. On reaching there he saw that there was a quarrel going on between his deceased son Narender and the accused Suresh @ Kala over the issue of installation of the pads by the accused, which was causing hindrance at the entrance of the house of the deceased. The deceased had asked the accused to remove those ballies and pads, but the accused was not willing to do the same. He deposed that he tried to make both of them understand not to quarrel, and when he was about to leave the accused and his father Ramesh had threatened PW-3 as follows:

*“Ya to tu Narender samjha le, nahi to hum sham tak isko achcha sabak sikhadenge”.*

7. PW-3 responded by stating *“maine to samjhadiya, phirbhi yeh nahin mante, to tuapna pocket dekhliyo”*. Ramesh - the father of accused, then retorted *“ab tupaie se aa ja and lathi se aa ja”*.

8. PW-3 stated that at about 10.00 am he was coming towards his house from the fields and he reached near Rajiv Gandhi Chowk, BhagyaVihar. He saw some public persons gathered there and some quarrel was going on. He saw that the quarrel was between his deceased son Narender and five persons i.e. Suresh @ Kala, Sonu s/o. *tau* of Suresh @ Kala, Monu - *nati* of accused Suresh @ Kala, Krishan - brother of accused Suresh, Parvesh – his *bhanja* and cousin of accused Suresh. He stated that all the five persons including the accused Suresh @ Kala were beating his deceased son with their legs and punches and his son was lying below their legs. PW-3 intervened in the quarrel and tried to separate his son, but the accused persons pushed him towards another side and he fell down and could not control himself. His deceased son Narender somehow separated himself from the accused persons and escaped and started running towards one corner and moved for about 2-3 steps. The accused persons were chasing him and his deceased son was apprehended by two accused persons i.e. Monu and Sonu and accused Suresh @ Kala stabbed him with a knife on his waist in the right side. Thereafter, the accused persons ran away from the spot. PW-3 then helped his son and gave him a shoulder and moved towards

village Rani Khera where he laid his son on the stairs in front of the house of Pradhan Roop Chand in the Gali. On receipt of information, his daughter-in-law Jag Murti PW-2, wife of deceased son Narender also reached there. Someone had called the PCR and the PCR also reached there. He stated that he and his daughter-in-law Jag Murti PW-2 removed the deceased Narender in the PCR van to Pooth Kalan MB hospital. Within 10-15 minutes his son was declared dead by the doctor. His statement was recorded by the police which is Ex.PW-3/A. He also deposed that he and his daughter-in-law gave their clothes to the police and they were seized and sealed by the police and the seizure memo was Ex.PW-3/B.

9. The trial Court has convicted the appellant primarily on the basis of testimony of PW-3.

10. The submission of learned counsel for the appellant is that the presence of PW-3 at the spot itself is doubtful. He submits that PW-15 Rajeev Kumar was the informant to the police. PW-15 deposed that on 15.06.2012 at about 10.30-11.00 am he was going towards village from bus stand. When he reached near the house of Roop Chand Pradhan he noticed that the deceased Narender had received injuries and blood was oozing from his stomach. He informed the PCR. The PCR van came there and the injured was removed to the hospital. His statement was recorded at Police Station-AmanVihar on 25.08.2012 by the IO. On his cross-examination on behalf of the accused he stated that when he reached the house of Roop Chand Pradhan, 10-20 persons had gathered there. Elder son of Gyan Chand master, Kala was also

present at the spot. He stated that Ramesh-the father of the accused (also examined as DW-4) was present there. He stated that Ramesh (DW-4) had accompanied the PCR to the hospital. He along with Ramesh and Kala helped in putting the injured in the van. He stated that the father of the injured viz. Kanwar Singh was not present at the spot. The injured was lying just in front of the house of Roop Chand Pradhan. He knew both the parties i.e. the accused and the deceased. He stated that there was no dispute between the families and no quarrel had taken place between the accused and the complainant “in his presence”.

11. The submission of learned counsel for the appellant is that PW-15 was not re-examined by the prosecution despite his statement in his cross-examination that, firstly, PW-3, the father of the deceased Kanwar Singh was not present at the spot and, secondly, that Ramesh (DW-4) – the father of accused had accompanied the injured Narender to the hospital in the PCR van.

12. Learned counsel for the appellant also places reliance on the testimony of DW-3 Roop Chand Pradhan. Roop Chand Pradhan DW-3 stated that on the date of the incident i.e. 15.06.2012 he went out to play cards at the residence of his cousin Mangal Ram, as usual, at around 9 am. He returned to his home at about 11.30 to 12.00 noon. He did not notice any blood or blood trail in front of his house. There is a grocery shop in front of his house. Some persons were standing near that shop and were talking that Narender had been murdered by somebody. DW-3 was cross examined by

the learned APP and during his cross examination, he stated that there are shops situated 15-20 yards from his house towards the bus stand. On the date of the incident he had not gone to the stairs of those shops and hence he could not say if the blood was lying or not.

13. Learned counsel for the appellant also places reliance on the testimony of DW-4 Ramesh-the father of accused. He stated that he came to know of the murder of Narender at 9 am. By that time only 30 minutes had elapsed from the time of murder. At that time he was at his home in Harijan Basti village Rani Khera. He deposed that he and Narender's wife took the injured Narender to a government hospital in village Pooth Khurd. They reached the hospital at 10.30 am. They had gone in the police vehicle. He stated that his son Suresh had gone to water tank situated in village Karala to bring water at the time of the murder.

14. During his cross examination he, inter alia, stated that on the day of the incident he was on the way to his fields from his home. He found the deceased Narender and his wife and several people one acre short of bus stand of village Rani Khera. The house of Roop Chand Pradhan was about 5 acres away towards village from that place. He stated that the father of the deceased Kanwar Singh was not present there. Narender and his wife were found by him on the way to his fields. At that time Narender had injuries on the back side. His (Narender's) shirt and payzama were blood stained. Narender's wife was holding him. He stated that he and Narender's wife placed Narender in the gypsy. Pertinently, he stated that his clothes were not

stained in that process. He stated that he had not told the said facts to the police, as deposed by him before the Court. He also did not complain to the authorities about his son's false implication. He admitted that he had appeared as a witness before the Juvenile Justice Board at the trial of the co-accused Monu. He stated that he had appeared before the Court only with regard to age of his son. He admitted that he did not tell the Principal Magistrate, JJB that his son had been falsely implicated as, on the date and at the time of murder, he had gone to village Karala to bring water.

15. Learned counsel for the appellant has also placed reliance on the testimony of DW-1 Manoj Kumar. Manoj Kumar was the husband of the tuition teacher of the accused from childhood. He deposed that on 15.06.2012 at around 05.00-05.30 pm he reached near Pani ki tanki, Karala to bring the water tanker. He saw the accused Suresh @ Kala at the place. He asked the accused as to why the police was searching for him, and he replied that he was not aware of the reason. He stated that he informed the accused that his cousin brother Narender had been murdered, and the police was searching for him in connection with the said murder. He deposed that the accused informed him that he was not concerned with the said murder. He stated that he made a phone call to the uncle of the accused Suresh and to Police Station AmanVihar for inquiry. 15-20 minutes later the police came there, and he told the police officer that he had found Suresh @ Kala near the water tank, Village Karala and that they should inquire facts from him. Thereafter, the police took the accused Suresh into custody.

16. Reliance has also placed on the testimony of DW-2 Vishwanath - the maternal uncle (mama) of the accused Suresh. He deposed that he was carrying on the repair work in the house of Suresh as a Mason, free of charge. The repair work did not require erection of any pads and so erection of ballies was not required. The repair work was being done only inside the house of the accused Suresh, and no repair work was done in the outside portion. He was cross examined by the learned APP and he denied the suggestion that for the construction work going on in the house of the accused Suresh @ Kala, he had erected pads and embedded ballies in the ground in front of the house of deceased Narender, which was causing inconvenience to Narender and his family members in going inside and coming outside of the house. He stated that Narender died due to his vice of addiction to liquor, and stated that he did not hear in the village as to who killed Narender.

17. The submission of learned counsel for the appellant, premised on the aforesaid statements is that the presence of PW-3 itself is doubtful at the place of occurrence. He further submits that PW-3 turned hostile in so far as the recovery of the knife on the disclosure of the appellant, is concerned. Moreover, the knife claimed to have been recovered on the disclosure of the appellant was examined by the FSL vide their report Ex.PX and Ex.PY and no blood stains were found on the knife. Thus the knife could not be connected with the crime. Learned counsel further submits that even though PW-3 claimed that there were a large number of people present at the spot when the incident took place-where the accused was being beaten by the

accused Suresh @ Kala and a few other named persons, no public witness was examined. The offence had taken place in broad day light on the street and it raises doubts on the case of the prosecution, that the police could not rope in other independent eyewitness. He submits that PW-3 is not reliable, since he is an interested witness-being the father of the deceased. He therefore submits that sufficient doubt has been raised by the appellant on the case of the prosecution, and the accused is entitled to the benefit of the doubt.

18. On the other hand Mr.Katyal, learned APP has firstly drawn our attention to the PCR Form Ex.PW/14-A. The same shows that the first PCR call was made at about 10.46 am on the date of the incident. The PCR form records the information received as '*rani khedagaonmein main road pe stand ke pass yaha par ek ladke ko chaku mar diyahai*'. It records further information received at 11:05 A.M. to the effect '*call is true ek injured kolekar hospital jaarahehain*'. It records further information received at 11:42 A.M. '*Narender S/o Kanwar age - 30 ko chacha ka ladka Kale S/o Ramesh gali dene par chaku maar kar bhaggaya. Narenderko Maharishi Valmiki Hospital Pooth mein doctor ne dead declare kardiya hai, Narender ki wife sath hain*'.

19. Mr. Katyal submits that the name of the accused as the assailant came to be recorded as early as 11:42 A.M. He also draws the attention of the Court to the rukka Ex.PW-7/B, and points out that the statement of PW-3 recorded

contemporaneously (rukka was sent at 01:45 P.M. for registration of the FIR) is consistent with the statement of PW-3 recorded before the Court. In the rukka itself, the name of the accused was disclosed by PW-3 as the assailant. Mr. Katyal also draws the attention of the Court to the FSL report Ex. PX and Ex. PY. He points out that the clothes of PW-2 Ms. Jag Murti - the wife of the deceased, and the clothes of PW-3 Kanwar Singh - the father of the deceased, were found to contain human blood of group 'B' which was also the blood group of the deceased. Mr. Katyal submits that the presence of PW-3 at the spot of occurrence and his status as an eye-witness is fully established from the testimony of PW-3. PW-2 was also not cross-examined on the aspect that PW-3 was not present at the spot. PW-2 had stated that when she reached, her husband, (now deceased), and PW-3 were already present at the spot. Mr. Katyal has also drawn the attention of the Court to the statement of PW-7 – SI Somvir. PW-7 has stated in his testimony that at the hospital Mr. Kanwar Singh-father of the deceased Narender, who was the eye-witness of the incident met him and he recorded the statement of Kanwar Singh Ex.PW-3/A. It was not suggested to PW-7 in his cross-examination that Kanwar Singh was not present with the deceased in the hospital.

20. Mr.Katyal has drawn the attention of the Court to the findings of the trial Court, wherein the trial Court has observed that the testimony of PW-15 is doubtful. Even though he had claimed that he and DW-4 Ramesh had helped PCR officials to put the injured into the PCR van, the clothes of neither PW-15 nor of DW-4 – Ramesh were smeared with blood, which would have

normally been the case. PW-15 did not claim that he was present at the time of the incident. He stated that he had reached the spot after the incident, when the crowd had assembled there. Thus, it is possible that he may not have seen PW-3 in the crowd. The presence of PW-3 at the hospital is also indicated by the fact that in the MLC Ex.PW-19/A the name, father's name, age and address of the patient was correctly and fully written, which would not be possible unless the injured was accompanied by a known person. Mr. Katyal has further submitted that PW-3 is a reliable and a credible eye-witness, and submits that PW-3 being the father of the deceased had no reason to falsely implicate his own nephew and to let go of the real culprit, in case the accused was not the one who had committed the offence. Mr. Katyal submits that since the present is a case based on eye-witness account, the doubt raised with regard to the recovery of the knife, and the fact that the knife was not found to contain blood stains is neither here nor there. He, therefore, submits that the trial Court has correctly found the appellant guilty of the offence and that the impugned judgment does not called for interference by this Court.

21. We have given our thoughtful consideration to the aforesaid submissions advanced by learned counsels of both the parties. We have also perused the record. The appellant has challenged the judgment of the trial court, primarily, on the following three premises:-

1. Presence of PW-3 at the scene of crime;
2. Credibility of the testimony of PW-3; and

3. Preference given to the ocular evidence of PW-3, over the opinion of the forensic expert.

22. We proceed to deal with them hereunder:

Presence of PW-3 at the scene of crime –

23. PW-3 has stated that he was present at the scene of crime and witnessed the murder of his son being committed by the appellant. He has categorically denied the suggestion made to him in cross-examination by Ld. Counsel for appellant that he was not present at the site of occurrence of the crime. Ld. Counsel for the appellant seeks to assail the testimony of PW-3 by placing reliance on the testimony of PW-15, wherein PW-15 states that PW-3 was not present with the deceased when he was lying near the house of Roop Chand Pradhan. The testimony of PW-15 on this aspect is unreliable, since the same is not consistent with the other credible evidence on record. PW-15 had himself reached the spot after the incident had taken place and a crowd had already gathered there. We find no error in Trial Court's finding that it is possible that PW15 might not have noticed the presence of PW3 when he reached the spot as crowd had already gathered there.

24. It is also important to note that PW-2 in her testimony has corroborated the fact that PW3 was present with her and the deceased near Roop Chand Pradhan's house and that she along with PW3 took the deceased to the hospital in PCR. This fact is corroborated by the presence of blood stains on the clothes of PW-3 and PW-2 - as is likely to happen while carrying an injured and bleeding person to the hospital. The blood group of the deceased matched with the group of the blood found on the clothes of PW-2 and PW-3. Further, PW-7 has stated in his testimony that at the hospital,

Mr. Kanwar Singh (PW-3) - who was the eye witness, met him and he recorded the statement of Mr. Kanwar Singh which is Ex. PW3/A. It is pertinent to mention here that no suggestion was put to PW7 in his cross-examination that Mr. Kanwar Singh (PW3) was not present with the deceased. Similarly, PW-9 H.C. Shivpal Singh stated in his cross-examination that he reached Maharishi Balmiki Hospital alongwith Inspector Anil Kumar and H.C. Jawahar at around 12:45 PM to 1 o'clock. PW-3 Kanwar Singh and PW-2 Jagmurti were also present there. At that time, S.I. Somvir PW-7 was recording the statement of PW-3 Kanwar Singh. No suggestion was given to PW-9 that he was deposing falsely on this aspect. Interestingly, even PW2 was not cross examined regarding the presence of PW-3 with deceased. This oversight by appellants gains more importance in light of the fact that presence of PW-3 at the scene of crime is the main basis upon which appellant challenges the judgment of trial court.

25. PW-15 has testified that it was he (PW-15) and DW-4 (father of the accused) who had helped PCR officials to put the injured into PCR van. This story seems to be an afterthought, as it is an admitted fact that there were no blood stains on the clothes of either PW-15, or DW-4, which was very likely to have happened while putting the injured into the PCR van. Pertinently, this happened with the clothes of PW-2 and PW-3.

26. DW-4 Ramesh – father of the accused is not credible in his testimony apart from being an interested witness. He contradicted himself. Pertinently, in his examination-in-chief DW-4 stated that he was at his home in Harijan Basti, Village Ranikhera at about 09.00 A.M when he learnt of the ‘murder’ of the deceased. By then 30 minutes had elapsed from the

‘murder’. Thus, DW4 became aware of the demise of the deceased at 09.00 A.M. In the same breath, he says that he took the “injured Narender” to the Government hospital and he reached the hospital at 10.30A.M. During his cross examination, he takes a summersault and states that he was on his way to his fields from home when he found Narender, his wife and several people one acre short of the bus stand of Village Ranikhera. At that time Narender had injuries on the backside. Thus, the subsequent statement of DW4, if believed, shows a chance meeting of DW4 with Narender and his wife– when DW4 was on way to his field. This conduct of DW4 would be rather unusual if his initial statement– that he learnt of the murder of his nephew Narender at 09.00 A.M. at his residence, were to be believed.

27. Thus, the location of DW4 at the relevant point of time itself is doubtful since he has contradicted himself by, firstly, claiming that he was at his house when he learnt of the murder at 09.00 A.M. and subsequently, in cross examination, he claimed that he was on his way to his field when he saw the injured with his wife, and took them to the hospital in the police gypsy.

28. As noticed hereinabove, his clothes did not receive any blood stains even though he claims to have taken the injured in the police gypsy. Thus, DW4 is completely unreliable and his testimony is liable to be discarded.

#### Credibility of PW3-

29. At the outset, it is important to mention that the deceased was the son of PW-3. Further the accused is the nephew of PW3. It is highly unlikely that PW-3 would falsely implicate his own nephew for the murder of his son, and not incriminate the real criminal. Further, as pointed out by the Ld. APP Mr. Katyal, that the name of assailant came to be recorded as early as at 11:42 A.M. (time of crime is around 10:30 A.M.) as evident from the PCR Form 1. The rukka EX.PW-7/B and statement of PW-3 (Ex. PW-3/A) recorded contemporaneously were sent for registration of FIR at 1:45 P.M. Testimony of PW-3 before the court is consistent with his previously recorded statements. As there was a short interval between the recording of the previous statements of PW3, and the death of the deceased, the possibility of any concoction or false implication is minimised. Further, in the bereaved state that a father would be on the death of his son, there is no reason that he would frame someone else and not the real killers of his son. In *Angoo and Others v. State of Uttar Pradesh*, (3) SCC 208 the Supreme Court while examining the evidentiary value of the deceased's brother observed that:

*“8...It, PuttuLal is, no doubt, the brother of deceased Mahadeo, but this very circumstance would add to the value of his evidence because he would be interested in ensuring that the real culprit responsible for the murder of Mahadeo are punished and not innocent persons.”* (emphasis supplied)

30. The same has been reiterated again by the Supreme Court in the case of *Satvir v. State of U.P.*, (2009) 4 SC 289 by observing:

*“24... It is well settled that if the witness is related to the decease, his evidence has to be accepted if found to be reliable*

*and believable because he would inter alia be interested in ensuring that the real culprit are punished.”*

31. Being the father of the deceased, PW-3 would be interested in getting justice for his son by stating the truth, and he is not interested in falsely implicating an innocent person.

32. Further, it has been submitted by the Ld. Counsel for the appellant that PW3 turned hostile as far as the recovery of the knife on the disclosure of appellant is concerned. This does not wash away the entire testimony of PW-3. Merely because a witness turns hostile in part, does not mean that his entire testimony should be erased from the record. In ***Govindaraju v. State, (2012) 4 SCC 722*** the Supreme Court while examining the evidentiary value of a hostile witness observed that:

*“36 It is also not always necessary that whenever the witness turned hostile, the prosecution case must fail. Firstly, the part of the statement of such hostile witnesses that supports the case of the prosecution can always be taken into consideration. Secondly, where the sole witness is an eyewitness who can give a graphic account of the events which he had witnessed, with some precision cogently and if such a statement is corroborated by other evidence, documentary or otherwise, then such statement is face of the hostile witness can still be a ground for holding the accused guilty of the crime that was committed. The court has to act with greater caution and accept such evidence with greater degree of care in order to ensure that justice alone is done. The evidence so considered should unequivocally point towards the guilt of the accused.”*

33. On a careful and cautious scrutiny of the testimony of PW 3 we find his testimony to be concise, precise and satisfactory on the point that he had seen the entire incident resulting in the death of his son.

34. On the other hand, the accused has taken the plea of alibi. This he has tried to establish through the testimonies of DW1 and DW4. The defence story is that accused had gone to fetch water from village karala at around 9:00 am on 15/06/2012 as stated by DW4 (father of accused). After that, there is no record of his whereabouts till 5:30 p.m on 15/06/2012 when he was seen by DW1 near the water tank at village Karala, who apprised him of his cousin's death. Pertinently, accused's absence from 9:00 am in the morning till 5:30 pm has not been explained as it is inconceivable that a person would take the entire day to fetch water from water tank situated at village Karala. This whole story of defence is an afterthought. DW4 being father of accused is trying to save his son from to the clutches of law and hence, this false story of alibi has been concocted. DW1, too, is an interested witness as accused used to take tuitions from DW1's wife. DW1's testimony is unreliable as he has stated that after informing accused of his cousin's death, he (DW1) called the police and thereafter the accused was arrested from the said spot at around 6:00 p.m on 15/06/2012. Whereas, PW-7 SI Sombir, PW-9 HC Shivpal Singh and PW-18 Inspector Anil Kumar have stated that the accused was arrested on 16.06.2012 at 4 am near his house after the police received secret information that the accused would visit his house to collect money. These testimonies by PW-7, PW-9 and PW-18 stands corroborated by Ex.PW-3/D and PW-3/E. Evidently, there is no credible reason to disbelieve the testimonies of PW7, PW9, PW18 who are formal witnesses and have no enmity against the accused. Pertinently no facts were proved to discredit them and the only argument raised was that they are formal police witnesses and hence should be disbelieved. However,

in *Tahir v. State (Delhi), 1996 SCC (Cri) 515* , the Supreme Court while examining the evidentiary value of testimony of police witnesses observed that:

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

35. Even if, for the sake of argument, we accept that accused was arrested at 6:00 pm on 15/06/2012 and not on 16/06/2012 at 4:00 a.m, this fact tends to incriminate the accused. His role in the murder of deceased is firmly established by the testimony of PW3 and other corroborating circumstances as discussed already. His running away after the incident is relevant as subsequent conduct under section 8 of Indian Evidence Act 1872 and this fact of accused absconding is another circumstance which tends to prove the credibility of PW3. For aforesaid reasons, we find that the accused has failed to discharge the burden of proof to establish his plea of alibi under section 103 of the Indian Evidence Act, 1872. Hence, in the present case PW3's

testimony is reliable and consistent and clearly proves murder of his son at the hands of the accused Suresh @ Kala.

Preference given to the ocular evidence of PW3 over the opinion of the forensic expert

36. Lastly, it has been argued by Ld. Counsel for the appellant that no blood stains were found on the knife claimed to have been recovered on the disclosure of appellant as per FSL report Ex.PX and Ex.PY. Thus the knife could not be connected with the crime. But in a case based upon ocular evidence, where the witness has seen the entire incident and further knows the assailant too, this fact pales into insignificance. This fact would have been pertinent in a case based upon circumstantial evidence, but here the father of deceased is an eye witness to the murder of his son by his nephew. His testimony is ocular, direct, logically consistent and corroborated from other circumstances too.

37. Consequently, we do not find any infirmity or illegality in the impugned judgment passed by learned trial court. Therefore, the present appeal is dismissed.

**VIPIN SANGHI, J.**

**I.S. MEHTA, J.**

**AUGUST 30, 2018**  
*sr,nd*