

\$~

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

%

Reserved on: 28.11.2022

Decided on: 19.04.2023

+ **CRL.A. 744/2018**

SUNDER SINGH

..... Appellant

Represented by: Mr. Jitender Tyagi, Ms. Ananya Roy, Mr. Rajesh Pandey and Mr. Gaurav Bidhuri, Advs.

Versus

STATE (GNCT OF DELHI)

..... Respondent

Represented by: Mr. Prithu Garg, APP for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA.J.

1.0 Vide this appeal, the appellant challenges the judgment dated 28.04.2018 passed by Ld. Addl. Sessions Judge-02, South District, Saket Court, New Delhi ("**impugned judgment**") in short) whereby the appellant was convicted for offences punishable under Sections 302/307/452 Indian Penal Code, 1860 ("IPC" in short) in case S.C. No. 6666/2017, in FIR no. 371/2012, PS Saket; and order on sentence dated 18.05.2018, sentencing the appellant to undergo rigorous imprisonment for life under Section 302 IPC with fine of Rs. 15,000/-, in default to undergo simple imprisonment for six months and further to undergo rigorous imprisonment for seven years under Section 307 IPC with fine of Rs. 7,000/- and in default to undergo simple

imprisonment for three months; and also to undergo rigorous imprisonment for two years under Section 452 IPC with fine of Rs. 3,000/- and in default to undergo simple imprisonment for one month.

2.0 Briefly stating, the prosecution case is that on 07.12.2012, a PCR call about one person lying in injured condition in a plot in Bank Wali gali near Tirkana Kuan, Lado Sarai, New Delhi, was received and the same was reduced into writing vide DD no. 45A/Ex. PW-11/A. On receipt of the said DD, PW-35 IO ASI Kuldeep Singh along with PW-4 Constable Balvir Singh reached the spot, where he found two *charpais* (cots) having blood stains and blood was also found lying spread around on various things. On enquiry, it was found that the injured had already been taken to hospital. Thereafter, leaving the subordinate staff to guard the spot after informing the duty officer to assign the call to senior officers and requesting to call crime team, PW-35 IO ASI Kuldeep Singh along with Ct. Parmod/PW-25 reached AIIMS Trauma Center, where injured Dalbir and Jagat Singh were found admitted and were declared unfit for statement. One Jagbir Singh @ Dhillia, (brother of the injured Dalbir Singh) stated to be the eye-witness, was also found. PW-35 recorded statement of Jagbir Singh (Ex. PW-35/A), on which, the present FIR Ex. PW-12/A under Sections 307/452/34 IPC was registered.

2.1 Charge-sheet mentions that PW-35/IO ASI Kuldeep Singh reached Max hospital, Saket and collected the MLC no. 343606/12 Ex. PW-3/A of the appellant/accused Sunder Singh, who had left the hospital against medical advice. Rough site plan Ex. PW-35/D was prepared. Crime team

inspected the scene of the occurrence and lifted the exhibits which were sealed and taken into possession vide memos Ex. PW-9/A to Ex. PW-9/G. Crime scene was photographed. Subsequently, on the basis of secret information, the appellant/accused was apprehended from DDA Park, Lado Sarai and arrested vide arrest memo Ex. PW-25/A and his disclosure statement Ex. PW-9/H was recorded. Appellant/accused was medically examined and his blood stained clothes were seized. Pursuant to his disclosure statement, the appellant/accused got recovered one knife (Ex. P-1) from the bushes inside the DDA Park, Lado Sarai and the said knife was seized vide memo Ex. PW-5/B. During further investigation, statements of the witnesses were recorded and co-accused JCL R was apprehended and at the instance of JCL R, one broken *danda* (Ex. P5) was also recovered. Site plan Ex. PW-35/F of the place of recovery was prepared.

2.2 On 12.12.2012, further investigation was handed over to PW-40 Ins. Ajay Pratap Singh, who moved an application Ex. PW-40/X for recording of the statement of injured, but both were found unfit for statement. Injured Dalbir Singh died during treatment. His post-mortem was got conducted on 21.12.2012 at Jai Prakash Narayan Apex Trauma Centre vide postmortem report Ex. PW-38/A proved by PW-12 Dr Manoj Dhingra. PW-27 Dr Munish Wadhawan opined that death was due to 'septicemia shock' as a result of secondary infection consequent to multiple injuries. After postmortem, sealed exhibits given by doctor were seized. During the course of investigation, the exhibits were sent to FSL Rohini.

2.3. Later on, on 01.05.2013, once the injured Jagat Singh was declared fit by the doctor, his statement was recorded by the IO/PW-40 Ins. Ajay Pratap Singh. On 07.05.2013, Jagat Singh's statement u/s 164 Cr.P.C/Ex. PW-7/A was recorded. During the course of investigation, FSL results were collected and same were made part of the charge sheet. Subsequent opinion Ex. PW-38/B regarding weapon of offence was obtained from the doctor and on completion of investigation, charge sheet was filed.

3.0 In support of its case, prosecution examined 42 witnesses.

4.0 The appellant vide his statement under Section 313 Cr.P.C denied all the incriminating evidence put to him and stated that he is innocent and has been falsely implicated in this case and had nothing to do with the family of Jagbir Singh. He stated that he left the hospital as the doctor told him that the treatment has been completed and he was requested to come back for dressing some days later. He further stated that he had told the doctor that he had sustained the injury while cutting grass for animals at home (Q13). He was however called to the Police Station, where he was falsely arrested in this matter. The police officials took his signatures on some blank papers forcibly. Appellant/accused chose not to examine any witness in his defence.

5.0 Learned counsel for the appellant/accused argued that the prosecution utterly failed to prove its case as the testimony of its star/injured eye witness PW-7 Jagat Singh suffers from inconsistencies and contradictions. PW-7 has named different persons/number of persons at different times. In his statement under Section 164 Cr.P.C(PW-7/A), PW-7 Jagat Singh though

mentioned about the presence of the appellant/accused, he has not assigned any role to him. Further, due to darkness, even identification of the appellant/accused by PW-7 is highly doubtful. PW-14 Poonam, another eye witness did not support the prosecution case and was declared hostile.

5.1 Learned counsel for the appellant/accused also argued that even the witnesses of recovery of weapon, PW-5 Karan Singh and PW-16 Dayachand, have not supported the prosecution version. PW-16 testified that police had told him about a weapon/knife lying in the park and not the appellant/accused. He also stated that the weapon was like a strip. Thus, the recovery of weapon of offence/knife at the instance of the appellant/accused has been rendered highly doubtful.

5.2 Learned counsel for the appellant/accused further argued that the only evidence against the appellant/accused is alleged history given in the appellant's MLC Ex. PW3/A which has been manipulated at the instance of the IO for false implication of the appellant/accused.

5.3 Learned counsel for the appellant/accused also argued that there was no reason for the appellant/accused to assault the deceased and the injured as admittedly, there never existed any dispute between them. Absence of motive in such a situation also shows false implication of the appellant/accused. Learned counsel for the appellant/accused submitted that the appellant has been falsely implicated only because of his previous record.

6.0 *Per contra*, the Learned Prosecutor argued that the testimony of the injured eye witness PW-7 Jagat Singh is consistent as to material particulars. PW-7 has categorically stated that on 07.12.2012 at about 10 pm while he

was sleeping next to his son namely Dalbir Singh/deceased, they were suddenly attacked by the appellant/accused, grandson of Mangey, Teetu and two other persons with knife, *danda* and stone. He even stated that his son/deceased Dalbir Singh was assaulted with knife who later succumbed to his injuries. The witness duly identified the appellant/accused in the court, who was known to him and has stood by the same in his cross examination. Further, PW-7's version before the court is corroborated by his statement under Section 164 Cr.P.C. Minor omissions/discrepancies in the testimony of PW-7 can be attributed to his ripe age of 85 years and also that he was examined more than one year after the incident. Learned Prosecutor argued that due weightage has to be given to the testimony of the injured eye witness and in support, placed reliance on the judgment of the Hon'ble Supreme Court in *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719, *Balraje v. State of Maharashtra*, (2010) 6 SCC 673 and *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259.

6.1 Learned Prosecutor also argued that the appellant/accused sought to create doubt about his identification by PW-7 Jagat Singh suggesting that it was dark at that time. The appellant/accused was known to PW-7 Jagat Singh and therefore, his identification cannot be doubted. Even otherwise, PW-7 has explained that though they had no electricity connection but the same was taken from their neighbour namely Mahavir.

6.2 Learned Prosecutor further argued that on the same night at about 12:35 am, PW-11 HC Bharat Bhushan had received a call from PW-21 Ajay Kumar, Security Incharge, MAX Hospital, Saket regarding admission of the appellant who had sustained injuries after a quarrel at F-56 Lado Sarai, Bank

Street, which was recorded vide DD no. 3A (Ex. PW11/B), which was sent to the IO. The appellant's MLC Ex. PW3/A was prepared by the doctors after examining him but he fled from the hospital against medical advice and therefore, could not be given any treatment except one tetanus injection. The alleged history in the appellant's MLC (Ex. PW3/A) mentions that he was intoxicated and had laceration and amputation on his right little finger with proximal phalanx and the finger was attached with only skin support.

6.3 Learned Prosecutor also argued that thereafter, pursuant to receipt of secret information that the appellant/accused was hiding in DDA Park, Lado Sarai, he was arrested from there at 5:30 am on 08.12.2012. At the time of his arrest, the appellant/accused was found to be having an injury on the little finger of his right hand which was bleeding; and IO had taken the appellant/accused for treatment to AIIMS Trauma Centre, where he was identified by the complainant Jagbir Singh (who died later) and was subsequently referred to Safdarjung Hospital, where during treatment his injured finger had to be amputated. Appellant's MLC Ex. PW3/A and injuries found on the body of the appellant accused show that the appellant/accused had suffered injuries by the weapon of offence which was two sided/double buttondar knife which was recovered from the bushes in the DDA Park, Lado Sarai at his instance in the presence of security guard PW-5 Karan Singh and PW-16 Dayachand, pursuant to the disclosure statement of the appellant/accused. (PW9/H)

6.4 Learned Prosecutor also argued that the appellant/accused's son JCL 'R' was also apprehended and one broken *danda* (Ex. P-7) was recovered from near the spot at his instance.

6.5 Learned Prosecutor further submitted that the medical evidence on record further corroborates the eye witness's account. Medical record-MLC of the deceased (Ex. PW13/A) and that of the injured witness/PW-7 (Ex. PW13/C) was duly proved by PW-13 Dr. V Sameer. Further, vide subsequent opinion Ex. PW38/B, Dr. OP Murthy (PW-38), after examining the weapons of offence i.e., two sided/double buttondar knife and two broken *dandas* opined that the injuries caused to the deceased and the injured were possible by the said weapons of offence. He also opined that injuries mentioned in MLC of the appellant/accused could also be possible with the said knife (Ex. P-1)

6.6 Learned Prosecutor also argued that even the forensic evidence supports the testimony of the injured eye witness. He submitted that the DNA Report Ex. PW40/I conclusively established the involvement of the appellant/accused and the JCL 'R' in the present offence. As per DNA Report (Ex. PW40/I), DNA allelic data from the source of exhibit '15' (blood in gauze of deceased Dalbir) are accounted in the mixed DNA allelic data from the source of exhibits '10a' (Jeans of the appellant), '10b' (Sports shoes of the appellant), '9' (Knife recovered at the appellant's instance), '11' (Wooden stick recovered from the spot) and '12' (Wooden stick recovered from the spot at the instance of the JCL 'R'); DNA allelic data from the source of exhibit '13' (Blood sample of injured PW-7 Jagat Singh) are accounted in the mixed DNA allelic data from the source of exhibits '10a' (Jeans of the appellant) and '10b' (Sports shoes of the appellant) and DNA profile from the source of exhibit '21' (blood in gauze of the appellant) are

accounted in the mixed DNA allelic data from the source of exhibits '10a' (jeans of the appellant) and '10b' (Sports shoes of the appellant).

6.7 The Learned Prosecutor submitted that though the prosecution's material witness PW-14 Poonam, wife of the complainant Jagbir Singh turned hostile during her deposition in the court, she did mention about the genesis of the offence i.e., quarrel which had taken between her late husband and the appellant/accused on the night of the incident and she even correctly identified the appellant/accused. She also deposed that PW-7 Jagat Singh and the deceased used to sleep in the *Gher* i.e., the place of occurrence. Her hostility can be explained in view of her husband having committed suicide due to family disputes over property and her statement that she was not having cordial relations with her father-in-law, brother-in-law and other relatives.

6.8 Lastly, the Ld. Prosecutor argued that in view of the fact that there was no enmity between the injured and the appellant/accused, there was no reason for the injured/PW-7 to falsely implicate the appellant/accused and let the actual attackers go scot free. He argued that thus, the prosecution has proved its case beyond reasonable doubt and the Ld. Trial Court has rightly convicted the appellant.

7.0 We have duly considered the submissions made by both the sides and have perused the record.

8.0 PW-7 Jagat Ram, the injured eye witness testified that on 07.12.2012 at about 10 pm while he was sleeping, the appellant/accused along with grandson of Mangey, Teetu, grandson of Hari and two other persons attacked

him and his son Dalbir/deceased with knife, *dandas* and stone. He received injuries on his head, hands, legs and throat and had suffered fractures in his hands. PW-7 identified the appellant/accused in court. In his cross examination, PW-7 stood by his version and stated that he and his son Dalbir Singh/deceased used to live in the *Gher* near his house. PW-7 categorically denied that the appellant was not present at the time of incident or that he did not cause any injury to PW-7 and his son/the deceased. PW-7 rather specified that he was hit with stones and *danda*. He also stated that when they were given beatings, he had raised alarm but nobody from the neighborhood came to their rescue. PW-7 further gave the turn of events and stated that on that day, he had lied down on the cot at about 8 pm, whereafter, his son/the deceased woke him up for milk. He drank milk and then both of them lied down. PW-7 denied that as he and his son were sleeping and some assailants had suddenly come and attacked them, he could not see the faces of the assailants due to darkness and being under the influence of sleep. PW-7 rather explained that although there is no electricity connection in the *Gher* but they had taken connection from a neighbour Mahavir through generator. He also categorically denied that he has named the appellant/accused as one of the assailants as told by his family members and others. He further denied that he has falsely deposed being injured and father of the deceased.

8.1 Learned counsel for the appellant argued that testimony of PW-7 is hardly trustworthy as it suffers from inconsistencies and contradictions. It was submitted that PW-7 in his examination in chief stated that he was sleeping when the assailants came, whereas, in cross examination, he stated

that both, he and his son Dalbir/deceased were awake when they were assaulted. Yet in his statement under Section 164 Cr.P.C (Ex. PW7/A), he has stated that he was awake and his son Dalbir/the deceased was sleeping. Learned counsel also argued that in his testimony PW-7 stated that they were assaulted with knife, *dandas* and stone whereas, in his statement under Section 164 Cr.P.C. (Ex. PW7/A) he was not sure and stated that perhaps he was also hit by danda. He further argued that PW-7 has not assigned any role to the appellant/accused in Ex. PW7/A, though he mentioned about his presence at the spot.

8.1.1 In this respect, a reference is made to PW-7's statement under Section 164 Cr.P.C(Ex. PW7/A) recorded on 07.05.2013, which reads:

"3-4 महीने पहले 4-5 लड़के आये थे करीब 10 बजे रात को मेरे घर पर आये। मैं चारपाई पर लेटा था। Dalbir भी वहीं सो रहा था। मेरी गले की हड्डी तोड़ दी। शायद डंडा था। पत्थर से भी मारा। मेरे बेटे को भी मारा दण्डो से। एक तो मांगेराम का पोता था। सुन्दर भी था। वो मेरे गांव का ही है। मैं उसको जानता हूँ। मेरे लड़के को मारा दण्डो से। मैं अपने लड़के के साथ घेर (Plot) में था। मेरा लड़का तो मर गया। "

8.1.2 From careful reading of the PW-7's statement under Section 164 Cr.P.C (PW7/A), it is apparent that he has stated about he and his son being assaulted with *dandas* and stones by four-five persons and specified the presence of the appellant/accused as one of the assailants besides grandson of Mangeram and other, who had assaulted him and his son/deceased. Thus, there is hardly any force in the argument of the learned counsel for the

appellant that in his statement u/S 164 Cr.P.C, PW-7 did not assign any role to the appellant/accused. Further, in his statement under Section 164 Cr.P.C, PW-7 has stated that they were assaulted with danda and stone and perhaps he was also assaulted by danda. Even in his testimony, PW-7 has stated about attack with danda, stone and knife. Thus, there is hardly any discrepancy in the two statements in this respect. As far as discrepancy with respect to who was asleep and who was awake, as pleaded is concerned, needless to mention that at the time of assault, even if PW-7 and the deceased were asleep, on assault, they would have awoke.

8.2 Learned counsel further argued that PW-7 gave presence of different number of persons on different occasions. Suffice it to state that variation in number of persons who had come on that fateful night along with the appellant/accused in his testimony (six-seven persons) and in his statement under Section 164 Cr.P.C (4-5 persons) can also not be termed as a material discrepancy, particularly considering PW-7's advance age of 85 years; and that his statement under Section 164 Cr.P.C was recorded after about five months of the incident, as he was earlier declared unfit to make a statement; and also taking into account the trauma he underwent not only because of his own injuries but also on account of losing his son/deceased in the incident.

8.3 In view of the above, both the statements when read in entirety and considering the fact that PW-7 stood by his testimony in all material particulars, there is hardly any material discrepancy in his version so as to discredit his testimony. Testimony of PW-7, an injured eye witness is natural and inspires confidence. It is a settled position of law that minor

discrepancies/omissions do not corrode the credibility of an otherwise trustworthy witness. Further, needless to mention that the evidence of injured witness has greater evidentiary value and cannot be discarded lightly unless compelling reasons exist for the same. (**State of M.P. vs. Mansingh and Others - 2003 SCC Online SC 847**). In **Abdul Sayeed v. State of M.P. (2010) 10 SCC 259**, Hon'ble Supreme Court observed that:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". (Vide Ramlagan Singh & Ors. v. State of Bihar, AIR 1972 SC 2593; Malkhan Singh v. State of U.P. AIR 1975 SC 12 ”

8.3.1 In view of the above, we find no merit in the appellant's arguments that PW-7's testimony is highly doubtful.

9.0 The fact that soon after the incident, both, PW-7/injured and the deceased Dalbir were taken to AIIMS, Trauma Centre has come on record vide testimony of PW-27 Ct. Inder Singh and PW-32 HC Mahipal. PW-27 has deposed that in the intervening night of 7-8, December 2012, he was posted with PCR van no. Eagle -30 of which, the base was near Lado Sarai. At about 11:50 p.m., he received information that one injured was lying near well (*kuan*) in *Bank wali gali*, Lado Sarai. He immediately reached the spot and took the injured Jagat Singh, s/o Sube Singh, r/o. F-340, Lado Sarai to

AIIMS Hospital and got him medically examined vide MLC No. 343589/12. In his cross-examination the only suggestion which was put to him was that his statement was not recorded by the IO, which he denied. PW-32 HC Mahipal deposed that he was posted as in-charge PCR Eagle-28 and its base was at Qutub Minar. He had received an information at about 11:45 p.m. about one person lying in injured condition in a vacant plot in *Bank wali gali*, Lado Sarai. He reached the spot within three minutes and saw that two persons were lying in injured condition while one injured was in a serious condition. Accordingly, he took the injured, who was in serious condition, to AIIMS Trauma Centre. His son Shakti Singh, who was also present at the spot, accompanied him in PCR and informed that injured Dalbir was his father. He got the injured Dalbir medically examined vide MLC No. 343586/12. This witness was not cross-examined. Further, PW-6 Shakti Singh Selwal son of Dalbir Singh/the deceased deposed about accompanying his father and grandfather Jagat Singh/injured in police van to AIIMS Trauma Centre on 07.12.2012; and that his father expired in the night of 20.12.2012. He identified the dead body of his father in AIIMS mortuary on 21.12.2012 vide identification statement Ex.PW6/A and had received the same vide memo Ex.PW6/B.

10.0 Testimony of PW-7 is further corroborated by medical evidence. PW-13 Dr V. Sameer has testified that in the (intervening) night of 08.12.2012 while he was working as Senior Resident, JPNATC, AIIMS, New Delhi, at about 12:47 am, injured Dalbir/(the deceased) and thereafter at about 1:06 am, Jagat Singh/PW-7 was brought in casualty with the alleged history of assault. He examined the injured Dalbir vide MLC No. 343586, Ex. PW

13/A, and nature of injuries suffered by him were found to be grievous in nature. Injured Dalbir was in a very critical condition and was unfit for giving statement. He later died on 20.12.2012 and the said medical record is PW13/B. He also examined injured Jagat Singh vide MLC no. 343589 Ex. PW13/C and the injured was also unfit for giving statement and nature of injuries suffered by him were also opined as “grievous” with “blunt object”.

10.1 MLC of the Injured/Jagat Singh, (PW-7), Ex. PW13/C *inter alia*, reads as under :

“MLC No. 343589

Name: Jagat Singh, **S/o:** Sahab Singh, **Age:** 83, **Sex:** Male

Residence: H.No.- 340 Khasra No.- 190 Lado Sarai, Bank Wali Gali, New Delhi.

Relative Name: CT Inder Singh,

Date & Time of Exam: Dec 8, 2012 1:06AM

Date & Hours of Arrival: Dec 8, 2012 12:28 AM

BRIEF ALLEGED HISTORY AND EXAMINATION:-

Alleged H/O: Assault on Dec 7, 2012 11:00PM,

H/O Loss of Consciousness: No, **H/O Vomiting:** No, **H/O Seizure:** No, **H/O ENT Bleed:** No

Comments: A/H/O Assault by lathi patient was brought here in respiratory distress with extensive subcutaneous emphysema over face, neck, chest, bilateral upper limbs and scrotum.

.....

Particulars of Injury(s)

Visible Injuries on Patient **VISIBLE**

1. Wounds: **Laceration** (2cm over the **left eyebrow**)

2. Wounds: Swelling (extensive subcutaneous emphysema over the face, neck, chest, both upper limbs, abdomen and scrotum)

3. Wound: Laceration 1cm over left frontal area

Opinion:

Nature of Injury

PENDING INVESTIGATION"

10.2 As far as the MLC of the deceased Dalbir Ex. PW13/A is concerned, it records visible injuries including stab wounds. His death summary Ex PW13/B records diagnosis as multiple stab injuries and details of treatment provided and that he died in the hospital on 20.12.2012. It further records the cause of death as 'septic shock with mods and cardiac arrest'.

10.3 Deposition of PW-27 and PW-32 about the deceased being taken to the hospital prior to the injured PW-7 was taken, finds corroboration in the timing of both being brought as reflected in their respective MLCs i.e. Ex. PW-13/A and Ex. PW-13/C. Same show that the deceased was brought prior in time i.e., at about 12:01 a.m. and the injured/PW-7 was brought at 12:28 a.m.

10.4 Testimony of PW-13 and MLC (Ex. PW-13/A), and death report of the deceased (Ex. PW13/B) and MLC of the injured/PW-7 (Ex. PW-13/C) remained uncontroverted as PW-13 was not cross-examined. PW-7's MLC (Ex. PW 13/C) shows that he suffered injuries over the left eyebrow, face, neck, chest, both upper limbs, abdomen and scrotum and laceration wound over left frontal area. Same corroborates PW-7's version that he had received injuries on head, hands, legs and throat/neck. His testimony that he was

assaulted with dandas and stone is also corroborated by the opinion about grievous injuries having been caused with blunt object. PW-13/A, MLC of the deceased shows that he had suffered multiple stab wounds on chest, arm, over the back, right arm and lacerated wound on right leg and chest. Same also corroborates PW-7's testimony that his son/deceased was stabbed with knife because of which he died.

10.5 Injured Dalbir died in the hospital on 20.12.2012 and post mortem on the body of the deceased was conducted on 21.12.22 by PW-38 Dr. O.P. Murthy, Professor, Department of Forensic Medicines, AIIMS Hospital, New Delhi, who testified that he had found 23 injuries on the body of the deceased, which are detailed in post mortem report Ex. PW38/A. He also deposed about subsequent opinion regarding weapon of offence (Ex PW38/B) given by Dr Munish Sharma who worked under his supervision. He stated that injuries mentioned in the post mortem report could be caused by two weapons as detailed in the subsequent opinion. PW-38 in his cross examination categorically stated that the deceased died due to injuries suffered by him and its complications. Septicemia was only because of the trauma of the said injuries. Post mortem report Ex. PW38/A and subsequent opinion Ex PW 38/B inter alia, read as under:

“Post mortem Report no.: TC-901/12 Ref. NO. DEC-54

Date & Hour of Receipt of Inquest Papers & dead body: Dec 21, 2012 @ 11:35

***Brief History as per Inquest papers including FIR/DD etc.:
Alleged history of assault in the form of multiple stab injuries on
night of 07/12/2012. Brought to Trauma Center AIIMS at 12.01 am***

on 08/12/2012 and admitted. While during treatment DECLARED DEAD at 8.15 PM on 20/12/12

- 1. Wounds: **Stab** (2 stabs each 3 Cm over the **left chest** with pleural bridge).*
- 2. Wounds: **Stab** (2 stabs over the left arm each subcutaneous deep with profuse bleeding).*
- 3. Wounds: **Stab** (multiple stabs over the back varying from 2 Cm to 4 Cm in length).*
- 4. Wounds: Laceration (3 Cm laceration over the right leg subcutaneous deep).*
- 5. Wounds: **Stab** (3 Cm over the right arm subcutaneous deep profusely bleeding).*
- 6. Wounds: Others (subcutaneous emphysema over the chest).*
- 7. Surgically intervened stitched wound 5 cm long over left side chest at upper part in anterior axillary line with underlying cutting of intercostal muscle and plural and intercostals drain tube present at lower part of the wound. Left side plural cavity contain about 50 ml fluid mixed with blood. Lateral aspect of left lower lobe shows a cut wound of 8X0.5 cm with inflamed swollen margins. Further exploration of it, a tract of 7cm run downward posteriorly and medially with exit cut of size 2X0.5 cm over posterior aspect of left lower tube having inflamed margins. Surface of the tract shows yellowish pus with granulation tissue*
- 8. Surgically intervened stitched wound 24 cm long over anterior abdominal wall in midline. The perineal cavity contain about 500 ml fluid mixed with blood*
- 9. Spindle shape stab wound 5X1 cm muscle deep over anterior aspect of right forearm middle part.*
- 10. Spindle shape stab wound 8X1 cm subcutaneous deep over upper part right shoulder*
- 11. Two Stitched wound 1.5 cm over right side chest in midaxillary line, done surgically for intercostal drain tube insertion.*
- 12. Stitched wound 4 cm over anterior lateral aspect of lower part left thigh*
- 13. Stitched wound 3 cm over anterior aspect of lower part of left thigh*
- 14. Spindle shape cut wound 6X1.5 cm muscle deep over lateral aspect of mid left thigh*

15. *Cut wound 4X3 cm muscle deep over posterior aspect of left thigh at upper part*
16. ***Stab wound 3X1 cm** subcutaneous deep over lateral aspect right knee. Further exploration shows track of 4cm towards posteriorly in subcutaneous plan with exit cut wound of 2X0.5 cm*
17. *Cut wound 3X0.5 cm subcutaneous deep at first web space of left hand between thumb and index finger (defence injury)*
18. *Surgically intervened stitched wound 4cm vertical over midline upper back of trunk. On Further exploration shows cut in left paraspinal muscle and fracture of left transverse process of T5 vertebrae.*
19. *Surgically intervened stitched wound 17cm horizontal over right side upper back of trunk with cut in underlying muscle*
20. *Surgically intervened stitched wound 26 cm horizontal over right side upper back of trunk extending to lateral aspect of right chest with cut in underlying muscles*
21. *Surgically intervened stitched wound 3cm oblique over right side mid back of trunk with underlying hematoma and cut in right latissimus dorsi, serratus posterior and paraspinal muscle . Further, exploration shows tract is going anteriorly and downward with dark red colour hemotoma about 500 gram around right kidney. Right kidney shows cut wound 2X1X2 cm over upper part with dark red hemotoma.*
22. *Lacerated wound 3.5X1cm skin deep over midforehead upper part.*
23. *Multiple abrasions with black hard scab 2X1cm and 1x1 cm over right knee; 3x0.5cm and 1x0.4cm over right leg anteriorly"*

Time since death: Consistent with hospital record.

Opinion: *The cause of death to the best of my knowledge in this case is "Septicemic Shock" as a result of secondary infection consequent to multiple injuries. Injury no. 22, 23 are caused by blunt force impact and injury no. 9,10,14,15,16,17 are caused by sharp edged weapon. All injuries are consistent with injuries mentioned in MLC. Injury no. 6 & 7(stab injury to chest) and injury No. 21 (Stab injury at right side back of trunk) are sufficient to cause death individually as well as collectively."*

Subsequent opinion (Ex. PW 38/B)

"1. Injuries; mentioned in MLC and PM report of-the deceased Dalbir Singh could be possible by alleged weapon of offence.

2. Injuries, mentioned in MLC of Jagat Singh could be possible by alleged weapon of offence.

3. Injuries mentioned in MLC of Sunder could be possible with alleged knife."

10.5.1 Postmortem report thus shows that the deceased had suffered injuries with sharp edged weapon as well as by blunt force, which further supports PW-7's version that the deceased was assaulted with knife, stones and dandas. It also shows that stab injuries, no. 6, 7 and 21 to the chest were sufficient to cause death of the deceased, individually as well as collectively. Further, as per subsequent opinion Ex. PW38/B, the stab injuries were possible by knife (Ex. P1) and other blunt injuries by the wooden stick/*danda*.

10.6 PW-7 Jagat Singh's testimony that they used to sleep in the *gher* is also corroborated by PW-14 Poonam, daughter-in-law of PW-7 who otherwise did not support the prosecution version completely. She in her cross examination by the Learned prosecutor admitted that PW-7, her father in law and her jeth Dalbir/the deceased used to sleep in the plot in the vicinity.

10.7 The factum of PW-7 Jagat Singh and his son/deceased suffering injuries, while they were at the plot/*gher*, is also corroborated by PW-15 Harvir Singh Saijwal, nephew of PW-7 Jagat Singh and cousin brother of the

deceased, whose testimony has remained uncontroverted as he was not cross examined. PW-15 deposed that on 07.12.2012, when he was returning home *via bank wali gali* after attending a marriage and reached near the vacant plot near well (*kuan*), he saw his Tau/PW-7 and his cousin brother Dalbir/the deceased were lying on the floor in injured condition; and Dalbir/deceased was unconscious. Meanwhile their neighbor namely Rajesh Kumar/PW-18 also reached the spot. He made a call at number 100 from his mobile number 9013475581 and Rajesh Kumar (PW-18) went to inform the family member of PW-7. He has further deposed that PCR van arrived and with his help took PW-7 and the deceased to hospital. Meanwhile, local police also arrived.

11.0 Harvir Singh (PW-15)'s version that he had made a call at no. 100 is corroborated by PW-10 W/Ct. Shika Dhaiya who has deposed that on 07.12.2012, while she was posted in CPR (PHQ) at about 23.40.36 hours, she received a call from mobile number- 9013475581 and the caller informed that "*Lado Sarai, Bank wali Gali mei Kuan ke paas khaali plot mei eik aadmi ghaayal pada hai*" and recorded the said message vide PCR Form Ex. PW10/A. In her cross examination she stated that neither did the caller inform his name nor did she ask for the same.

12.0 Harvir Singh/PW-15's version that their neighbour PW-18 Rajesh Kumar had arrived at the spot and that with PW-15's help injured and the deceased were taken to hospital through PCR van is corroborated by PW-18, though he otherwise, turned hostile. PW-18 deposed (on 19.10.2015) that about a year back after attending some marriage function, he went home.

After about half an hour i.e., at about 11.30/12 midnight when he came in the *gali* he found number of police officials were present and came to know that a quarrel had taken place and that the injured had been taken to hospital. He stated that he did not know about the details of the said quarrel. In his cross examination by the Learned Prosecutor, PW-18 admitted that on 07.12.2012 at about 11/11:50 pm, after changing clothes, after return from a marriage function, he went to Turkuna Kuan near vacant piece of land in order to switch off the tube well; and that the tubewell where he had gone was situated near the vacant plot where the incident had taken place, which is at a distance of about 100-150 mtrs from his house. He also admitted that he had stated to the police that the injured Dalbir Singh and Jagbir Singh were lifted by PW-15 Harbir Singh with the help of police officials in police van, though he denied that he went to the house of the injured persons to inform his family members, he himself voluntarily stated that Jagbir Singh (Brother of the deceased and son of the injured PW-7) and his wife Poonam had themselves reached at the spot. He further stated that he was aware that the appellant/accused (whom he identified in court/ already knew him) was arrested three four days after the incident. PW-18 was not cross examined and therefore his testimony remained uncontroverted.

13.0 Testimony of the above witnesses further support the version of PW-7.

14.0 ASI Kuldeep Singh PW-35 has deposed that on 07.12.2012, at about 11:50 pm, duty officer PS Saket entrusted him a call regarding a person lying injured in a vacant plot near bank wali *gali*, Lado Sarai. On receipt of the same, he along with Ct. Pramod/PW-25 reached the spot i.e, vacant plot

(*Gher* of Jagat Ram, bank wali *gali*) where SI Hari Chand (PW-31), beat Ct. Gyanender (PW-37) and Ct. Shiv Kumar (PW-9) were already present. He entered the plot and saw two cots lying there which were having blood and there were also blood stained *rajai* and *gadda*. On enquiry, he came to know that the injured have been removed to Trauma Centre by PCR van. He informed the Duty Officer about the same and requested for crime team and also requested for entrustment of the matter to a Senior Officer. The appellant himself suggested to PW-35 SI Kuldeep Singh in cross examination that the place of incident is an open plot where cows and buffalows used to be tied, which proves reference to the place as *gher* and then went on to voluntarily state that in one corner there was tin shed. It was also suggested to him that a lot of blood was lying at the spot.

14.1. PW-35 has also deposed that leaving the subordinate staff to guard the scene of crime, he along with Ct. Pramod/PW-25 reached AIIMS Trauma Centre, collected MLCs of the injured persons namely Dalbir and Jagat Singh. Both were declared unfit for statement. However, one Jagbir Singh brother of one of the injured person Dalbir, was found present. He made enquiries with Jagbir Singh (brother of the deceased) and recorded his statement Ex. PW-35/A.

14.2 PW-35 ASI Kuldeep Singh further testified that vide Ex.PW35/A, Jagbir Singh stated that on 07.12.2012, at around 10:30 pm, he had gone to take meals from nearby dhaba of Lala (PW-19) and when he was getting the food packed, the appellant/accused Sunder Singh resident of the same village, came there in Maruti car along with his associates in drunken state

and started abusing and quarreling with him. His wife Poonam/PW-14 reached there and intervened and brought him back to their house. The appellant/accused and his friends left extending a threat to kill him. Sometime thereafter, the appellant/accused again came in front of his house along with his son R and started abusing him. He saw that the appellant/accused was carrying a knife and his son JCL R was having a *danda*. On seeing this, he did not come out of his house. On which, the appellant/accused and his son left after extending threats. However later on, a doubt arose in his mind as his father and brother were in *gher*/vacant plot. He along with his wife Poonam/PW-14 reached there and saw that the appellant/accused armed with knife and his son JCL R having *danda*, were assaulting his father and brother. When he and his wife tried to intervene, the appellant/accused and his son JCL 'R' ran towards them to assault them. But they somehow managed to escape and returned home; they called the family members and returned to the spot, both the appellant/accused and his son ran away from there. In his cross examination, PW-35 stated that in AIIMS Trauma Centre no one else except injured Jagat Singh, Dalbir and his brother Jagbir Singh, were present. He also stated that he recorded Jagbir's statement in the Trauma Centre itself and finished recording the same at about 1:30 am. He denied that Jagbir Singh had not told the above facts, as recorded in Ex. PW35/A, to him; and that he had obtained his signatures on blank papers.

14.3. PW-35 further stated that he made his endorsement Ex. PW35/B on the said statement and handed over the rukka to Ct. Pramod/PW-25 for registration of FIR. He then returned to the spot along with complainant

Jagbir Singh. By that time, crime team had reached and inspected the scene of crime, took photographs and handed over to him, Crime Team Visit Report Ex. PW35/C. He prepared rough site plan of the scene of crime (Ex. PW35/D) at the instance of the eye witness Jagbir and recorded supplementary statement of Jagbir. He lifted exhibits from the spot i.e., blood sample in gauze (Ex. PW9/A), blood stained earth (Ex. PW9/B), earth control (Ex. PW9/C), blood stained bed-sheet (Ex. PW9/D), blood stained quilt cover (Ex. PW9/E), blood stained plastic katta (gunny bag) (Ex. PW9/F) and one broken *danda* (Ex. PW9/G). These exhibits were converted into pullanda and were duly sealed with his seal of KSH and seized vide aforesaid seizure memos. He was not cross examined in this respect except suggesting to him that the *danda* was planted on the JCL Ravi, which was denied by PW-35.

14.4 PW-35's testimony is corroborated by PW-9 Ct. Shiv Kumar, who was left at the spot. PW-9 testified that on return from the hospital, IO/PW-35 had lifted the aforesaid exhibits, sealed and seized the same vide aforesaid memos. PW-9 also stood by his version in cross-examination and stated that the exhibits were lifted by the investigating officer from within the radius of 10-15 ft. of the scene of crime. Blood stained plastic katta, which was lying there was empty. He could not tell the number of blood samples in gauze/the number of places from where the same were lifted from the scene of crime, but categorically denied that he was not present at the spot. Nothing of substance could be extracted in his cross-examination so as to impeach his testimony.

14.5 PW-35/ASI Kuldeep Singh has further testified that on 08.12.2012 he received DD no. 3A (Ex.PW11/B) on receipt of which, he visited Max Hospital, Saket and collected MLC of the appellant/accused (Ex.PW3/A). But the appellant was not found in the hospital and the doctor had mentioned in the MLC that the patient had left against medical advice. Subsequently, a secret information that the appellant was available in DDA Park, Lado Sarai, was received. Accordingly, he along with PW-25 Ct. Pramod reached the said park and apprehended the appellant/accused on identification of the secret informer. They noticed that last finger of the appellant/accused's right hand was bleeding and there was a temporary bandage on the injury. The appellant/accused was taken to AIIMS Trauma Centre for medical treatment. Complainant Jagbir Singh who was present there identified the appellant/accused. The examining doctor referred the appellant/accused to Safdarjung Hospital. Accordingly, the appellant was taken to Safdarjung Hospital, where during treatment, last/little finger of the appellant/accused was amputated. Thereafter, he went back to AIIMS Trauma Centre and received two sealed pullandas, containing blood stained clothes of the injured from duty Ct. Ravi/PW-26. Same is corroborated by PW-26 Ct. Ravi Kumar who has deposed that doctor had handed over to him two cloth parcels with two sample seals which were handed over by him to PW-26 ASI Kuldeep Singh vide memo Ex. PW26/A. PW-26 was not cross examined.

14.6 PW-35 ASI also deposed that the appellant/accused was arrested and his personal search was carried out vide memos Ex. PW25/A and Ex.PW25/B. The appellant/accused was interrogated and his disclosure

statement Ex.PW9/H was recorded. PW-25 Ct. Pramod has deposed on the same lines. PW-25 stated that when he returned to the spot and handed over *rukka* and copy of FIR to PW-35 ASI Kuldeep Singh, he (PW-35) in the meanwhile had received a secret information that the appellant was available in DDA Park, Lado Sarai. Accordingly, they reached the said park and apprehended the appellant/accused. He also deposed that they noticed that last finger of appellant's right hand was amputated and bleeding and therefore, they took the appellant/accused to AIIMS Trauma Centre for medical treatment. Eye witness Jagbir Singh who was present there identified the appellant/accused as one of the assailants who assaulted his brother and father with knife. The examining doctor referred the appellant/accused to Safdarjung Hospital. Accordingly, the appellant was taken to Safdarjung Hospital, where he was provided treatment.

14.7 PW-35 has also deposed that before lodging the appellant/accused in lock-up he had seized the appellant's shoes and jeans pants which he was wearing and sealed them with the seal of KSH and seized vide memo Ex. PW9/I. PW-35 even identified the exhibits in the court. Same is corroborated by PW-9, Ct. Shiv Kumar, who deposed that IO/PW-35 had seized blood stained white colour sport shoes and blue coloured jeans pants (Ex.P-6 Colly) worn by the appellant vide seizure memo Ex. PW-9/I and sealed then with the seal of KSH and that disclosure statement Ex.PW9/H of the appellant was also recorded. PW-35 was not cross-examined w.r.t. seizure of the appellant's shoes and jeans pants. Only suggestion put to PW-9 was that he deposed about the same after seeing the aforesaid documents

Ex. PW-9/I and Ex. PW-9/H, in re-examination which he denied. PW-9 stood by his deposition in cross-examination.

15.0 PW-35 also testified that in his disclosure statement (Ex.PW9/H), the appellant disclosed that he had concealed the knife used in commission of the crime in DDA Park, Lado Sarai. The appellant led him/PW-35 and Ct. Gyanender/PW-37 to DDA Park Lado Sarai where guards namely Karan Singh(PW-5) and Dayachand(PW-16) were joined in the investigation. The appellant/accused pointed out a bush inside the DDA Park Lado Sarai and got recovered from there, one twin blade knife, handle of which was between the blades. Sketch of the knife Ex. PW5/A was prepared and it was sealed with the seal of KSH and seized vide seizure memo Ex. PW5/B. Thereafter, it was deposited in malkhana. PW-35 stood by his testimony in cross examination. He stated that the knife was at some distance away from the gate and was concealed in the *jhaadi*. The mud was also found on the knife. He denied that the knife was planted on the appellant and that they had forcefully made the guards to sign the recovery memo of the knife.

15.1 PW-37 Ct. Gyanender who accompanied PW-35 to the DDA Park, Lado Sarai deposed on the same lines about recovery of knife. In his cross-examination, PW-37 categorically denied that knife in question Ex.P-1 was brought by the IO and was planted upon the appellant and that appellant had not gotten recovered any knife. PW-25, Ct. Pramod, also deposed on the same lines as PW-35 regarding apprehension of the appellant/accused from the DDA Park, Lado Sarai and the medical treatment provided to him at AIIMS Trauma Center and thereafter at Safdarjung Hospital, identification

of the appellant/accused by witness Jagbir Singh, who was present at AIIMS Trauma Center, recording of disclosure statement of the appellant, recovery of knife pursuant thereto from DDA Park, Lado Sarai etc. and its sealing and seizure.

15.2. PW-5 Karan Singh who worked as gardner at Qutab Nursery, Lado Sarai deposed that at about 5:15 pm on asking of the police personnel, he joined five six police persons in the park and the appellant/accused was also there (duly identified) and one knife was recovered from near a small Ashok tree in the park. Sketch of the same Ex. PW5/A was prepared and it was converted into pullanda and seized vide pointing out cum seizure memo Ex. PW5/B. He however stated he was unable to identify the said knife if shown as it had become dark at the time of recovery. As the witness resiled from his previous statement, he was cross examined by the learned Prosecutor. In his cross examination, PW-5 stated that the appellant/accused was in police custody when he joined investigation at about 5:15 pm and was asked to search the weapon of offence. Few minutes whereafter, the police told that weapon of offence was lying there. On being shown the knife (taken out of a parcel) having two blades on both the sides, PW-5 identified that it was the same knife Ex. P-1 which was sealed by the police in his presence from the park. He further stated that there are big as well as small trees of different type in the park and there are hedges on the side of footpath, which might be about 2 ft. heigh on the sides. Further, by virtue of his own suggestion to PW-5 in cross examination, the appellant/accused has admitted that there are trees as well as hedge in the park, though it was also suggested that the hedge was maintained by cutting extra leaves once in five to ten days. PW-5

stated that if any article is kept in the hedge same would not be visible from the leaves of the hedge, which shows that the knife was hidden/was not visible. Appellant's suggestion to PW-5 that the appellant and the police were standing at a distance of about two three ft. from the hedge when the said knife was recovered, also reflects that the same could be recovered only at the pointing out of the appellant.

15.2.1 Ld. Counsel for the appellant argued that as per PW-5, knife was retrieved at the instance of police. Considering PW-5's testimony in entirety, it does not in any manner reflect that the knife was not recovered at the instance of the appellant. Merely because, PW-5 stated that police told that the weapon of offence was lying there, does not in any manner create doubt in that regard.

15.3 Another witness of recovery of knife (Ex.P-1) PW-16 Dayachand deposed that on 08.12.2012, he was working as a Chowkidar in DDA Park, Lado Sarai, New Delhi; that while on duty, at about 5 pm, he and Karan Singh/PW-5 were called by two police persons . This witness also turned hostile. He deposed that they were asked to search for a weapon and meanwhile the police officers told that a weapon was lying there. He also stated that the said weapon was like a strip. PW-16 identified his signatures on Ex. PW5/A (sketch of knife), Ex. PW5/B (seizure memo of knife) and stated that the said strip was similar to the one shown in sketch of knife. But, when knife Ex.P-1 was shown to PW-16, he denied that it was the same strip/knife which was recovered by the police. Though PW-16 turned hostile, it has come in his testimony that he had joined the proceedings for recovery

of weapon and in his cross-examination he categorically denied that the knife in question (Ex.P-1) was brought by the IO and was planted upon the appellant and that the appellant had not gotten recovered any knife. With respect to the identity of the appellant, PW-16 stated that he has weak eyesight and was therefore unable to identify the person who was in police custody at the time of recovery. PW-16 however further stated that the said person was having injury on his right hand and was having bandage/dressing on his hand and in his cross examination by learned Prosecutor, he stated that the appellant could be the said person but he was not sure. Same points towards the appellant, who had injury on his hand at the time of recovery of weapon of offence. On conjoint reading of his testimony with that of PW-35, PW-37 and PW-5 Karan Singh, it is evident that pursuant to the disclosure of the appellant (Ex.PW9/H), knife Ex. P-1 was recovered from the DDA Park, Lado Sarai. PW-5 even identified the knife Ex.P-1 as the same which was seized from the park in his presence. From his testimony it is apparent that the place from where the knife was recovered, was not visible.

15.4 Thus, even if the argument of the learned counsel that the knife was taken out as told by the police is accepted for a while, same does not impact factum of recovery of knife at the instance of the appellant. Reference with benefit in this respect is made to the case titled *State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600*, wherein Apex Court has observed as under :

“142. There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to

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

15.5 Ld. Counsel for the appellant argued that it has come in the testimony of PW-35 that there was mud on the knife, however the sketch does not carry any mud. Had the version of PW-35 been correct, the sketch would have got the mud, which was on the knife. In view of the above evidence on record, simply because the mud marks are not seen on the sketch of the knife does not in any manner impact the version of abovesaid witnesses about recovery of knife at the instance of the appellant/accused pursuant to his disclosure.

15.6 Further, PW-35 testified that after apprehension of JCL R, his version was recorded and thereafter at his instance one broken blood stained *danda* (Ex.P-7) about 43 cms long was recovered from near the place of incident and was converted into pullanda, which was sealed with the seal of KSH and seized vide memo Ex.PW35/E. PW-35 denied in his cross-examination that *danda* was planted on the JCL R.

16.0 PW-42 Ms. Sunita Gupta, Senior Scientific Officer (Biology), FSL testified that she was assigned 16 sealed parcels received in the office of FSL, Rohini on 28.12.2012, for examination. After examination, she had furnished detailed report Ex.PW40/E noting that blood was detected on Ex. 1 (blood stained gauze cloth piece), Ex. 2 (blood stained soil), Ex. 4 (blood stained loi), Ex. 5 (blood stained rajai cover), Ex. 6 (blood stained plastic katta), Ex. 7a (damp foul smelling shirt), Ex. 7b (damp foul smelling nicker), Ex. 8a (blood stained cloth piece), Ex. 8b (blood stained cloth piece), Ex. 9 (blood stained metallic knife), Ex. 10a (blood stained pants), Ex. 10b (blood stained pair of shoes), Ex. 11 (blood stained broken wooden danda), Ex. 12 (blood stained broken wooden danda), Ex. 13 (blood stained foul smelling liquid), 14 (blood stained foul smelling liquid) & Ex. 15 (blood stained gauze cloth piece of deceased), blood could not be detected on exhibit 3. She further deposed that she also examined the exhibits serologically and as per the serological report dated 25.3.13 (Ex.PW40/F) exhibits nos. 7a, 7b, 13 & 14 regarding species of origin shows no reaction and the remaining exhibits i.e. 1,2, 4, 5, 6, 8a, 8b, 9, 10a, 10b, 11, 12 & 15 were of human species of origin and on Ex.8a, blood group B was detected.

16.1 DNA examination report (Ex.PW40/I), with respect to the aforesaid exhibits was proved by PW-41 Ms. Monica Chakravarty, Senior Scientific Assistant (Biology), FSL. PW-41 testified that she had received 14 sealed parcels for examination and opinion. Seals on the said parcels were intact and that she had tallied the seals with the sample seals. After examination, she had opined that the DNA profiling (STR analysis) performed on the

exhibits provided was sufficient to conclude that DNA profiles from the source of exhibit '15' (Blood in gauze of deceased Dalbir) are similar with the DNA profiles from the source of exhibits '1' (Gauze cloth piece from the spot), '4' (Shawl from the spot), '5' (Quilt cover from the spot), Ex. '9' (knife), Ex. '11' (Wooden stick from the spot) & Ex. '12' (Wooden stick from the spot) however DNA profiles from the source of exhibit '13' (blood sample of injured Jagat Singh) are similar with the DNA profiles from the source of exhibit -8a' (cloth piece having few brown stains) and mixed DNA profiles from the source of exhibits '10a' (jeans pants having brown stains) & '10b' (a pair of sports shoes).

16.2 In view of the above, DNA allelic data from the source of exhibit '15' (Blood in gauze of deceased Dalbir) are accounted in the mixed DNA allelic data from the source of exhibits '10a' (Jeans of the appellant), Ex. '10b' (Sports shoes of the appellant), Ex. '9' (knife Ex.P-1 recovered at the instance of the appellant), Ex. '11' (Wooden stick recovered from the spot) and Ex. '12' (Wooden stick recovered from the spot at the instance of the JCL R). DNA allelic data from the source of exhibit '13' (Blood sample of injured PW-7 Jagat Singh) are accounted in the mixed DNA allelic data from the source of exhibits '10a' (Jeans of the appellant) and '10b' (Sports shoes of the appellant). DNA profiles from the source of exhibit '21' (Blood in gauze of the appellant) are accounted in the mixed DNA allelic data from the source of exhibits '10a' (jeans of the appellant) and '10b' (sports shoes of the appellant).

16.3 Thus, the forensic evidence also supports the version of eye-witness PW-7 and establishes the presence of the appellant/accused at the spot and connect him to the crime.

17.0 It is also noteworthy that the appellant himself had suffered injuries in hand on that fateful day and had visited Max Hospital for treatment but left against medical advice. PW-3 Dr Krishna Prasad Bandaru, testified that on 08.12.2012, at 12.30 AM, Sunder Singh S/o Diwan Singh, was brought by Dharamvir Singh with the alleged history of assault by a person, with whom, he had an argument ; he was attacked by a knife/sword and in protecting himself, he injured his right hand. Alcohol intoxication was present. He examined him vide MLC No. 2919 (Ex. PW-3/A), and on examination, he found right little finger laceration and amputation at proximal phalanx and attached with, only skin support, laceration on the dorsum of ring finger. He also deposed that as patient left against medical advice, he was not given any treatment, except injection of tetanus. PW-3 was not cross examined. Thus, PW-3's testimony and as well as appellant's MLC Ex. PW3/A has remained uncontroverted. MLC Ex. PW-3/A reads as under:

"Name of the Patient- Mr. Sunder Singh, S/o Mr. Diwan Singh, Age- 37, Sex- Male, Religion- Hindu, Occupation- Retailer.

Patient's Address:- F-56, Ladu Sarai, Bank Street, New Delhi- 110030.

Name & Address of Accompanying Person: Mr. Dharamveer Singh.

Date & Time of Arrival: 8/12/2012, 12:30 AM

Accident: Ladu Sarai, New Delhi.

Discharge: LAMA 8/12/2012, 1:00 AM.

Place of Accident: Ladu Sarai.

HISTORY & PHYSICAL EXAMINATION

Patient came to ER with alleged H/o assault by a person whom he had an argument. He was attacked by a knife/sword and in protecting himself he injured his right hand. Alcohol intoxication present.

.....

Exposure: Right little finger laceration and amputated with at proximal phalanx and attached with only skin support laceration on the dorsum of ring finger about IXI cm.

Nature of Injuries : Opinion Reserved.

Provisional Diagnosis : Assault with laceration of right ring and middle finger.

Name of the Examining Medical Officer: DR. KRISHNA PRASAD BANDAEU"

17.1 Further, on this evidence being put to the appellant while recording his statement u/S. 313 Cr.PC (in response to Q-13), the appellant stated that he left the hospital as the doctor told him that the treatment has been completed and he was requested to come back for dressing some days later. He further stated that he had told the doctor that he had sustained injury while cutting grass for animals at home. The appellant did not give any detail of the implement with which he was cutting the grass and how his hand got injured. Interestingly no such suggestion was put to PW-3, the doctor, the right person to comment whether such injury was possible with such an implement. This suggestion was put to the IO/PW-35, who denied the same. Rather, PW-38 Dr. O.P. Murthy vide his subsequent opinion Ex.PW38/B opined that injuries mentioned in MLC of the appellant (Ex. PW-3/A) were possible with knife in question (Ex. P-1).

18.0 The fact that as per the appellant's MLC (Ex. PW3/A) alcohol intoxication was found present, supports the prosecution version. Further, the history given by the appellant himself to the examining doctor (PW-3) regarding assault with knife/sword pursuant to an argument also go to support the prosecution version. As per prosecution, genesis of the offence in the present case was an argument/quarrel which took place between the appellant/accused and the complainant Jagbir Singh (brother of the deceased) when Jagbir Singh was getting the food packed at Lala Ka Dhaba and the appellant/accused had come there along with his associates in drunken state. Hearing ruckus, wife of Jagbir Singh namely Poonam (PW-14) had reached there and intervened and took Jagbir home; the appellant also left but extending threat to Jagbir. Unfortunately, Jagbir Singh, who was involved in that argument committed suicide later and therefore, could not step into the witness-box. Other relevant witnesses of these facts ie. Lala Ram PW-19 (dhaba wala) and Poonam (wife of Jagbir) PW-14 turned hostile. However, the facts that on 07.12.2012, the appellant/accused had visited the Lala Ram's Dhaba at about 10.00 pm and argument had taken place between Jagbir and the appellant/accused ; and PW-14 Poonam (wife of Jagbir) had reached the dhaba, intervened and took Jagbir away, have come on record vide their testimony.

18.1. PW-19 Lala Ram has deposed that in the year 2012, he was running a *dhaba* on the ground floor of the property F-340 First Floor, Lado Sarai, New Delhi, where he was residing on the first floor. Although he could not recollect the exact date, he stated that in the year 2012 at about 10 pm, the appellant/accused, (whom he identified in the court), came to his *dhaba* for

purchasing meals in his white colour car and there was one more person in the said car. However, since the food had already got over and he had already closed his *dhaba*, the appellant/accused returned. Next morning, at about 7/8 am when he came to his *dhaba*, he came to know that Dalbir/deceased had died but he is not aware who murdered the deceased. As PW-19 did not fully support the prosecution version, he was declared hostile and was cross examined by the learned Prosecutor. In his cross examination by the Id Prosecutor, PW-19 admitted that the said incident had taken place on 07.12.2012, but denied that he had closed the *dhaba* due to fear of the appellant/accused and his family members. The witness was confronted with his statement under Section 161 Cr.P.C/Ex. PW19/A, where the aforesaid facts are recorded. He admitted that the next day i.e., on 08.12.2012, the appellant/accused had been arrested by the police but he did not know that he was arrested for murder of Dalbir Singh. Though PW-19 admitted that he had voluntarily made the statement Ex.PW19/A to the police and that the same was read over to him, he denied that he stated to the police that Jagbir @ Dhill/deceased had also reached his dhaba and when he told the appellant that *dhaba* had been closed and no meals were available, the appellant abused Jagbir/deceased and thereafter, hot words were exchanged between the appellant and Jagbir/deceased and they abused each other; and meanwhile, Poonam (PW-14), wife of Jagbir reached and took Jagbir away.

19.0 PW-14 Poonam wife of Jagbir Singh (complainant) also did not fully support the prosecution version. However, she has deposed (on 24.08.2015) that she is illiterate and did not remember the exact date and time but it was about two and a half years ago, at night, a quarrel had taken place in front of

their house near restaurant, between her husband/Jagbir Singh and the appellant (whom she duly identified). She had intervened and then had brought her husband inside the house and had closed the door. When she woke up the next morning, she heard noise of crying of her mother-in-law Sukhdei, father-in-law Jagat Singh , sister-in-law/jethani Sunita and on enquiry they told that a quarrel had taken place with Dalbir/deceased in which he sustained injuries, but she had not seen the quarrel. As PW-14 resiled from her previous statement she was cross examined by the Learned Prosecutor. In which, she admitted that the quarrel between her husband Jagbir and the appellant/accused had taken place at about 10:30 pm on 07.12.2012 but denied that during that quarrel the appellant had abused and threatened her husband. PW-14 in her cross examination by the appellant stated that she was not aware as to what happened after she brought her husband/Jagbir inside the house after his quarrel with the appellant/accused. PW-14 has also stated that police had made enquiry from her husband Jagbir and his statement was also recorded by the police regarding the incident. She further stated that her husband Jagbir has already died about a year ago as he committed suicide due to family disputes with respect to the property; and that presently, she is not maintaining any relations with her father in law Jagat Singh/injured, brother in law and other relatives.

20.0 In view of the above, testimonies of PW-19 Lala Ram and PW-14 Poonam, wife of Jagbir Singh (complainant) support the prosecution version of the genesis of the offence i.e. the same night i.e. at about 10:00-10:30 pm on 07.12.2012, the appellant along with another person had visited PW-19's dhaba for purchasing meals; and that a quarrel took place between PW-14's

husband Jagbir Singh and the appellant/accused near that dhaba. PW-14 had intervened and brought her husband/Jagbir back home. Subsequently, she came to know that the injured persons/the deceased had suffered injuries and that the appellant was arrested by the police on 08.12.2012. Reason of PW-14 not supporting the prosecution version is evident from her statement in cross-examination that her husband Jagbir/the complaint in the present case committed suicide due to family disputes regarding property and that she has not been maintaining cordial relations with her father-in-law injured Jagat Singh/PW-7, brother-in-law and other relatives. PW-14's statement that her husband Jagbir's statement was recorded by the police regarding the incident lends credence to the testimony of the IO/PW-35 ASI Kuldeep Singh, who in his testimony has stated that he had recorded/Ex. PW 35/A statement of the complainant Jagbir (brother of the deceased and son of the injured PW-7), on above lines on which *rukka* Ex PW35/B was sent and FIR (Ex. PW12/A) was registered.

21.0. In view of the foregoing, the prosecution has been able to prove beyond reasonable doubt that in the night of 07.12.2012, the appellant/accused illegally trespassed into PW-7 Jagat Singh's *gher* at Bank Wali Gali, Lado Sarai, Delhi and committed murder of Dalbir Singh and also caused grievous injuries to Jagat Singh/PW-7.

22.0. Ld. Counsel for the appellant argued that admittedly there was no dispute or enmity between the appellant and the injured or the deceased, hence the prosecution has failed to prove any motive on the part of the appellant to assault them. Suffice it to state that absence of motive is not

always fatal to the case of the prosecution and the same has to be seen in the facts and circumstances of each case. (*State of Himachal Pradesh Vs. Jeet Singh, AIR 1999 SC 1293*). In view of the evidence on record as discussed above, the motivation on the part of the appellant to assault is reflected in the incident/arguments which took place between the appellant and the complainant Jagbir Singh earlier that night. Even if the same is ignored for a while, in the light of evidence which has come on record, absence of motive does not in any manner impact the prosecution case. Rather, in absence of any previous enmity/motive, there was no reason for PW-7/injured Jagat Singh to falsely implicate the appellant/accused.

23.0. In view of the above, we find no infirmity or illegality in the impugned judgment and the same therefore, does not call for any interference.

24.0. Appeal is accordingly dismissed.

25.0. Judgment be uploaded on the website and a copy be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 19 , 2023/g.joshi