

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

+ **CRL.A. 880/2018**

Reserved on : 10.12.2018

Date of Decision: 23.01.2019

IN THE MATTER OF:

VIKRAM RANA

..... Appellant

Through : Mr.Jaideep Malik, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through : Ms. Aashaa Tiwari, APP.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The present appeal arises out of a common judgment of conviction dated 28.05.2018, passed by the learned Additional Session Judge in Session Case No. 59165/2016, with respect to FIR No.94/2016 under Section 302/120B/34 IPC and 25/27 Arms Act, P.S. Samaipur Badli as well as in Session Case No.378/2017 with respect to FIR No. 241/2016 under Section 25/27 Arms Act, P. S. Samaipur Badli.

2. The appeal also challenges the order of sentence dated 31.05.2018, whereby the appellant was sentenced to undergo R.I. for the remainder of his life with a fine of Rs. 25,000/- and in default, to undergo further S.I. for one year for the offence punishable under Section 302 IPC. He was also sentenced to undergo one year R.I. for the offence punishable under

Section 25 Arms Act with fine of Rs. 5,000/- and in default, to undergo further S.I. for 6 months. The appellant was further sentenced to undergo one year R.I. for the offence punishable under Section 27 Arms Act with fine of Rs. 5,000/- and in default, to undergo further S.I. for 6 months. The fine, as stated, has not yet been paid.

3. The prosecution case begins with a PCR call made on 27.01.2016, received at about 6:30 pm, with the information to the effect that one person has been shot dead near the roundabout of Village Siraspur. The name of the informant was recorded as Jai Bhagwan and his mobile no. as 9968035390 in the PCR Form by W/Ct Mukesh who appeared as PW-12. The PCR form was proved as PW-4/A by S.I. Devender Kumar (PW-4) and it records as follows:

The PCR reached the spot at about 6:48 pm and reported that *"Siraspur fatak band hai, fatak khulne par jayenge 27/01/2016 18:48:56 call is true. Gulshan Takkar, Age 59 years s/o Late Ram Swaroop Thakkar R/o H.No.189, Siraspur Village, Shiv Mandir ke pas jo apni dukan G-I AK Store chhatri chowk ke pas bathroom ka saman milta hai, par baitha hua tha jisko chati par goli lagi hai, ek khali khol moke par mila hai aur nokar Raju Chaurasiya, age 30 years ne bataya ki mein toilet karne gaya tha to main ek u/k ladka paidal tha jisne brown sol, odh rakhi thi, usko dukan se utarkar bhagte hue dekha hai. L-15 gadi also present on spot. Call se 30 minute pehle ki baat hai, croom infd WLP 27/01/2016 19:01:12 SHO sahab with staff moke par 27/01/2016 19:04:59 ACP and SHO sahab moke par Moke par Gulshan Thakkar dead hai.*

SI Vinit 27/01/2016 19:05:15 same halaat from L-15 27/01/2016 19:05:34 C. Room infd.

Challan Close Time: 27 Jan.2016 19:32:33"

4. In the meantime, the information received was also relayed to PS Samaipur Badli and registered as DD 43A, at 6:30 PM stating that “*Siraspur Gol chakkar ke paas ek admi ko goli maar di aur uska murder ho gaya*”. The said entry DD 43A was exhibited as PW-29/A.

5. The DD was marked to SI Vineet Kumar (PW-29) who along with Ct. Umesh (PW-36) and HC Balbir (PW-37) reached the spot at House No.23, shop-cum-factory of G-Tech Surf and the blood smeared dead body of Gulshan Rai Takkar was found lying on a *Takht* (wooden bed) in the Cabin. The deceased had gunshot injuries on his face. The Crime team was called and photographs were taken.

6. S.I. Vineet met son of the deceased, namely Deepanshu (PW-11) at the spot and recorded his statement (Ex. PW-11/A). Deepanshu stated that he and his father had taken a shop on rent at House No.23 near Chhatri Chowk, Siras Pur, wherein they were jointly running a factory for making ‘surf’. A servant named Raju Chaurasia who had been working in the factory for the last two years, had telephonically informed him at 6:15 PM on 27.01.2016 that Babuji has been shot (*Babuji ko goli lagi hai*). He further stated that he was at Naharpur from where he reached the shop and saw his father lying in a pool of blood in the cabin on the *Takht*. He further stated that some unknown person had entered the shop and shot dead his father.

7. On the above statement of Deepanshu, a rukka was prepared and taken to the police station by PW-37, HC Balbir Singh. On the same day, FIR No.94/2016 was registered at 9:30 pm under Section 302 IPC and

27/54/59 Arms Act. The said FIR was exhibited as Ex. PW-18/B by HC Guljar (PW-18). The site plan (Ex. PW-38/A) was prepared by the IO, Insp. Ramesh Kumar (PW-38) at the instance of Deepanshu. Insp. Ramesh Kumar lifted 5 empty cartridges from the cabin lying at different places. He also lifted 2 bullet leads lying in the cabin under the *Takht* and near the pillow, two broken teeth of the deceased lying on the *Takht*, blood stained bed sheet & pillow, mobile phone from the pocket of the deceased having a SIM, one bill book of blue colour, one blood stained broken specs of the deceased, blood in a Gauze piece. The above articles were converted into pullandas, sealed with the seal of RS and taken into possession vide seizure memo, Ex. PW-29/F. The case property was deposited with the malkhana. ASI Ram Kumar, in-charge of the Mobile Crime Team, was examined as PW-2 and he proved his report (Ex. PW-2/A). The photographs of the crime scene were taken by HC Virender (PW-3) and he proved the negatives as Ex. PW-3/A1 to A19 and the developed photographs as Ex. PW-3/B1 to B18. PW-5, HC Pramod Kumar proved the FIR No.94/2016 as Ex. PW-5/A. Scaled Site plan (Ex. PW-6/A), prepared at the instance of Insp. Ramesh Kumar, was proved by PW-6, Ct. Naveen. Ct Vinod handed over the copy of the FIR to the area Magistrate at about 11.05/11.10 pm. HC Jagat Singh, the store keeper appeared as PW-20 and proved the entries in the store register. He denied the suggestion that the case property had been tampered with while it was in his custody.

Post Mortem Report:

8. PW-1, Dr. N K Gunjan proved the Post Mortem examination, conducted on 28.01.2016, at 1:25 pm, as Ex. PW-1/A. The Post Mortem report reads as:

“External Injuries:

1. A penetrating gunshot entry wound having circular hole with circumferential abrasion and marginal radial laceration, measuring 1.5 x 1.5 cm with surrounding grease collar, was present on the left side forehead 1.5 cm above and 2.3 cm ... from glabella. There was no singeing of surrounding hair, blackening or tattooing of surrounding skin. The bullet then proceeded through the soft tissues of the scalp to cause a circular entry hole in the frontal bone which cause beveling of inner table of skull bone. Further, the bullet has proceeded through the left frontal lobe of brain in downward and backward direction to perforate through the cerebral peduncles and pontine area. The bullet then impacted with occipital bone just posterior to the foramen magnum. In this area a deformed bullet of length 01cm and base diameter 0.5 was recovered. The overall direction of this wound is backwards, downwards and medially.

2. A penetrating gunshot entry wound having circular hole, with circumferential abrasion, and slight marginal radial laceration, measuring 1.5 x 1.5 cm, with surrounding grease collar was present on the right side of face, 03 cm below the medical canthus of right eye. There was no singeing of surrounding hair, blackening of tattooing of surrounding skin. The bullet then proceeded through the soft tissues of the face to cause a circular entry hole in the frontal process of maxilla and base of skull. It transected the right cerebral hemisphere and then the bullet embedded in tentorium cerebelli. In this area a bullet of length 01cm and base diameter 0.5 cm was recovered. The overall direction of this wound is backwards, upwards and laterally.

3. A gunshot entry wound with marginal abrasion and laceration, measuring 1.5 x 1.5 cm was present over the back of the right ear lobule. There was no singeing of surrounding hair, blackening or tattooing of surrounding skin. The bullet entered from the back of right ear lobule and exited from anterior surface of ear lobule and re-entered at a point 1.5 cm above the right angle of

mandible and further proceeded tangentially through the skin, soft tissues and muscles for a distance of 02 cm and exited at a point 04 cm above and 02 cm away from the right angle of mandible and further causing a obliquely placed, lacerated wound of size 03 x 1.5 x 0.3 cm over the right side of the face, the medial end of this wound was 01 cm below the lateral canthus of right eye.

4. A penetrating gunshot entry wound having circular hole, with circumferential abrasion and slight marginal radial laceration, measuring 1.5 x 1.5 cm, with surrounding grease collar was present over the face in the midline, situated at the philtrum. The bullet perforated the skin and subcutaneous tissue and then passed through the oral cavity fracturing the upper incisor teeth. It then perforated the tongue in tis posterior portion and then perforated the posterior pharyngeal wall and sub-cutaneous tissues, finally getting embedded into the muscles just below the left clavicle. In this area a deformed bullet of length 01cm and base diameter 0.5cm was recovered. The overall direction of this wound is downwards, backwards and laterally.

5. A penetrating gunshot entry wound having circular hole, with circumferential abrasion, and marginal radial laceration, measuring 1.5 x 1.5 cm, with surrounding grease collar was present on the right upper quadrant, 51 cm below the top of head and 13 cm away from the anterior midline of the body. There was no singeing of surrounding hair, blackening or tattooing of surrounding skin. Further, the bullet was entering the abdominal cavity, in the right upper quadrant, by perforating through intercostal muscles between 9th and 10th ribs, fracturing 9th rib. Further it produced a perforating wound of size 03cm x 0.5cm on the right lobe of liver over its superior surface before passing through the superficial part of left psoas major muscle. In this area a bullet of length 01 cm and base diameter 0.5cm was recovered. The overall direction of this wound is backwards, upwards and medially.

OPINION

Cause of death in this case is gunshot injuries to the head, neck and abdomen produced by firearm projectile. All injuries are ante-mortem in nature and injury no-1, 2, 4 and 5 are sufficient to cause death in ordinary course of nature.

***Time since death:** Between 12-24 hours at the time of post-mortem examination."*

9. After the Post Mortem examination, PW-1 handed over the clothes, blood sample on the gauze piece and 4 bullet leads recovered from the body of the deceased, sealed with the seal of NKG, FMT to the Investigation officer along with sample seals. After the Post Mortem, the body of the deceased was handed over to the family members who conducted the last rites. It is pertinent to note that till this stage of the investigation, the name of the assailant did not come on record.

10. On 29.01.2016, Ms. Sunita Takkar, wife of the deceased reached the police station along with her son Deepanshu, claiming herself to be a witness of the incident. Insp. Ramesh Kumar recorded her statement wherein she named the appellant, Vikram Rana as the assailant who had caused gunshot injuries to her husband. She further stated that there was another boy waiting outside on a motorcycle and the appellant, after covering his face with a shawl, had fled away with the said motorcyclist. She gave the number of the said motorcycle as HR ...2307.

Arrest of the appellant with motorcycle HR 13H 2307 and country made pistol with one live round

11. With this information, the investigation was carried further and on 11.03.2016, ASI Jagdish Singh (PW-24 and also examined as PW-31),

from Special staff, Outer District, Rohini received a secret information about the appellant. He alongwith HC Rajesh (PW-26) and others formed a raiding party and reached the spot at G.T. Karnal Road, Siraspur village. The appellant was seen riding a motorcycle. On asked to stop, he tried to flee but was apprehended with the black coloured pulsar motorcycle bearing No.HR 13H 2307. The said motorcycle and its key were seized vide seizure memo, Ex PW-24/C. The police also found a country made pistol with one live round in his possession. The same were seized vide seizure memo, Ex.PW-24/B and sealed with the seal of JS. The sketch of the same was exhibited as Ex. PW-24/A. A rukka was prepared and same was taken by HC Rajesh (PW-26) to P.S. Samaipur Badli. The FSL form was prepared. On receipt of the rukka, FIR No.241/16 u/s 25/27, Arms Act was registered at P.S. Samaipur Badli. ASI Joginder Singh (PW-22) from P.S. Samaipur Badli reached the spot and took the seized articles into his possession. He also interrogated and arrested the appellant. The identification of the motorcycle was not disputed by the defence during the trial. The motorcycle was identified and exhibited as Ex-PW12/Article 1. Sri Krishan @ Bholu (co-accused) was also arrested in the evening on the same day.

FSL

12. The articles seized from the spot on 27.01.2016 as well as the seizures made on 11.03.2016, were sent to the FSL. Dr. Ruchi Sharma, PW-17 conducted the biological examination report (Ex. PW-17/A) and exhibited the DNA examination (Ex. PW-17/B) and Genotype analysis report (Ex. PW-17/C).

FSL, Ballistic Division Report

13. PW-34, Sh. V.R. Anand, Asstt. Director Ballistic, FSL prepared the ballistic report dated 27.07.2016 (EX. PW-34/A) with respect to the country made pistol of 7.65 mm bore and one live cartridge of 7.65 mm, which were seized from the appellant. The pistol was found to be in working order and had test fired successfully. The cartridge was a live one. Both were proved as fire arm/ammunition and exhibited as F1 and A1 respectively.

14. PW-34 had also examined the five 7.65 mm empty cartridges marked as EC1 to EC5, two deformed bullets, marked as EB1 to EB2 all of which were lifted from the spot and four bullets recovered from the body of the deceased, marked as EB3 to EB6 alongwith the 7.65mm bore country made pistol & test fired cartridge already marked as F1 and A1. Three 7.65 mm cartridges received for test firing, were test fired. The recovered test fired cartridges were marked as TC1 to TC3 and the recovered test fired bullets were marked as TB1 to TB3. On comparison, the individual characteristics of the firing pin marks & breech face marks present on EC1 to EC5 and on TC1 To TC3, were found to be identical. The individual characteristic of striation marks present on EB3 and on the test fired bullets, TB1 to TB3 were also found to be identical. The expert report dated 27.06.2017, was exhibited on record as Ex-PW34/B.

15. During the trial, a total of 38 witnesses were examined by the prosecution. Deepanshu, son of the deceased was examined as PW-11. Ms. Sunita Takkar, wife of the deceased was examined as PW-14; Raju Chaurasia, servant, was examined as PW-10 and Mr. Jai Bhagwan @

Mallu, who made the call to the police at number 100, was examined as PW-9. The appellant also examined three defence witnesses. It is noteworthy that the co-accused, Krishan was acquitted and the present appeal is confined only to the appellant.

16. Arguments have been heard from both sides. Learned defence counsel has contended that the statement of Sunita Takkar, PW-14 ought to be discarded as the same has come on record on the third day of the incident. As per him, the statement of PW-14 was antedated and brought on record after the arrest of the appellant; that the conduct of PW-14 does not inspire confidence as she had neither called police, her son or anyone else, nor did she give number of the motorcycle. Instead she remained silent for two days which show that she is a planted witness; that there was no motive; that the appellant has been picked and the pistol which was already recovered, had been planted on him; that no public witness was joined at the time of his arrest; that the scaled site plan does not show the presence of PW-14; that there were inconsistencies and improvements in statements of the witnesses. It was thus argued that the trial court had committed an error in sentencing the appellant for the remainder of his life.

17. On the other hand, Ms. Aashaa Tiwari, the learned APP has supported the impugned judgment. She argued that it cannot be held as a rule of universal application that the testimony of a witness becomes unreliable merely because there is a delay in the examination of a particular witness. To support the said plea, reliance was placed on a decision of the Supreme Court in **V.K. Mishra and Ors. vs. State of Uttarakhand and Ors. (2015) 9 SCC 588**.

Analysis:

18. It is not in dispute that the deceased, Gulshan Rai Takkar was running a shop-cum-factory on the Ground floor of H No.23, near Chhatri Chowk, Siras Pur. It is also undisputed that he had suffered gunshot injuries on 27.01.2016, at the above address. It has not been disputed that the cause of the death was the gunshot injuries suffered by him. There has been no cross examination of the Dr. N.K. Gunjan, (PW-1) on the above aspect.

19. To connect the appellant with the incident, the prosecution was required to prove the following circumstances: -

- a) the appellant was present on the spot on 27.01.2016, at time of the offence at the shop cum Godown No.23, near Chhatri Chowk, Siras Pur;
- b) the appellant had fired gunshots at Gulshan Rai Takkar & ;
- c) Gulshan Rai Takkar had succumbed to the above gunshot injuries.

20. The prosecution has sought to prove the above circumstances primarily by relying upon five facts namely: i) motive i.e, previous quarrel on 17.06.2014, between the appellant and his father on one hand and the deceased and his son, Deepanshu on the other hand; ii) testimony of Sunita Takkar; iii) recovery of a country made pistol of 7.65 mm bore and one 7.65 mm live cartridge from the appellant for which reliance was placed on the Ballistic reports; iv) recovery of a black coloured motorcycle no.

HR 13H 2307 from the appellant and v) scientific evidence in the form of FSL and PM report.

21. To prove the first two circumstances, the prosecution has relied on the motive, testimony of Sunita Takkar (PW-14) & the FSL report.

Motive : Incident of 17.06.2014

22. Both, Deepanshu (PW-11) and Sunita Takkar (PW-14) have testified that the appellant had a motive in killing Gulshan Rai Takkar. Deepanshu deposed that on an earlier occasion on 17.06.2014, while he was unloading cans from his car, parked on the street, the appellant's father i.e, Rakesh Rana came in his car and started honking. Gulshan Rai Takkar, father of Deepanshu was also present there. At that time, an altercation had ensued. He further deposed that Rakesh Rana had slapped Gulshan Rai Takkar and had also bitten on his thumb. Gulshan Rai Takkar then slapped Rakesh Rana, who went away, threatening to come back and take revenge. Later, Rakesh Rana came with some person to their factory with the intention to kill; however, he was turned away. Subsequently, Gulshan Rai Takkar gave a call to the police at 100 number. In between, the appellant also gave life threats to Deepanshu. Although, the matter was settled with the intervention of village elders, yet as per PW-11, the appellant again visited their factory and asked them to apologise to his father. On 25.11.2015, PW-11 met the appellant at some marriage function where the appellant's behavior was not normal. Sunita Takkar (PW-14) had also deposed on similar lines. Additionally, she stated that the appellant had also visited their house on 17.06.2014, on the pretext of purchasing washing powder.

23. To prove the incident dated 17.06.2014, the prosecution has examined W/Ct Manju (PW-23) for proving the PCR call. The e-challan to this effect was exhibited as ExPW-4/C. HC Satpal (PW-30) deposed that on 17.06.2014, he received a telephone call from the duty officer to investigate DD 62B (Ex.PW-30/A). The said DD recorded as:

“5-6 gunday mere ghar ke niche khade hain mujhe maarne ke liye khade hai, humara jhagra hua tha veh keh rahe hai ki goli maar denge. Siraspur, house No.189, opposite Shiv Mandi”.

The said information was recorded in DD No.62B (ExPW-30/A). He reached at the aforesaid address and met Gulshan Rai Takkar who informed him about the altercation that had taken place with Rakesh Rana and had also informed about the compromise arrived at between the parties. The witness had recorded DD No. 14A (Ex. PW-30/B) to the above effect.

Testimony of Sunita Takkar (PW14)

24. PW-14 deposed that on 27.01.2016, at 5:30 PM, she went to their factory situated near Chhatri Chowk, Siras Pur, where her husband was present in a cabin. She had spoken to her husband and proceeded to the godown located behind the cabin for packing the material. She had then heard a noise of firing shots/crackers and on coming out, saw the appellant going out of the cabin of the deceased. The appellant had pointed his pistol at her and said, *“tere husband ne mere papa ko kutta kaha tha to jaise maine inka haal kiya hai, mai tera aur tere parivaar ka yahi haal karunga agar tune police ko bataya ya kisi ko bataya”*. She further stated that the

appellant had fired at her but the bullet didn't come out. The appellant wrapped a shawl around him and went out of the factory. When she followed him, she saw a black motorcycle parked outside. The appellant along with another boy fled away on the motorcycle towards the railway crossing. She gave the number of the motorcycle as HR...2307. She stated that she was frightened. She went inside the cabin and found her husband lying in a pool of blood. There was a black mark on his forehead, blood was oozing out and he was not responding. Raju Chaurasiya (PW-10) was present there although at that particular time, he was in the toilet. After sometime, Jai Bhagwan (PW-9) reached the spot and called the police. In the meantime, her son, Deepanshu had also reached there. She had correctly identified the appellant in the court.

25. Learned counsel for the appellant has challenged the testimony of PW-14 primarily on two counts firstly, that she was not present at the spot and was rather planted to falsely implicate the appellant and secondly, that the delay of 1 ½ days in informing the police of the fact that she was present at the spot, is fatal. Ld counsel has also argued that infact, the statement of PW14 was antedated as it was recorded after the appellant's arrest.

Whether PW14 Sunita Takkar was present on the spot at the time of incident:

26. A perusal of the record shows that the incident had taken place at about 6.15 pm on 27.01.2016. There was no clue about the assailant till about 29.01.2016, when Sunita Takkar approached the police, on her own, and gave details of the incident and named the appellant as the assailant.

In her statement to the police, she had also stated that after committing the offence, the appellant had fled away on a black color motorcycle bearing number HR...2307.

27. The factum of the motorcycle number, although incomplete, given by Sunita Takkar on 29.01.2016 assumes great significance as the appellant is not the owner of the said motorcycle. However, when the appellant was arrested on 10.03.2016, he was found riding that very motorcycle. As seen from the record, it is an admitted fact that the actual owner of the said motorcycle was the co-accused, Krishan. This fact has been admitted by Krishan while answering Question no.3 during his statement recorded under Section 313 Cr.P.C. Also, the documents of registration of the said motorcycle in the name of Krishan were exhibited by PW-21/A, Ganesh Kumar as Ex.PW-21/A. It was not the case of the appellant that the co-accused, Krishan was known to Sunita Takkar. In fact, while answering Questions No.3 and 4, during his examination under Section 313 Cr.P.C., Krishan had replied that the appellant used to occasionally take the said motorcycle.

28. The presence of Sunita Takkar at the spot on the date and time of the incident has been confirmed by Raju Chaurasia (PW-10). He had deposed that he was working in the factory of the deceased where washing powder was being manufactured. On the date of the incident, at about 5:40 /6:00PM, the wife of the deceased was working in the godown and he had gone to the toilet. The deceased was present in the office but his son, Deepanshu was not present in the factory. When PW-10 returned from the toilet after 4-5 minutes, he saw the deceased lying in his office and blood

was oozing from his head and on seeing this, he made a call to Deepanshu (PW-11) from his mobile phone. In five minutes, Jai Bhagwan @ Mallu (PW-9) came there and Deepanshu also arrived.

29. In his cross examination, PW-10 reiterated that at the time of the incident, the wife of the deceased (PW-14) was working in the godown, at about 10-12 meters from the cabin where the deceased was working. He denied the suggestion that if a person was in the godown, he could see the person entering the cabin. He further stated that there was only one cabin in the factory and there were no other rooms except the godown. He denied that the wife of the deceased was not in the factory at the time of the crime. It is worthwhile to note that PW-10 neither claims to be a witness to the incident, nor claims to have seen the appellant. The appellant has produced one Saroj as defence witness (DW-1) who stated that she was staying on the 2nd floor of the godown and on the date of the incident at about 6.15 or 6.30 pm, Raju Chaurasia had come to her. He informed her that *“Aunty pata nahin Gulshan Kumar ko kya ho gaya, khoon me lathpath ho raha hain”*. She further stated that on her asking as to where was he, Raju Chaurasia had replied that he had gone to urinate. DW-1 was examined to discredit the prosecution case that instead of informing Deepanshu on the phone and staying at spot of incident, Raju Chaurasia had gone to DW-1 to inform her about the incident.

It was sought to be argued that Raju Chaurasia had gone to DW-1 because Sunita Takkar was not present at spot at the time of the incident. A perusal of the cross-examination of Raju Chaurasia would show that no suggestion was put to him by the learned counsel for the appellant

regarding his going to the house of Saroj (DW-1). This argument is, therefore, clearly an afterthought.

30. At the time of arguments, learned counsel for the appellant had argued that the statement of Raju Chaurasia (PW-10) under Section 161 Cr.P.C. was recorded for the first time on 18.05.2016 and no reason for the delay in recording his statement has been offered and therefore, his deposition cannot be relied on. It may be noted that no such suggestion was given to the said witness and nor was any argument on this line taken during the trial. Still, we note that the presence of PW-10 on the spot at the time of the incident stands satisfactorily established by the PCR report (Ex. PW-4/A) and the testimonies of PW-9 and PW-11.

31. Deepanshu (PW-11) has testified that he was informed about the incident by Raju Chaurasia (PW-10). He deposed that he along with his parents, used to work in the factory and their servant, Raju Churasia was working there as a labour.

On 27.1.2016, he was present at Naharpur, Rohini and at about 5:50/5:55 PM, received a call from Raju Chaurasia who said that '*papa ko kuch ho gaya hai bahoot blood ho raha hai, jaldi se aa jao*'. He had immediately called Mallu @ Jai Bhagwan (PW-9) and told him to reach the shop.

32. Jai Bhagwan @ Mallu appeared as PW-9 and deposed that the deceased was running a godown where he used to prepare surf/washing powder. He stated that he received a call from Deepanshu on the date of the incident and on reaching the spot, found the deceased in the cabin and

blood was coming out of the wound on his head. He made a call at No.100 from his mobile number, 9968035390. Though PW-9 resiled from his earlier statement made to police under Section 161 Cr.P.C, but during his cross-examination by the defence, he deposed that he had reached the spot within 4 to 5 minutes of receiving the call. The police also reached the spot. Most importantly, during his cross examination by the counsel for the appellant, PW-9 stated that the son and wife of the deceased were already present at the spot when he had reached there and they were still there when he left. He denied the suggestion that the wife and son of the deceased were not present till he had remained there.

33. Indeed, Sunita Takkar, being the wife of the deceased, is a related witness. When the witness is closely related, then law requires that testimony of such a witness needs a close scrutiny before any reliance can be placed on it. In this context, in ***Gangabhavani V Rayapati Venkat Reddy and Ors. (2013) 15 SCC 298***, the Supreme Court held as under:

“15..... Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

“18. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased.”
(emphasis added)

34. In **State of U.P. vs. Kishanpal and Ors. (2008) 16 SCC 73**, it was held thus:

"18. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded."

"19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness."

"20. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. The ground that the witness being a close relative and

consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible.” (emphasis added)

35. Similarly, in **Mohabbat and Ors. vs. State of M.P. (2009) 13 SCC 630**, the Supreme Court held as below:

“11 Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.” (emphasis added)

36. We find that PW-14 is a natural witness who was present at the spot when the incident had occurred. The presence of PW14 on the spot has also been corroborated by the testimony of PW-10. The statement of PW-14 is found to be truthful and inspires confidence as she had not only given the colour but also the number of motorcycle (albeit incomplete) and

the appellant at the time of his arrest, was found to be riding the very same motorcycle in spite of the fact that he was not the owner of the same. Had he been the owner of the motorcycle, things would have been different.

37. Learned counsel for the appellant has argued that the motorcycle was planted on the appellant after it was lifted from the house of the co-accused, Krishan. However, Krishan, has not taken such a stand in the trial. Learned counsel has also argued that the country made pistol had already been recovered from the spot and later, after arresting the appellant, it was planted on him. However, neither such suggestion was given to PW-29, S.I. Vineet who was a witness to the seizure from the spot on 27.01.2016; nor such a suggestion was given to PW-9, PW-11 or PW-14 who were witnesses present at the spot on 27.01.2016. Also, the recovery of 7.65 mm bore country made pistol from the appellant is not only connected to the 5 empty cartridges seized from the spot, but also to the bullet lead, EB3 extracted from the body of the deceased. The Ballistic expert from the FSL, Sh. V.R. Anand was examined as PW-34 who proved his report as Ex-PW34/A and Ex PW-34/B. It is noteworthy that his testimony could not be shattered in cross examination.

38. We do not find any merit in the submission of learned counsel for the appellant that no public witness was joined at time of the appellant's arrest, seizure of the motorcycle and country made pistol etc. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. In this context, we may refer to **Pramod Kumar vs. State (GNCT) of Delhi (2013) 6 SCC 588**. In the present case, the appellant was apprehended on secret information by a

team of Special Staff, Outer District, Rohini namely ASI Jagdish (examined as PW-24 and also as PW-31) and HC Rajesh (PW-26). He was later handed over to ASI Joginder Singh (PW-22) of P.S. Samaipur Badli. Thus, the submission that the whole case should be thrown overboard because of non-examination of an independent witness cannot be accepted.

39. The motive also assumes importance. Only because the earlier incident had taken place 6 months earlier, does not make it a weak motive. [Refer, **Gurmej Singh and Ors v State of Punjab (1991) Supp 2 SCC 75**]. Evidence has come on record that a scuffle had taken place between the deceased and the appellant's father, Rakesh Rana, and the appellant had visited the house of the deceased as well as their godown. He had in fact asked Gulshan Rai to apologise to his father. W/Ct. Manju (PW-22) and HC Satpal (PW-30) have proved the DD entries with respect to the earlier incident.

Conduct & Delay on part of PW-14 in approaching the police:

40. The defence counsel has questioned the conduct of PW-14 in failing to call the police or immediately informing her son or relatives about the appellant being the accused. During her testimony, PW-14 has stated that the appellant had pointed a pistol at her and tried to shoot but the bullet did not come out. He had also threatened her to not to disclose anything to the police. In this background, PW-14's conduct cannot be termed as unreal. She had just seen her husband grievously injured and was frightened. She had touched her husband but he did not respond. He had succumbed to the injuries. That every human being behaves differently in similar circumstances, has been reiterated by the Supreme Court in

Motiram Padu Joshi and Ors. vs. The State of Maharashtra (2018) 9

SCC 429 as below:

*“16. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. **Every one reacts in his own special way. There is no set Rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.**” (emphasis added)*

41. Learned counsel for the appellant has also argued that the delay of 1½ days on Report of PW-14 in approaching the police is fatal. In her testimony, PW-14 had explained the circumstances of the appellant pointing a pistol at her and threatening her. She had also stated that the appellant had attempted to fire at her but the bullet did not come out. She stated that she did not inform her son or the police about the incident and only after speaking to the relatives on 29.01.2016, did she approach the police and give her statement. In her cross examination, PW-14 explained that she was perplexed.

42. It is a settled legal position that delay in examining a witness is not a reason to discard the testimony. If the delay is explained and if the

reasons offered are found to be plausible and acceptable, then reliance can be placed on such a testimony. In this context, we may refer to **Banti @ Guddu v State of Madhya Pradesh (2004) 1 SCC 414, Gangabhavani (supra)** and **V.K. Mishra & Ors. (supra)**.

43. To prove the first two circumstances for connecting the appellant with the offence, besides relying on the motive and the testimony of PW-14, the prosecution has also relied on scientific evidence in the form of Ballistic reports (Ex. PW-34/A and Ex. PW-34/B). As recorded above, the above two reports prove that the bullet lead, EB3 extracted from the body of the deceased was found to be fired from the country made pistol “F1” which was seized from the appellant on 10.03.2016. Even, the empty cartridges EC1 to EC5 seized from the spot on 27.01.2016, were opined to be identical to the cartridges that were test fired from the country made pistol “F1”. The argument of learned counsel for the appellant that the country made pistol had already been seized from the spot and later on planted on the appellant, was not even suggested to the witness of the seizure i.e, PW-29 or even to PW-9, PW-11 or PW-14.

44. To prove the third circumstance that Gulshan Rai succumbed to the gunshot injuries, besides the statement of PW-14 and the scientific report, the prosecution has relied upon the Post Mortem report (Ex. PW-1/A) which was duly proved by PW-1. The testimony of PW-1 was not even challenged during his cross examination. In fact, no question was asked to him at all.

45. Lastly, it has been argued on behalf of the appellant that the trial court could not have awarded him “life imprisonment for remainder of

life”. We find the said argument to be fallacious. It is no longer res integra that a sentence of imprisonment for life means a sentence for the entire life of the prisoner. In **UOI vs.V.Sriharan alias Murugan & Ors.** reported as **(2016) 7 SCC 1**, while answering the reference, it was held that imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code means imprisonment for the rest of the life of the convict. Reference is made to **Duryodhan Rout V State of Orissa (2015) 2 SCC 783** and **Sanjay Kumar Valmiki v State (2018) SCC Online Del 9304**.

46. For all the above reasons, we do not see any merit in the present appeal which is accordingly dismissed. The appellant’s conviction under Section 302 IPC and Sections 25/27 Arms Act is upheld and the sentence imposed on him, is maintained. His bail bonds are cancelled. The appellant who is on bail, shall surrender forthwith to serve his remaining sentence.

47. Trial Court records be released along with a copy of this judgment.

(MANOJ KUMAR OHRI)
JUDGE

(HIMA KOHLI)
JUDGE

JANUARY 23, 2019/sm