



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

% Reserved on: 4th May, 2023
Decided on: 26th June, 2023

+ **CRL.A. 1087/2018**

DILIP MISHRA Appellant
 Represented by: Mr.Joginder Tuli, Ms.Joshini Tuli,
 Mr.Shrikant Sharma and Mr. Ishu
 Sharma, Advocates.

versus

STATE Respondent
 Represented by: Mr.Prithu Garg, APP for the State
 with Inspector Satish Kumar, PS
 Bhalswa Dairy.

+ **CRL.A. 1230/2018**

NAUSHAD Appellant
 Represented by: Mr.B. Badrinath, Advocate
 (DHCLSC) and Mr.Dhruv Bhardwaj,
 Advocate.

versus

STATE Respondent
 Represented by: Mr.Prithu Garg, APP for the State
 with Inspector Satish Kumar, PS
 Bhalswa Dairy.

+ **CRL.A. 1082/2018**

NEELU Appellant
 Represented by: Mr.Joginder Tuli, Ms.Joshini Tuli,
 Mr.Shrikant Sharma and Mr. Ishu
 Sharma, Advocates.

versus

STATE Respondent
 Represented by: Mr.Prithu Garg, APP for the State
 with Inspector Satish Kumar, PS



Bhalswa Dairy.

+

CRL.A. 1088/2018

ANCHAL

..... Appellant

Represented by: Mr.Joginder Tuli, Ms.Joshini Tuli,
Mr.Shrikant Sharma and Mr. Ishu
Sharma, Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Prithu Garg, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.

+

CRL.A. 1096/2018

AKASH

..... Appellant

Represented by: Mr.Joginder Tuli, Ms.Joshini Tuli,
Mr.Shrikant Sharma and Mr. Ishu
Sharma, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Prithu Garg, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.

+

CRL.A. 1086/2018

SUSHMA

..... Appellant

Represented by: Mr.Joginder Tuli, Ms.Joshini Tuli,
Mr.Shrikant Sharma and Mr. Ishu
Sharma, Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Prithu Garg, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.



+

CRL.A. 268/2019

SURAJ @ TINDA

..... Appellant

Represented by: Mr.Anshuman Sinha, Advocate
through VC.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Prithu Garg, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.

+

CRL.A. 76/2019

JITENDER @ GUDDU PASSI

..... Appellant

Represented by: Ms.Rakhi Dubey, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Prithu Garg, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.

+

CRL.A. 798/2019

DEEPAK @ DUTTA

..... Appellant

Represented by: Mr.Vineet Dhanda, Advocate
(Amicus Curiae) with Mr.Archit
Aggarwal and Ms.Gurleen Kaur,
Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Prithu Garg, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.

**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE POONAM A. BAMBA****MUKTA GUPTA, J.**

1. By way of these appeals, the appellants challenge the common impugned judgment of learned Trial Court dated 9th October, 2018 and order on sentence dated 11th October, 2018 whereby the appellants were held guilty and were sentenced as under:

S. No.	Appellant(s)	Offence(s)	Sentence
1.	Neelu, Sushma, Dilip Mishra and Anchal	Section 147 IPC	Rigorous imprisonment for two years along with fine of ₹1,000/- each in default whereof simple imprisonment for one month.
		Section 148 IPC	Rigorous imprisonment for three years along with fine of ₹1,000/- each in default whereof simple imprisonment for one month.
		Section 325 r/w Section 149 IPC	Rigorous imprisonment for seven years along with fine of ₹5,000/- each in default whereof simple imprisonment for six months.
		Section 302 r/w Section 149 IPC	Rigorous imprisonment for life along with fine of ₹50,000/- each in default whereof simple imprisonment for two years.



2.	Anchal	Section 452 r/w Section 149 IPC	Rigorous imprisonment for seven years along with fine of ₹5,000/- each in default whereof simple imprisonment for six months.
3.	Akash, Deepak @ Dutta, Naushad, Suraj @ Tinda and Jitender @ Guddu Passi	Section 147 IPC,	Rigorous imprisonment for two years along with fine of ₹1,000/- each in default whereof simple imprisonment for one month.
		Section 148 IPC	Rigorous imprisonment for three years along with fine of ₹1,000/- each in default whereof simple imprisonment for one month.
		Section 302 r/w Section 149 IPC	Rigorous imprisonment for life along with fine of ₹10,000/- each in default whereof simple imprisonment for one year.
		Section 452 r/w Section 149 IPC	Rigorous imprisonment for seven years along with fine of ₹5,000/- each in default whereof simple imprisonment for six months.

2. As per the prosecution facts of the case are that on 29th March, 2017 at about 12.00-12.15 PM, Rahul (injured/PW-21) was caught hold by appellant Anchal and his associates in D Block, Mukundpur, beaten up and taken to Anchal's house, where he was again beaten up. Under fear and threat, Rahul disclosed the whereabouts of Narender (deceased) to the assailants. Thereafter, PCR officials reached the spot and while some of the assailants/appellants ran away from the spot, three assailants/appellants



namely Dilip Mishra, Neelu and Sushma were taken to the police station by PCR officials along with injured Rahul (PW-21). Information about this incident was also given by one Chandan to the police which was recorded vide DD No.37B at about 12.50 PM that Rahul who was a murder suspect has been caught, however, when ASI Ramesh Chand (PW-25) along with HC Balu Palve (PW-7) reached the spot, they could not find anyone and were informed that Rahul and the three appellants were taken to the police station. These two police officers came back to the police station at about 1.30 PM and at the police station, injured Rahul and the said three appellants were present and Rahul was taken to the hospital by Ct.Chander Prakash (PW-6) and at the same time the three appellants left the police station. In the meanwhile, at about 12.30-12.45 PM, two appellants Anchal and Akash along with appellants Deepak, Suraj, Jitender @ Guddu Passi and Naushad entered the house of deceased and assaulted the deceased. Thereafter, the deceased was dragged out of his house till Aam Aadmi Chowk, Gali No.8, where he was again beaten up. In respect to this incident, information was given to the police by one Pradeep, which was recorded vide DD No.43B on which PW-7 and PW-25 reached the Aam Aadmi Chowk where Dilip, Neelu and Sushma along with their associates were seen beating the deceased by the police officials. Police officials were able to apprehend and arrest five of the appellants at the spot namely Sushma (Ex.PW-22/A), Neelu (Ex.PW-22/B), Dilip Mishra (Ex.PW-19/A1), Anchal (Ex.PW-19/B1) and Akash (Ex.PW-19/C1). The deceased was taken to the hospital by PW-25 and at about 4.50 PM, the deceased died at the hospital. At the hospital, statement of father of the deceased Ram



Kishan (PW-11) was recorded (Ex.PW-11/A) and *rukka* (Ex.PW-16/B) was prepared on which FIR No.204/2017 dated 29th March, 2017 under Sections 147/148/149/452/302/34 IPC was registered at PS Bhalswa Dairy (Ex.PW-9/A).

3. Dr.Anshul Saxena (PW-1) conducted the post-mortem on the dead body of Narender S/o Ram Kishan on 30th March, 2017 and tendered his report (Ex.PW-1/A). He opined:

“EXTERNAL INJURIES:

1. *Horizontally placed surgically sutured wound, with intact sutures, measuring 5.5 cm in length, was present over left parietal region, situated 11 cm above left tragus. Opening of the sutures revealed a lacerated wound.*
2. *Surgically sutured wound, with intact sutures, measuring 8 cm in length, was present over right parietal region, situated 2 cm away from previous injury. Opening of the sutures revealed a lacerated wound.*
3. *Surgically sutured wound, with intact sutures, measuring 7 cm in length, was present over left parieto-occipital region, situated 10 cm above left tragus. Opening of the sutures revealed a lacerated wound.*
4. *Surgically sutured wound, with intact sutures, measuring 2 cm in length, was present over left occipital region, situated 2 cm below previous injury. Opening of the sutures revealed a lacerated wound.*
5. *Surgically sutured wound, with intact sutures, measuring 3.5 cm in length, was present over left occipital region, situated 3 cm away from external occipital protuberance. Opening of the sutures revealed a lacerated wound;*
6. *Surgically sutured wound, with intact sutures, measuring 6 cm in length, was present over right occipital region. Opening of the sutures revealed a lacerated wound.*
7. *Surgically sutured wound, with intact sutures, measuring 1.5 cm in length, was present over right parietal region,*



situated 4 cm above previous injury. Opening of the sutures revealed a lacerated wound.

8. *Surgically sutured wound, with intact sutures, measuring 7 cm in length, was present over right occipital region, situated 2 cm below external injury no. 6. Opening of the sutures revealed a lacerated wound.*

9. *Surgically sutured wound, with intact sutures, measuring 2 cm in length, was present over right occipital region, situated 3.5 cm below external injury no. 6. Opening of the sutures revealed a lacerated wound.*

10. *Surgically sutured wound, with Intact sutures, measuring 3 cm in length, was present over right occipital region, situated 4 cm below external injury no. 6. Opening of the sutures revealed a lacerated wound.*

11. *Surgically sutured wound, with intact sutures, measuring 1 cm in length, was present over occipital region in midline, situated 7 cm below external occipital protuberance. Opening of the sutures revealed a lacerated wound.*

12. *Surgically sutured wound, with intact sutures, measuring 3 cm in length, was present over right frontal region, situated 8 cm above and 4 cm away from glabella. Opening of the sutures revealed a lacerated wound.*

13. *Surgically sutured wound, with intact sutures, measuring 3.5 cm in length, was present, over left frontal region, situated 3 cm away from previous injury. Opening of the sutures revealed a lacerated wound.*

14. *Surgically sutured wound, with intact sutures, measuring 7 cm in length, was present over left fronto-parietal region, situated 4 cm away from previous injury. Opening of the sutures revealed a lacerated wound.*

15. *Abraded contusion, reddish in colour, measuring 7 x 4 cm, was present over forehead and face in the midline, situated 1 cm above glabella.*

16. *Abraded contusion, reddish in colour, measuring 5 x 2 cm, was present over left side of face, situated 1 cm below outer canthus of left eye.*



17. *Superficial laceration, measuring 1 x 0.5 cm, was present over right side of face, situated 2 cm below and 1 cm away from inner canthus of right eye.*
18. *Surgically sutured wound, with intact sutures, measuring 2.5 cm in length, was present over right mandibular region, situated 2 cm away from symphysis menti. Opening of the sutures revealed a lacerated wound.*
19. *Abraded contusion, reddish in colour, measuring 2.2 x 1.5 cm, was present over left shoulder region.*
20. *Multiple abraded contusions, reddish in colour, over an area of 15 x 10.5 cm, were present over left shoulder and arm, starting at the shoulder tip.*
21. *Multiple contusions, reddish in colour, were present over back of entire right forearm and hand.*
22. *Multiple contusions, reddish in colour, were present over back of entire left forearm and hand.*
23. *Contusion, reddish in colour, measuring 10 x 4 cm, was present over back on the left side, situated 2 cm below and 6 cm inner to the left shoulder tip.*
24. *Multiple abraded contusions, reddish in colour, over an area of 12 x 2 cm, were present over back on the left side, ending 9 cm above left posterior superior iliac spine.*
25. *Abraded contusion, reddish in colour, measuring 4 x 1.8 cm, was present over right shoulder region.*
26. *Multiple abraded contusions, reddish in colour, over an area of 13 x 5.5 cm, were present over back in the midline and on the right side, starting 15 cm above upper end of gluteal cleft.*
27. *Multiple abraded contusions, reddish in colour, over an area of 5 x 3.5 cm, were present over right knee.*
28. *Abraded contusion, reddish in colour, measuring 3 x 1.5 cm, was present over right leg, situated 15 cm below right knee.*
29. *Vertically placed, wedge shaped, penetrating stab wound, measuring 2.2 x 0.3 cm, was present over front of right leg, situated 12 cm above right ankle.*





30. Surgically sutured wound, with intact sutures, measuring 3 cm in length, was present over left knee. Opening of the sutures revealed a lacerated wound.

31. Multiple abraded contusions, reddish in colour, over an area of 6 x 4 cm, were present over back left leg, starting 10 cm above left ankle.

32. Multiple superficial lacerations, over an area of 5 x 3 cm, were present over left foot.

The above mentioned injuries were ante-mortem in nature.

OPINION:

The deceased died due to head injury, sustained as a result of blunt force trauma to the head. Cumulatively the injuries over the head are sufficient to cause death in ordinary course of nature.

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

4. Insp. Satish Kumar (PW-26) conducted the investigation in the matter and on his interrogation, disclosure statement of Dilip Mishra (Ex.PW-19/A-3), Anchal (Ex.PW-19/B-3), Akash (Ex.PW-19/C-3) were recorded. On 25th April, 2017, on receipt of information regarding arrest of the other accused persons by special staff of crime team, Insp. Satish Kumar along with Ramji Lal went to Rohini Court Complex where after his application seeking permission for interrogation was allowed, Insp. Satish Kumar interrogated and arrested appellant Naushad, Suraj @ Tinda and Deepak @ Dutta vide arrest memo Ex.PW-5/D, Ex.PW-5/E, Ex.PW-5/F respectively and their disclosure statements Ex.PW-5/G, Ex.PW-5/H and Ex.PW-5/I respectively were also recorded. After completion of investigation, charge-sheet was filed and all the nine appellants were charged as under:



“I, Virender Kumar Bansal, Addl. Sessions Judge, Pilot Court, North District, Rohini, Delhi do hereby charge you accused 1) Anchal son of Dilip Mishra 2) Neelu D/o Dilip Mishra 3) Dilip Mishra son of Ram Jagat 4) Sushma wife of Ashutosh 5) Akash son of Sh. Gopal 6) Deepak @ Dutta son of Mohan Koli 7) Naushad son of Habib Ahmed 8) Suraj @ Tinda 9) Jitender @ Guddu Passi as under:-

On 29.03.17 at about 12/12.15 PM in street no.21, D Block, Mukand Pur-I, you all along with two other JCL Vicky, Anish and two other unknown accused (not arrested) within the jurisdiction of PS Bhalswa Dairy formed an unlawful assembly and used force and did violence in order to achieve the common object of the unlawful assembly and thereby committed the offence punishable under Sec.147 IPC and within the cognizance of this court.

Secondly on the above said date, time and place you all being members of the above said unlawful assembly were also armed with knives and dandas the deadly weapons and thereby committed the offence punishable under Sec.148 read with Sec.149 IPC and within the cognizance of this court.

Thirdly on the above said date, time and place you all in furtherance of the common object of unlawful assembly assaulted Rahul son of Ramesh and caused grievous hurt on his person and thereby committed the offence punishable under Sec.325 read with 149 IPC and within the cognizance of this court.

Fourthly on the above said date at about 12.30/12.45 PM you all in furtherance of the common object of unlawful assembly tress passed in house no.33/354 Trilok Puri, Delhi after making preparation for causing hurt/assault i.e. by arming yourselves with the knives and dandas and thereby committed the offence punishable under Sec.452 read with Sec.149 IPC and within the cognizance of this court.



Fifthly on the above said date at about 12.30/12.45 PM from house no.33/354 Trilok Puri, Delhi to street no.8, Aam Aadmi Chowk, Mkand Vihar, Mukand Pur, Delhi you all in furtherance of the common object of unlawful assembly assaulted Narender and caused his death and thereby committed the offence punishable under Sec.302 read with Sec.149 IPC and within the cognizance of this court.”

To prove its case the prosecution examined 27 witnesses and defence evidence was led only by Jitender @ Guddu Passi by examining his sister Smt. Indu as DW-1, who claimed that in March, 2017 she visited the parental house at Patna and came back to Delhi on 27th March, 2017 and her brother i.e. appellant stayed back at Patna and came to meet her at Delhi on 4th April, 2017.

5. Learned counsel appearing on behalf of appellants Dilip Mishra, Neelu, Anchal, Akash and Sushma submitted that the appellants admit the first incident that occurred at their house with respect to beating Rahul and pleaded that they may be released on the period undergone under Section 325 IPC. Learned counsel contended that the conviction of these appellants for the other two incidents of house trespassing and murder of Narender is untenable. It was submitted that it was untenable that ASI Ramesh Chand and HC Balu Palve went to three different places pursuant to DD No.37B, 43B and 46B within a short span of time. It was further pointed out that the version of father of deceased Ram Kishan (PW-11) is also full of contradiction and is not believable. As per the testimony of PW-11, the house of the deceased was about 72 Sq. Yards in size with a bedroom of





10x12 feet having a double bed, dressing table, almirah, sofa and chairs despite which ten persons entered the said room, out of which 7-8 persons were carrying *danda*, *saria* and knife. Further, despite having been pushed away twice i.e. firstly, during the incident which took place inside the house and second, at the incident which took place at Aam Aadmi Chowk, he did not sustain any injury, which fact also creates doubt on his presence at the spot. It was further contended that statement of other eye-witness Rahul (PW-20) was recorded after about 1½ months for unknown reasons. Further, PW-20 deposed that statement of PW-11 was recorded at the police station while PW-11 deposed that his statement was recorded at the hospital itself and thereby, contradicting each other. It was further pointed out that neither of the eye-witnesses i.e. PW-11 and PW-20 made a call to the police which in itself is an unnatural conduct. Further, despite being a heavily populated area no member of the public was made a witness in the case.

6. Learned counsel appearing on behalf of appellant Naushad contended that the prosecution failed to establish guilt of the appellant beyond reasonable doubt and thus, he be acquitted. It was contended that PW-11 is the father of the deceased and PW-20 is the cousin of the deceased and are interested witnesses and cannot be relied upon. It was pointed out that it is on record that the deceased was a resident of Mukundpur and PW-11 was a resident of Trilokpuri and therefore, the sudden presence of PW-11 at the spot is doubtful. Further, as per PW-11's initial statement i.e. Ex.PW-11/A, the assailants were not known to him and he had given the names of the assailants on being told by PW-20. Furthermore, as per PW-11's version he had good look at the assailants, however, despite that, he did not give any



description of the assailants i.e. height, built etc. It was further contended that there is no evidence on record to show that the incident in fact took place inside the house of the deceased. The photographs taken by the crime team were in this regard not proved during trial. The version of PW-11 and PW-20 of Anchal inflicting knife injury on the deceased is not proved by the MLC of the deceased (Ex.PW-18/A). It was further contended that no public witness or resident of the locality was made witness despite the incident having been taken at the open place of the locality. It was argued on behalf of the appellant that the appellant being a resident of the same locality, his mere presence in the vicinity is insufficient to fasten any liability with the aid of Section 149 IPC and in this regard, reliance was placed on (2013) 16 SCC 752 Ranjit Singh & Ors. vs. State of Punjab. Further, no specific role has been attributed to the appellant in the commission of the offence. Furthermore, the recovery of *danda* shown at the instance of the appellant is planted as the same was made from an open field after about 40 days of the incident and no blood was detected on the *danda*, and recovery from all the appellants arrested on 24th April, 2017, was shown from the same place i.e. Bhalswa Jheel Golf Course, and all these facts render the recovery unreliable.

7. Learned counsel appearing on behalf of appellant Jitender @ Guddu Passi contended that the case of the prosecution was based on the direct evidence in the form of testimony of PW-6, PW-7, PW-11, PW-19, PW-20 and PW-25, however, all these witnesses had either not named the appellant or only a vague allegation had been made against the appellant. No specific role had been assigned to the appellant and no police official was able to



identify the appellant. It was further contended that presence of the key eye-witnesses PW-11 and PW-20 is itself doubtful as PW-6 and PW-19 who were the first who reached the spot categorically stated that they did not meet any family member of the deceased at the spot. Even otherwise, the conduct of PW-11 and PW-20 was doubtful as they neither sustained any injury nor tried to save the deceased nor informed the police. Furthermore, it was the police officials who had taken the deceased to the hospital and not PW-11 or PW-20. Statement of PW-20 was recorded after 1½ month of the incident. In this regard reliance was placed on the decision in 2010: DHC:63-DB Gurcharan vs. State. It was further contended that a knife is shown to have been recovered at the instance of the appellant, however, no prosecution witness states that the appellant was carrying a knife or that knife was used by the appellant, therefore, the recovery of knife at his instance becomes immaterial. Even otherwise, neither there was any blood on the knife nor was the knife sent to FSL. Learned counsel further contended that the prosecution has also failed to establish any motive for the appellant to commit the murder of the deceased and thus, in the absence of any evidence to implicate the appellant in the present offence, it was submitted that the present appeal be allowed and the appellant be acquitted.

8. Learned amicus curiae appearing on behalf of appellant Deepak @ Dutta submitted that neither any independent witness was made to join the investigation, when the disclosure statement of the appellant was recorded nor any witness was made to join the recovery of *danda* from Bhalswa Jheel. In this regard reliance was placed on the decision in 2022 SCC OnLine SC 1396 Ramanand @ Nandlal Bharti vs. State of U.P. It was





pointed out that as per the testimonies of IO (PW-26) and HC Karam Singh (PW-23), the *dandas* recovered from the Bhalswa Jheel area had bloodstains on them, however, as per the FSL report (Ex.PW-26/G), no blood was found on the *dandas*. Even otherwise, there is no evidence brought on record to link the alleged *dandas* recovered to the commission of the present offence, for which reliance was placed on the decision in (2017) 11 SCC 31 Debapriya Pal vs. State of West Bengal. It was further contended that the testimony of two eye witnesses PW-11 and PW-20 is doubtful and does not inspire confidence and reliance was placed on the decision (2013) 4 SCC 422 Sunil Kundu & Anr. vs. State of Jharkhand. Furthermore, it was submitted that the CDR of the mobile phone of the appellant was not placed on record by the IO which would have shown the exact location of the appellant. Learned counsel for the appellant relied upon the decision in 2022 SCC OnLine SC 1454 Nandu Singh vs. State of Chhattisgarh and submitted that the prosecution even failed to establish any motive and this aspect was completely ignored by the learned Trial Court. It was further submitted that the appellant had refused to undergo TIP as the police had already taken his photographs and relied upon the decisions in (2021) 1 SCC 118 Rajesh vs. State of Haryana and 2023 SCC OnLine Del. 1769 Azad vs. State of GNCTD & Anr.

9. On the other hand, learned APP for the State submitted that the impugned judgment of learned Trial Court is based on proper appreciation of evidence in the present case and there is no infirmity in the impugned judgment, and therefore, the present appeals are liable to be dismissed. To buttress his submissions, he relied upon the following facts.





- i. Appellants Dilip Mishra, Neelu and Sushma have admitted in their statements under Section 313 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) that they were taken by the PCR van to the police station along with injured Rahul (PW-21) which constitutes an admission of their involvement in the incident pertaining to injuries caused to Rahul. Rahul identified all the appellants and attributed specific roles to them i.e. Anchal caught hold of him and gave kick and fist blows, Akash gave kick and fist blows in his stomach, Neelu and Sushma beat him with bricks and stones and exhorted “*ise jaan se maar do*”, Deepak, Suraj and Jitender @ Guddu Passi gave beatings to him when he was tied with rope, Naushad gave him fist blows on his stomach and Dilip Mishra had also beaten him and threatened him not to depose to the police about the incident.
- ii. MLC of Rahul (Ex.PW-18/B) corroborates his version and the dental opinion recorded that “injury is grievous from dental side”.
- iii. Ram Kishan (PW-11) and Rahul Nishad (PW-20) were the eye witnesses to the incident and they correctly identified the appellants in the Court and attributed specific role of each of the appellants. Ram Kishan neither named nor identified appellant Suraj @ Tinda. Presence of both these eye witnesses at the spot was natural, being deceased’s relative and living in the same locality.
- iv. Appellants Anchal Mishra, Dilip Mishra, Neelu, Sushma, Akash @ Nakali and JCL ‘V’ were arrested from the spot while remaining accused fled away from the spot. These remaining appellants namely Naushad, Deepak @ Dutta and Suraj @ Tinda were arrested on 24th





April 2017 by officials of Special Team, Crime Branch on the basis of a secret information from service road near All Heavens Banquet Hall at Wazirpur Industrial Area vide arrest memo Ex.PW-13/A, Ex.PW-13/C and Ex.PW-13/E respectively. Appellant Jitender @ Guddu Passi was arrested by another Special Team of Crime Branch on 6th May 2017 from near his resident at Village Amora (Ex.PW12/B).

- v. The prosecution witnesses i.e. PW-11, PW-20, PW-6, PW-7, PW-19 and PW-25 have consistently deposed about the weapons carried by the appellants. Bloodstained wooden stick (*Baans*) was recovered at the instance of Dilip Mishra (Ex.PW-6/A), one bloodstained wooden stick (*Danda*) was recovered at the instance of Akash (Ex.PW-7/A), one bloodstained knife was recovered at the instance of Anchal Mishra (Ex.PW-7/B) and one bloodstained iron rod was recovered from JCL 'V' (Ex.PW-7/C). And appellant Jitender @ Guddu Passi got recovered a knife from some bushes at Bhalswa Jheel Jungle. Furthermore, bloodstained clothes of Dilip Mishra (Ex.PW-19/A4), Anchal Mishra (Ex.PW-19/B4), Akash Nakali (Ex.PW-19/C4), Sushma (Ex.PW22/G) and Neelu (Ex.PW22/H) were recovered at the time of their arrest at the spot itself.
- vi. The post-mortem report of Narender (Ex.PW-1/A) recorded 32 external injuries on the body of the deceased and it was opined that the cause of death was head injury sustained as a result of blunt trauma to the head.





vii. As per DNA report (Ex.PW-26/G), deceased's blood/DNA was found on the clothes of the Dilip Mishra, Anchal Mishra, Sushma, Neelu and JCL 'V'. Blood of the deceased was also found on the shirt of Ram Kishan (PW-11) which proves his presence at the spot.

10. Learned APP for the State further submitted that although there were improvements in the testimony of PW-21, PW-11 and PW-20 as compared to their respective statements under Section 161 Cr.P.C. (Ex.PW-21/D, Ex.PW-11/A and Ex.PW-20/D respectively), however, the same being minor in nature, do not affect the credibility of the witnesses. It was further submitted that the present case is based on direct evidence and the evidence of all the witnesses is cogent, corroborative and reliable and is also substantiated by medical and forensic evidence. Further, the evidence of an injured eye witness is held in high regard by the Hon'ble Supreme Court in a catena of judgments and as such, Rahul (PW-21) has remained consistent in his statement. Learned APP further contended that refusal by the four appellants namely Naushad, Deepak @ Dutta, Suraj @ Tinda and Jitender @ Guddu Passi to participate in the TIP does not affect the credibility of their dock identification by PW-20 and other prosecution witnesses during trial and in this respect, reliance was placed on a judgment of the Hon'ble Supreme Court reported as (2012) 7 SCC 646 Shyamal Ghosh Vs. State of West Bengal.

11. Having heard both the parties at length and perusing the record, the following evidence emerges.

12. Ram Kishan (PW-11) deposed that his son/deceased was residing at Gali No.4, D-Block, Janta Vihar, Mukundapur Delhi for the last five years.





On 29th March 2017, he was on duty rest and at about 11:30-11:45 AM, he visited his son/deceased along with Rahul @ Nishad. At about 12:30-12:45 PM, someone knocked the door which was opened by Rahul and three persons were found standing at the door who asked for a bottle of 20L water, as the deceased used to supply drinking water. Thereafter, all these three persons entered the house of his son/deceased and were followed by 4-5 other boys who also entered the house including Anchal whom he knew prior to the incident. Anchal said “*tune mere bhai ko mara hai, aaj tujhe khatam ker denge*”. He further stated that Anchal was carrying a knife in his hand and gave a blow with the same on the neck of his son/deceased, and as his son/deceased ducked, the deceased sustained injuries on his head. ‘V’ alias ‘G’ was carrying *saria*/iron rod and Akash was carrying *danda* in his hand and they gave blows with the same to his son/deceased. The deceased tried to run towards the staircase but he was covered by 4-5 boys and was not allowed to escape. He rushed to save his son, but Naushad pushed him aside and he being a heart patient, became semi-conscious. He further stated that his son was beaten with bricks, piece of *silli*/slab, *danda*, knife and *sariya*. After regaining consciousness, he asked about the whereabouts of his son/deceased and thereafter, he along with Rahul @ Nishad reached Aam Aadmi Chowk. At the Aam Aadmi Chowk, Dilip Misra, Neelu, Sushma, Jitender, Anchal, Deepak, Akash and Naushad and two more persons were seen beating his son/deceased lying on the ground. Someone informed the police, and when police came to the spot, Dilip Misra, Anchal, Akash, ‘G’ @ ‘V’, Neelu and Sushma were apprehended, and his son/deceased was taken to BJRM Hospital in an auto by the police. He and





Rahul also reached the hospital where his statement (Ex.PW-11/A) was recorded by the police. On the same day, his son died at the hospital. He identified the body of his son (Ex.PW-11/C) and handed over his bloodstained clothes to the police (Ex.PW-11/B). In his cross-examination, he stated that he does not remember if Naushad pushed him on which he was confronted with his statement. He further stated that he does not remember who dragged his son out of the house and also that he tried to save his son, but he was not allowed to reach upto him. He further stated that Rahul Nishad did not try to save his son.

13. Rahul Nishad (PW-20) stated that he along with his *fufa* Ram Kishan and deceased were residing in Mukundpur, Delhi. Deceased used to supply RO water and he was working under him. Another boy named Rahul was also working with him. On 29th March 2017, at about 12:30-12:45 PM, Anchal, Akash and 'G' came to the house of the deceased, Akash knocked the door and asked for opening the door and asked for a water bottle. Thereafter, these three boys entered the house and were followed by Deepak, Suraj, Guddu Passi, Naushad and some other boys whose names were not known to him. Anchal said "*tumne mere bhai ko mare ho, tumhe hum nai chhodenge*". Anchal gave a knife blow to the deceased, and as the deceased ducked, the knife hit the head of the deceased. The deceased tried to run towards the staircase, but Anchal, Akash, Deepak, 'G' and other persons gave beatings to deceased at the staircase. Ram Kishan tried to save the deceased, but Naushad pushed Ram Kishan, who fell down and became unconscious, and regained consciousness after 2-3 minutes. Thereafter, he along with Ram Kishan went to Aam Aadmi Chowk where the above-



named persons including Sushma, Neelu and Dilip Misra were beating the deceased with kick and fist blows, and Dilip Misra was giving beatings with *danda*. Ram Kishan tried to save the deceased but was pushed aside. Someone made a call at no.100 and police came and took the deceased to the hospital in a TSR. He along with Ram Kishan also reached the hospital and after sometime, the deceased was declared dead. Thereafter, he along with Ram Kishan went to the police station where statement of Ram Kishan was recorded and his own statement was recorded after about one and a half month of the incident. In his cross-examination, he stated that he used to go in the street where Dilip, Neelu and Sushma were residing to deliver water.

14. Rahul, son of Ramesh (PW-21) deposed that on 29th March, 2017, after supplying water to the customers, he reached D-Block at about 12:00-12:15 PM where he was caught hold by Anchal and his associates and was beaten by them and was asked about the whereabouts of his employer/deceased. He told them that he was unaware about the whereabouts of the deceased, on which he was beaten and was taken towards the house of Anchal and was tied. Two sisters of Anchal also reached there along with other persons and all those persons together beat him. He stated that he was beaten with bricks and stones and sister of Anchal exhorted "*maar do isse*". Anchal and his associates brought *bandook* and sword from the house to kill him and after Anchal put *bandook* at his head, he told them that Narender was at his house. PCR reached there and he became unconscious. The above-named persons ran away from the spot and PCR officials took him to the police station from where he was taken to the hospital and was got medically examined. He identified Anchal as the





person who caught him on the way and gave him kick and fist blows; he identified Akash as the person who gave kick and fist blows in his stomach; he identified Neelu and Sushma as the ones who beat him with bricks and stones and said “*isse jaan se maar do*”; he identified Deepak, Suraj, Jitender @ Guddu Passi who had beaten him while he was tied with rope; he identified Naushad as the person who gave fist blows on his stomach and was not allowed to spit blood and he also identified Dilip Mishra as the father of Anchal and as the person who threatened him not to depose about the incident to the police. He further stated that Dalip Mishra was already in the police station when he came back to the police station from the hospital.

15. ASI Ramesh Chand (PW-25) deposed that on 29th March, 2017, he was on emergency duty with HC Balu Palve. At about 12.50 PM, duty officer informed him that one person has been caught in Gali No.21, D Block on suspicion of murder. On receipt of this information, he and HC Balu Palve reached the spot where he came to know that a boy named Rahul was beaten by 10-12 persons and two female and Rahul were taken by PCR van to the police station. He along with Balu Palve returned to the police station where he came to know that Rahul was injured and he also met Neelu, Sushma and Dilip Mishra, who informed him that Rahul was involved in the murder of Chanchal. Thereafter Rahul was sent to the BJRM Hospital. When Rahul returned from the hospital, Sushma, Neelu and Dilip were not present at the police station. After some time, he received a call with respect to a quarrel at Gali No.8, D Block, Janta Vihar. He reached the spot where, Neelu, Sushma, Dilip Mishra and 5-7 associates were beating one person with *lathis*, *dandas*, kicks and fist blows. In the





meanwhile, patrolling staff of PS Bhalswa Dairy, HC Mahesh, HC Deepak, ASI Vinod, Ct. Ramesh and Ct. Rajeev also reached there and all the police staff saved the injured. Dalip Mishra and Akash were carrying *dandas* in their hands, Anchal was carrying knife in his hand, JCL 'V' @ 'G' was carrying *saria* and Sushma and Neelu were throwing bricks. He further stated that four-five boys ran away from the spot out of which one was carrying a knife. All the above-named persons were caught at the spot and their weapons were taken by the police. Name of the injured was revealed as Narender (later deceased) whom he took to BJRM Hospital in an auto. Crime team was called at the spot. *Danda* found in the possession of Akash was having bloodstains and one end of the same was having shape of square, which was seized vide memo Ex.PW-7/A. *Danda* found in possession of Dilip Mishra was having five rounds and was of three feet and three inches in length which was seized vide memo Ex.PW-6/A. Knife found in the possession of Anchal was having bloodstains, its sketch (Ex.PW-7/M) was prepared and it was seized vide memo Ex.PW-7/B. Blood, bloodstained earth and earth control were seized vide memo Ex.PW-7/D and Ex.PW-7/E. Three bricks stained with blood were also seized vide memo Ex.PW-7/G. After all the exhibits were seized, SHO and Inspector Satish also arrived at the spot and information was received that the deceased died at the hospital.

16. Insp. Satish Kumar (PW-26) deposed that on 29th March, 2017, he came to know about the incident in respect whereof five persons were apprehended by the police and that the injured had expired. Thereafter, he reached Gali No.8, near Aam Aadmi Chowk, Mukundpur where the incident



took place and met ASI Ramesh Chand who briefed him about the case and handed over the sealed *pullandas*. He formally arrested the five apprehended persons namely Dilip Mishra (Ex.PW-19/A1), Anchal (Ex.PW-19/B1), Akash (Ex.PW-19/C1), Sushma (Ex.PW-22/A) and Neelu (Ex.PW-22/B). Clothes of the appellants were found stained with blood which were seized vide memo Ex.PW-19/A4, Ex.PW-19/B4, Ex.PW-19/C4, Ex.PW-23/G and Ex.PW-23/H. He also recorded the disclosure statement of the appellants. On 25th April, 2017, he along with Ct. Ram Swaroop and Ramji Lal went to Rohini Court Complex on receipt of information regarding arrest of appellants Naushad, Suraj @ Tinda and Deepak @ Dutt. Pursuant to permission for interrogation from the concerned Court, he interrogated the three appellants and thereafter arrested them vide memo Ex.PW-5/D, Ex.PW-5/E and Ex.PW-5/F respectively. Thereafter, disclosure statements of the appellants Ex.PW-5/G, Ex.PW-5/H and Ex.PW-5/I were also recorded. On 6th May, 2017, he along with HC Karam Singh were led by the three appellants in front of Bhalswa Jheel, Golf Court towards jungle where there were bushes and the appellants produced one *danda* each which were used by them in the commission of offence. All the three *dandas* have bloodstains which were seized vide memo Ex.PW-23/A, Ex.PW-23/B and Ex.PW-23/C. On 10th May, 2017, pursuant to permission for interrogation, he interrogated appellant Jitender @ Guddu Passi and thereafter, arrested him vide memo Ex.PW-5/C and recorded his disclosure statement Ex.PW-26/E, in pursuance whereof on 13th May, 2017, appellant Jitender led the police to Bhalswa Jheel, towards Mukundpur, D Block, *Kaccha Rasta* and from the bushes, one knife was produced, which was sketched (Ex.PW-8/A)





and was seized vide memo Ex.PW-8/B. Thereafter, after completion of investigation, he filed the charge-sheet.

17. In his statement under Section 313 Cr.P.C. appellant Jitender @ Guddu Passi denied his presence at the spot. He stated that the FIR was anti-time and dated and was falsely registered on the false statement given by Ram Kishan. He further stated that his photographs were taken by the police when he was arrested from his residence and was shown in the police station. He further stated that knife was planted on him to create false evidence. He stated that he was innocent and was falsely implicated in the present case and that at the time of incident he was not in Delhi and also that he was arrested from his house at Village Amora, District Azamgarh, U.P. by the police.

18. Appellants Akash, Deepak, Suraj @ Tinda and Naushad in their respective statements under Section 313 Cr.P.C. denied their presence at the spot. They further stated that weapon of offence i.e. *danda* was planted on them. They further stated that they were arrested from their house and further stated that the bloodstained clothes did not belong to them. They further stated that they denied TIP for the reason that their photographs were shown to the complainant at the police station.

19. Appellants Anchal, Dilip Mishra, Neelu and Sushma in their respective statements under Section 313 Cr.P.C. stated that Anchal was not present at the spot and was at his house and that Neelu, Sushma and Dilip were at the police station. Anchal also stated that he was apprehended from his house and not from the spot. Dilip Mishra, Neelu and Sushma stated that they were detained in the police station and were arrested from the



police station itself. They also denied recovery of any bloodstained clothes from them and stated that the same were planted on them. They further stated that the witnesses in the case were planted by the IO as their family used to pressurize the IO to expedite the arrest of culprits who had murdered Chanchal, on which the IO had threatened them that they would be implicated in false murder case.

20. As noted above, according to the case of prosecution three incidents took place on 29th March, 2017 and all the appellants were at least present in the first incident and the third incident thereby warranting their conviction under Section 302 read with 149 IPC. It is the case of the prosecution that the murder of Narender/ deceased took place to revenge the murder of Chanchal that took place in December 2016 and appellants Dilip Mishra, Neelu, Sushma, Anchal are the father, sisters and brother of deceased Chanchal respectively and the other accused are the associates of Anchal, the brother of Chanchal. Since Narender was one of the accused in the murder of Chanchal, the family members of deceased Chanchal along with their associates were on search of Narender and after spotting him committed the murder and before that Rahul (PW-21), an employee of Narender, was beaten to find out the whereabouts of Narender in the first incident.

21. The three incidents that are the basis of conviction in the present appeals are as under:



- “a) *Physical assault resulting in grievous hurt to Rahul, s/o Ramesh (PW-21) at Gali No. 21: Section 325 r/w 149, IPC (“First Incident”)*
- b) *House trespass with preparation to cause hurt to Narender at Gali No. 4: Section 452 r/w 149, IPC (“Second Incident”)*
- c) *Physical assault and murder of Narender at Gali No. 8, Aam Aadmi Chowk: Section 302 r/w 149, IPC (“Third Incident”)*”

22. Before analyzing the evidence of the witnesses to ascertain the role of each of the appellants in the three incidents, it would be appropriate to note the chronology of events on 29th March, 2017 as per the case of the prosecution:

S. No.	Time	Event	Evidence/Remarks
1)	12:00-12:15 pm (approx.)	Assault on PW-21 Rahul at Gali No. 21. (First Incident)	<u>Injured eyewitness:</u> PW-21 Rahul. <u>Incident:</u> a. As per the injured eyewitness, he was caught by Anchal and his associates at 12:00-12:15 pm at D Block, Mukundpur. b. The Appellants gave beatings to him and thereafter took him to the area in front of Anchal’s house where he was tied and beaten up. c. Two sisters of Anchal (Neelu and Sushma) also reached there along with other persons and started beating him up. d. The assailants repeatedly asked him about the whereabouts of his employer,



			Narender. e. Under fear and threat, he told the assailants the whereabouts of Narender. f. All Appellants have been named and identified by PW-21 with specific roles attributed to each Appellant.
2)	12:30-12:45 pm (approx.)	House Trespass and assault on Narender in the latter's house at Gali No. 4. (Second Incident) After being brought out of this house, Narender was assaulted and dragged till Aam Aadmi Chowk, Gali No. 8 where he was given further beatings before he could be rescued by the police. (Third Incident)	<u>Eyewitnesses:</u> a. PW-11 Ram Kishan (Narender's father) b. PW-20 Rahul Nishad (Narender's cousin) <u>Incident:</u> (as per PW-20) a. As per the eyewitnesses PW-11 and 20, the accused had visited the house of Narender at 12:30-12:45 pm. b. Two Appellants namely Anchal and Akash along with the JCL 'V' @ 'G' had entered first. c. They were followed by four Appellants namely Deepak, Suraj, Jitender @ Guddu Passi, Naushad. d. Three Appellants namely Dilip Mishra, Neelu and Sushma have not been named by the eyewitnesses in respect of the Second Incident. They have been named only in respect of the Third Incident.
3)	12:41 pm	PCR call by Neelu Kumari stating that Rahul, a murder suspect has been caught by her. (First Incident)	Filed with chargesheet but not exhibited in evidence.
4)	12:50 pm	DD No. 37-B lodged on information by	Filed with chargesheet but not exhibited



		Chandan that Rahul, a murder suspect has been caught. (First Incident)	in evidence. <u>Note:</u> a. Even though the said DD has not been exhibited, PW-7 HC Balu Palve has deposed regarding the same in his examination-in-chief. (Pg, 25) b. PW-7 has also admitted during cross-examination that the said DD was recorded at the PS at 12:50 pm. (Pg.36)
5)	01:15 pm	MPV reported to Control Room (against Neelu Kumari's PCR call) that suspect Rahul has been caught and is being taken to PS and the caller Dilip Mishra is also accompanying them.	PCR Form
6)	Between 01:15 pm and 01:26 pm	On receipt of DD No. 37-B, PW-25 ASI Ramesh Kumar (Original IO) along with PW-7 HC Balu Palve reached the First Incident spot. However, they did not find anyone at the said spot and came to know that Rahul had been taken to the PS by the PCR.	<u>PW-25 ASI Ramesh Chand:</u> a. PW-25 deposed that at about 12:50 pm, the Duty Officer informed him that one person has been caught in Gali No. 21 (First Incident spot) on suspicion of murder. b. On receiving this information, he along with PW-7 reached the First Incident spot where they came to know that Rahul had been beaten by 10-12 persons including two females and that Rahul had been taken to the PS by PCR van. c. He fairly admitted during cross-examination that when he and PW-7 reached the First Incident spot, they had not seen any accused giving beating to any person.



			<u>PW-7 HC Balu Palve:</u> a. PW-7 also deposed on similar lines. b. He stated during cross-examination that when he and PW-25 reached the First Incident Spot, the injured Rahul and the three Appellants namely Dilip Mishra, Neelu and Sushma had already been taken to the PS by a PCR van.
7)	01:26 pm	MPV reported to Control Room (against Neelu Kumari's PCR call) that suspect Rahul has been handed over to LP (Local Police).	PCR Form
8)	01:30 pm (approx.)	PW-7 and 25 returned to the PS from the First Incident spot, at about 01:30 pm. When they reached the PS, PW-21 Rahul and the three Appellants namely Dilip Mishra, Neelu and Sushma were already present in the PS. Immediately after returning to PS, Rahul was taken to the Hospital by PW-6 Ct. Chander Prakash. No other police official accompanied them to the Hospital.	<u>PW-7 HC Balu Palve:</u> a. PW-7 stated these facts during cross-examination. b. He denied the suggestion that the said three Appellants were present in the PS when PW-21 Rahul returned from the Hospital to the PS. c. He volunteered to state that the said three Appellants had left the PS at the time when PW-21 Rahul was taken to the Hospital. d. He also stated that it takes about 10 minutes to reach from the PS to Gali No. 8 (Third Incident Spot). e. Hence, if the said three Appellants left the PS at about 01:30 pm, they would have reached the Third Incident Spot at about 01:40 pm. <u>PW-25 ASI Ramesh Chand:</u> a. PW-25 deposed that the three Appellants namely Dilip Mishra, Neelu



			and Sushma were present in the PS, along with PW-21 Rahul, when he had sent Rahul to Hospital with PW-6 Ct. Chander Prakash. b. He also deposed that when Rahul returned from the Hospital after his medical examination, the said three Appellants were not present in the PS. c. He stated during cross-examination that he cannot tell the exact time when he returned to the PS from the First Incident Spot. d. He also stated that he cannot tell the exact time when he sent Rahul to the Hospital with PW-6 Ct. Chander Prakash.
9)	01:39 pm	DD No. 43-B lodged on information by Pradeep regarding quarrel at Gali No. 8. (Third Incident)	Filed with chargesheet but not exhibited in evidence. a. Even though the DD No.43-B has not been exhibited, PW-7 HC Balu Palve has deposed regarding the same in his examination-in-chief. b. The said DD shows that the Second Incident at Narender's house had already taken place before 01:39 pm. c. This corroborates the version given by eyewitnesses namely PW-11 and 20 that the Second Incident took place at 12:30-12:45 pm. d. Further, as already stated above, the three Appellants namely Dilip Mishra, Neelu and Sushma left the PS at about 01:30 pm. Hence, their presence at the Third Incident, which is reported much later at 01:39 pm, cannot be doubted and the eyewitness testimony to this effect stands corroborated.





10)	01:45 pm(approx.)	Receipt of DD No. 43-B by PW-25 ASI Ramesh Chand at the PS.	PW-25 stated during cross-examination that he received DD No. 43-B at about 01:45 pm.
11)	01:55 pm(approx.)	PW-25 ASI Ramesh Chand and PW-7 HC Balu Palve officials reached the Third Incident spot at about 01:55 pm. Almost simultaneously, beat officials including PW-19 Mahesh also reached the said spot. The police officials present at the spot witnessed the Appellants giving beatings to Narender. They overpowered and arrested the following accused persons at the spot: • The three Appellants namely Dilip Mishra, Neelu and Sushma. • Appellant Anchal Mishra. • Appellant Akash @ Nakali. • JCL 'V'.	a. PW-25 stated during cross-examination that he reached the Third Incident spot at about 01:55 pm. b. PW-7 deposed that on receipt of DDNo. 43-B by PW-25, they came to know about the Third Incident. At the same time, PW-25 received another call and they reached the Third Incident spot. c. Both PW-7 and 25 deposed that beat staff including PW-19 HC Mahesh also reached at the said spot. d. PW-7 and 25 deposed that on reaching the spot, they saw the the three Appellants namely Dilip Mishra, Neelu and Sushma and their 5-7 associates giving beatings to Narender. e. PW-19 also deposed that on reaching the spot, he witnessed 10-12 persons giving beatings to Narender. f. PW-7, 19 and 25 deposed that the police officials present at the spot overpowered the Appellants/assailants and rescued Narender. g. PW-25 took Narender to the Hospital in an Auto.
12)	02:04 pm	PCR call by Sanjay Kumar regarding	Filed with chargesheet but not exhibited



		quarrel at Gali No. 4. (Second Incident)	in evidence.
13)	02:05 pm	DD No. 46-B regarding Second Incident.	Filed with chargesheet but not exhibited in evidence.
14)	02:06 pm	MLC of PW-21 Rahul. Brought by PW-6 Ct. Chander Prakash.	Proved by PW-18 vide Ex.PW-18/B
15)		When PW-6 Ct. Chander Prakash and PW-21 Rahul returned to PS from the Hospital, PW-7 and 25 had already left the PS and reached the Third Incident spot.	PW-7 stated during cross-examination that PW-6 did not return to PS from Hospital in his presence. This corroborates the fact that PW-7 had already proceeded to the Third Incident spot before Rahul and Chander Prakash had returned to the PS from the Hospital. a. It appears from the testimony of PW-7 and PW-25 that he had left the PS for the Third Incident spot after the return of Rahul and Chander Prakash to the PS from the Hospital. This is incorrect and contrary to the timeline established in evidence. In fact, as stated above, PW-7 stated in cross-examination that PW-6 did not return to the PS from the Hospital in his presence. b. PW-6 has stated during cross-examination that he reached the Third Incident spot at 12:30-12:45 pm and that PW-25 reached the spot 10-15 minutes after him. This is incorrect and contrary to the timeline established in evidence. c. The above contradictions in the testimony of PW-6, 7 and 25 do not affect the correctness or credibility of



			the eyewitness testimony (PW-11 and 20) in this case.
16)	02:25 pm	MLC of Narender. Brought by PW-25 ASI Ramesh Chand.	Proved by PW-18 vide Ex. PW-18/A. PW-11 and 20 also followed Narender to the Hospital. The statement of PW-11 was recorded at the Hospital.
17)	04:50 pm	Time of death of Narender.	Death Report (Ex. PW-26/B)
18)	04:55 pm	DD No. 29A regarding death of Narender at Hospital.	Proved by PW-16 vide Ex. PW-16/A
19)	5:40 pm	Rukka was drawn on statement of PW-11 Ram Kishan recorded at the Hospitals.	a. Rukka(Ex. PW-16/B) b. Statement of PW-11 (Ex. PW-11/A)
20)	06:25-07:25 pm	Five Appellants were formally arrested at the Third Incident Spot by the IO namely PW-26 Insp. Satish Kumar.	a. Arrest Memo of Sushma at 06:25 pm (Ex. PW-22/A) b. Arrest Memo of Neelu at 06:30 pm (Ex. PW-22/B) c. Arrest Memo of Dilip Mishra at 07:00 pm (Ex PW-19/A-1) d. Arrest Memo of Anchal at 07:15 pm (Ex PW-19/B-1) e. Arrest Memo of Akash @ Nakali at 07:25 pm (Ex PW-19/C-1)

23. As regards the incident of assault on Rahul at Gali No.21 is concerned, it may be noted that the place of incident was D Block, Mukundpur outside the house of the appellants Dilip Mishra, Neelu, Sushma and Anchal. The injured Rahul (PW-21) who was an employee of deceased Narender stated that when he reached at D Block at about 12.00 –





12.15 PM he was caught hold by Anchal and his associates and beaten for asking him to reveal the whereabouts of his employer, Narender. He stated that he was unaware of the whereabouts of Narender, so he was beaten, taken towards the house of Anchal and tied over there. The two sisters of Anchal i.e. Neelu and Sushma also reached there along with other persons and all those persons assaulted him. He alleged that he was beaten by bricks and stones and sister of Anchal exhorted “*Maar do isee*”. Anchal and his associates brought *bandook and* swords from the warehouse to kill him, so, he told him that Narender was at his house. The witness claims that he became unconscious thereafter. It may be noted that for this offence stated to have been committed at 12.00 – 12.15 PM on 29th March, 2017, PCR call was made by Neelu Kumari at 12.41 PM that Rahul, a murder suspect, has been caught and DD No. 37-B was lodged on the said information. Though both these documents i.e. PCR call and the DD No. were filed with the charge-sheet but not exhibited in evidence by the prosecution. The reason of non-exhibition of these documents appears to be that the timings of this DD entry and the sequence of events thereafter would show that some of the appellants were still present at D Block, Mukundpur and thereafter in the Police station, when the second and third incident took place, thereby partly falsifying the case of the eye-witnesses of the prosecution.

24. Even though DD No. 37-B and the PCR call of Neelu Kumari have not been exhibited, however HC Balu Palve (PW-7) in his examination-in-chief itself stated that on 29th March, 2017 he was posted at PS Bhalaswa Dairy and on receipt of DD No. 37-B regarding apprehension of one person, suspected to be involved in murder, he along with ASI Ramesh reached at



gali No.21, D Block, where they came to know that injured Rahul was beaten by some persons and females and he had been taken to the Police Station. They then returned to the Police Station where they met injured Rahul. In the Police Station Neelu, Sushma and their father Dilip Mishra were also present and informed that the boy Rahul along with others was involved in the murder of Chanchal son of Dilip Mishra and brother of Neelu, Sushma and Anchal. On inquiry, Rahul informed that these two girls, their father, brother and 6 - 7 other persons doubted that he along with his employer Narender were involved in the murder of Chanchal and that they had given beating to him. Thus, this witness HC Balu Palve reached the spot i.e. D Block, gali No.21, Mukundpur on receipt of DD No. 37-B, which was lodged at 12.50 PM and thereafter returned back to the Police Station as the injured had been taken back to the Police Station.

25. Further, even ASI Ramesh Chand (PW-25) in his deposition stated that he was on emergency duty from 8.00 AM to 8.00 PM on 29th March, 2017 along with HC Balu Palve. At about 12.50 PM duty officer informed them that one person has been caught in gali No.21, D Block, Mukundpur on suspicion of murder. On receipt of this information he reached the spot with HC Balu Palve and at the spot they came to know that a boy named Rahul was beaten by 10 – 12 persons and 2 females and Rahul with others had been taken by PCR to the Police Station. Thus, he along with HC Balu Palve returned to the Police Station where they came to know that Rahul son of Ramesh was injured and in the Police Station they met Neelu, Sushma, Dilip Mishra who informed that Rahul was involved in the murder of Chanchal. Thereafter, injured Rahul was sent to BJRM hospital with Ct.



Chander Prakash. He further stated that when he sent Rahul with Ct. Chander Prakash, Neelu, Sushma and Dilip Mishra were present in PS, however when Rahul returned from the hospital, Sushma, Neelu and Dilip Mishra were not present in the Police Station.

26. MLC of Rahul son of Ramesh Ex.PW-18/B notes the arrival of Rahul in BJRM hospital on 29th March, 2017 at 14.06 hours. It is thus evident from the evidence of the two witnesses ASI Ramesh Chand and HC Balu Palve and the time of arrival on the MLC of Rahul at the hospital that at least till 1.50 pm on 29th March, 2017 when Rahul was sent to hospital, Dilip Mishra, Neelu and Sushma were present in the Police Station. It is relevant to note these timelines, so as to ascertain who are the accused involved in the second and third incident.

27. Undoubtedly, Rahul is an injured victim and his testimony is required to be given credence, however, in a case of an unlawful assembly when there are five or more persons attacking, it is difficult to ascertain and/or remember the role of each of the accused. Further the chance of inclusion of bystanders is also not ruled out. This witness stated that he was caught hold by Anchal and the others gave him beatings and that Akash gave him kicks and fist blows on his stomach. Neelu and Sushma gave beatings to him with bricks and stones and exhorted “*isee jaan se maar do*”. Further Deepak, Suraj, Jitender @ Guddu Passi gave him beatings when he was tied with rope. He also stated Naushad gave him fist blows on his stomach and he was not allowed to spit blood from his mouth. As regards Dilip Mishra, he stated that after the other accused gave him beating, Dilip Mishra threatened him not to depose to the Police about the incident, when he was



brought to the Police Station from hospital when Dilip Mishra was already in the Police Station. In his cross-examination he denied the suggestion that when he reached the Police Station from hospital, Dilip Mishra, Sushma and Neelu were present in the Police Station. According to his MLC Ex.PW-18/B an abrasion and tenderness over left side mandible region was observed with loosening of the lower incisor tooth. The matter was referred to dental opinion as well, wherein fracture of the mandible was found, though no loss of any tooth was found. It is evident that due to the fracture of mandible being proved, the injury to Rahul (PW-21) was grievous in nature. However, as claimed by Rahul that eight accused assaulted him, that too with bricks and stones besides kicks and fists blows is not fortified from his MLC. From the evidence of this injured witness it has been however proved that an unlawful assembly was formed to cause grievous injury to Rahul.

28. As noted from the statement of Rahul (PW-21), he was in D-Block when Anchal and his associates caught hold of him. However, to know the whereabouts of Narendra, he was beaten and forcibly taken towards the house of Anchal. Though he states that Anchal and all his associates had assaulted him but considering the nature and number of injuries, as noted above, the role assigned to each of the accused is required to be looked into. Anchal has been specifically named as the one who brought the injured outside his i.e. Anchal's house and tied him there. Thereafter, two sisters of Anchal namely Neelu and Sushma reached along with the other persons. Who are the other persons along with the two sisters have also not been named at that stage. However, according to this witness, after he was tied,



he was beaten with bricks and stones. Anchal asked Rahul '*where is your employer, who is involved in the murder of my brother*'. Sister of Anchal exhorted and said '*isse maar do*'. Anchal and his associates brought *bandoor* and sword from their house in order to kill him. It is claimed that Anchal put *bandoor* on his head and under the fear, he told them that Narender was at his house. In his further examination-in-chief, Rahul said that Anchal was the person who caught hold of him on the way and gave kick and fist blows. He revealed Akash as the person who gave kicks and fist blows in his stomach. It is alleged that Neelu and Sushma gave beating to him with brick and stones and said '*isse jaan se maar do*'. It is stated that Deepak, Suraj, Jitender @ Guddu Passi gave beating to him when he was tied with rope and as regards Naushad is concerned, it is stated that he gave him fist blows on his stomach and he was not allowed to spit the blood from mouth. The role assigned to Dilip Mishra is that, after giving beatings by above-named persons, Dilip Mishra threatened him not to depose to the police about the incident at the time when he was brought to the police station. Thus, no overt act is attributed to Dilip Mishra and Dilip Mishra is also not the person who was stated to be the part of unlawful assembly. The threat given at the police station not to tell the facts to the police cannot make Dilip Mishra liable for the offence of being a part of unlawful assembly for catching hold of this witness and beating him. Further, this witness also stated that when he was brought back to the police station from hospital, Dilip Mishra was still in the police station. Hence, Dilip Mishra cannot be held to have participated in any of the three incidents, as noted



above. Consequently, the impugned judgment of conviction and order on sentence qua Dilip Mishra are liable to be set aside.

29. As per the order on charge noted above, though all the nine appellants were charged for the offence punishable under Section 325 read with 149 IPC for causing grievous injury to Rahul (PW-21) by forming an unlawful assembly, however, only Dilip Mishra, Anchal, Neelu and Sushma have been convicted for the said offence by the impugned judgment. In the absence of any conviction of appellants Naushad, Aakash, Suraj @ Tinda, Jitender @ Guddu Passi and Deepak @ Datta as also the absence of a State Leave to Appeal in regard to the offence of beating of Rahul (PW-21) i.e. for offence punishable under Section 325 read with 149 IPC, no finding is required to be returned by this Court. Since in the first incident, at least five persons were involved and the injury to Rahul (PW-21) was grievous in nature, this Court finds no infirmity in the conviction of the appellants Anchal, Neelu and Sushma for offence punishable under Sections 147, 148 and 325 read with 149 IPC.

30. As regards second incident of 29th March, 2017 is concerned regarding house trespass with preparation to cause hurt to Narender at gali No.4, for which appellant Anchal, Akash, Deepak @ Dutta, Naushad, Suraj @ Tinda and Jitender @ Guddu Passi have been convicted for offence punishable under Section 452 read with 149 IPC, the prosecution relies upon the testimony of two witnesses i.e. Ram Kishan (PW-11) the father of the deceased Narender and Rahul Nishad (PW-20) a relative of Narender who was working with him.



31. According to Ram Kishan (PW-11) at about 12.30 – 12.45 PM someone knocked the door, which was opened by Rahul (PW-20) and three persons were found standing at the door who asked for a bottle of 20 litre water as the deceased used to supply drinking water. Thereafter, all these three persons entered the house of his son Narender followed by 4 – 5 other boys including Anchal, whom he knew prior to the incident. Anchal stated “*tune mere bhai ko maara hai, aaj tujhe khatam kar denge*”. Anchal was carrying a knife in his hand and gave blow with the same on the neck of his son and his son ducked. He received injuries on the head. Ram Kishan claims V @ G (the juvenile) was carrying an iron rod and Akash was carrying *danda* and they also gave blows with the same to his son. The deceased tried to run towards staircase but he was restrained by 4—5 boys and was not allowed to escape. He rushed to save his son, but Naushad pushed him outside and he being heart patient became semi-unconscious. According to him, his son was beaten by bricks, piece of slab, *danda*, knife, *sariya*, etc. When he regained consciousness and asked about the whereabouts of his son, he along with Rahul @ Nishad reached at Aam Aadmi Chowk, where Dilip Mishra, Neelu, Sushma, Jitender, Anchal, Deepak, Akash and Naushad and two more persons were seen beating his son, who was lying on the ground. Someone informed the Police and when the Police came at the spot, Dilip Mishra, Anchal, Akash, the juvenile, Neelu and Sushma were apprehended and his son Narender was taken to BJRM hospital in an auto by the Police. On the same day his son died. Rahul Nishad (PW-20) a relative of Narender/ deceased and who was working with him also reiterated this version.



32. Thus, for the second incident, as per Ram Kishan, the three persons who first entered the house of Narender were Anchal, Akash and the juvenile V @ G. Thereafter, 4-5 other persons surrounded his son and they assaulted him. However, in cross-examination, this witness admitted that the house of Narender was admeasuring 72 square yards and in half portion thereof, one bedroom, kitchen, toilet, bathroom, staircase were constructed and in other half area, the water treatment plant was installed. He further admitted that the bedroom measuring 10 x 12 ft. had a double-bed, dressing table, almirah, sofa and chairs. He also admitted in the cross-examination that in the room of Narender measuring 10 x 12 ft. with all these items noted above, there were 10 persons, out of which, 7-8 persons were carrying *dandas*, *sariyas* and knives. Thus, according to this witness, besides the 7-8 assailants, 3 of them were there, so, 10-11 persons were in the room of 10 x 12 ft. with the double-bed, dressing table, almirah, sofa & chairs and they were all assaulting Narender. This version is highly improbable in view of the size of the room and hence, the testimony of this witness is not reliable.

33. Further, the third incident was in sequel to the second incident after Narender was removed from his house at gali No.4 and taken to gali No.8 Aam Aadmi Chowk where also he was assaulted resulting in his death.

34. As regards third incident DD No. 43-B was lodged by Pradeep regarding quarrel at gali No.8. Copy of this DD entry though filed with the charge-sheet was not exhibited. However, ASI Ramesh Chand (PW-25) in his cross-examination admitted that at about 1.45 PM he received the call DD No. 43-B and at 1.53 PM they reached gali No.8 where the third



incident had taken place. It is thus evident when this witness left the Police Station, Neelu, Sushma and Dilip were present in the Police Station and in any case by 1.45 PM when the DD No.43-B was received the injured Narender had already been assaulted. Further, the time when Narender was assaulted can be gathered from his MLC Ex.PW/18/A as he was got admitted at the hospital on 29th March, 2017 at 2.25 PM and died at 4.15 PM. As per the version of Ram Kishan (PW-11) itself his son Narender was taken to BJRM hospital in an auto by the Police. Thus, as Narender was admitted to the hospital at 2.25 PM, it is apparent that the third incident took place between 1.15 PM to 1.45 PM because by 1.45 PM the DD Entry No.43-B had been lodged. Even though the eye-witnesses i.e. Ram Kishan and Rahul Nishad stated that Dilip Mishra, Sushma and Neelu were present and assaulted Narender in the third incident at Aam Admi Chowk, however, this portion of their testimony needs to be discarded in view of the cogent evidence available that by at least 1.50 PM, these three appellants were present in the Police Station as per the testimony of Rahul (PW-21), HC Balu Palve and ASI Ramesh.

35. From the conjoint reading of the evidence as noted above, it is apparent that Dilip Mishra, Neelu and Sushma were not present in the third incident and the version of Ram Kishan and Rahul @ Nishad about their presence and of the police officers that they were arrested at the spot of third incident is a false and concocted. As Dilip Mishra, Neelu and Sushma were in the police station, they were also named for the third incident and arrested therein. Thus Dilip Mishra, Neelu and Sushma are liable to be



acquitted for the offence in relation to the third incident i.e. Sections 302 read with 149 IPC.

36. Coming to the role of the remaining accused besides Dilip Mishra, Neelu and Sushma in the second and third incidents, it may be noted that no public witness has been associated with the two incidents despite the locality being populated and thus this Court is left with the testimony of Ram Kishan (PW-11) the father of deceased and Rahul Nishad (PW-20) the cousin of the deceased, who are claimed to be the eye-witnesses.

37. Learned counsel for the defence have claimed that Ram Kishan was not a resident of Mukundpur but residing in Trilokpuri and could not have all of a sudden reached his son's place. This Court finds merit in the submission of learned counsels for the defence as not only the version of Ram Kishan is false on the counts as noted above, it is also liable to be discarded as despite his not coming in contact with his son on both the occasions, he handed over his blood stained clothes, which seizure memo (Ex.PW-11/B) was not signed by Ram Kishan.

38. However Rahul Nishad (PW-20) was a natural witness as he was not only the cousin of Narender but he was also working with him by supplying RO waters, thus, his presence at the spot was natural. In his deposition Rahul Nishad (PW-20) has spoken about the second and third incident and claims that at about 12.30 – 12.45 PM on 29th March, 2017 Anchal, Akash and the juvenile came to the house of Narender. Akash knocked the door of Narender and asked for opening the door as he required water. He opened the door and Akash asked for the water bottle. As he was going towards Narender, Anchal, Akash and the juvenile entered the house of Narender



and they were followed by other boys, namely, Deepak, Suraj, Guddu Pasi, Naushad and others whose name he did not know. Firstly Anchal, Akash and the juvenile entered the room of Narender. Anchal said “*tumne mere bhai ko mara hai, tumhe hum nahi chhodenge*”. Anchal gave the blow of knife on Narender, who ducked the blow of knife which hit his head. Narender ran towards staircase when Anchal, Akash, Deepak, juvenile and other named persons gave beatings to Narender at staircase. His uncle Ram Kishan tried to save but Naushad pushed Ram Kishan, so he fell unconscious. He tried to save his uncle Ram Kishan and after he regained consciousness after 2-3 minutes, Ram Kishan asked him where was Narender taken. Thereafter, he along with Ram Kishan asked public persons where Narender was taken and reached Aam Aadmi Chowk. At the Aam Aadmi Chowk public persons had gathered. According to Rahul - Nishad, Sushma, Neelu, Dilip Mishra were giving beatings with kicks and fist blows to Narender. Dilip Mishra was giving beatings to Narender with *danda*. Ram Kishan tried to save but he was pushed. At the same time Police reached there, as someone had made a call at 100 number and the Police took the injured Narender in a TSR to the hospital. He along with his uncle Ram Kishan reached at the hospital at around 2.30 PM and at about 4.15 PM Narender expired in the hospital. He admitted that his statement under Section 161 Cr.P.C. was recorded after one and a half month after the incident as he went to Trilokpuri and from there he went to his native place.

39. Version of this witness Rahul Nishad, as noted above, is full of contradictions and concoctions. Further improvements even in his statement recorded under Section 161 CrPC after one and a half month can





also be not ruled out. From the evidence of ASI Ramesh Chand and HC Balu Palve as also the injured victim Rahul, son of Ramesh (PW-21), Sushma, Neelu and Dilip Mishra were in the Police Station when till ASI Ramesh Chand left on receipt of DD No. 43-B at about 1.50 PM and thus would not have been present at the third incident at gali No.8. Further, as per the version of Rahul Nishad though Anchal was carrying a knife and when he gave a blow to Narender in the second incident, Narender ducked resulting in an injury on the head of Narender. However, as per the MLC of Narender Ex.PW-18/A the injuries on Narender were multiple contused laceration wounds over the head, knee, chin with swelling all over the body. Further, as per the opinion of Doctor the injuries i.e. contused laceration wounds or contusions were sustained as a result of blunt force trauma to the head. No injury has been opined to be caused by a sharp edged weapon. Further, appellant Anchal Mishra was apprehended at spot and as per the prosecution case his clothes, T-Shirt and jeans which he was wearing were found to be bloodstained. Though as per the disclosure statement of Anchal Mishra it is stated that knife in his hand was seized by the Police at the spot, however no seizure memo thereof has been exhibited nor does the knife form part of the personal search memo of Anchal. One rusty metallic knife was sent to the FSL, which was termed as Ex.3. Further one more rusty knife having metallic blade and wooden handle was also received at the FSL exhibited as Ex.1A. However, no blood was detected either on Ex.3 or Ex.1A thereby connecting the injuries caused to the deceased by the said knives. It is thus apparent that injuries though multiple were give only by danda blows.



40. As per the DNA analysis carried out, DNA profile generated from the bloodstained gauze cloth piece of deceased Ex.'21A' was found to be similar with the DNA profile generated from the clothes of Dilip Mishra '15a', '15b'; clothes of Anchal Mishra '16a', '16b'; lady's shirt of accused Sushma '17'; Frock of Neelu '18', clothes of juvenile '19a', '19b'; shirt of complainant Ram Kishan '20' and clothes of deceased '21a', '21b', '21c'. As noticed, the blood on the shirt of complainant Ram Kishan was not possible as it is not the case of Ram Kishan that when the injury was inflicted arising out of the second incident to his son, or at the time of third incident, he caught hold of his son or saved him for the reason he stated that on both the occasions when he tried to save him he was pushed. This witness also did not take Narender to the hospital and reached hospital only after Narender had been admitted in the hospital. Further as noted above, Dilip Mishra, Neelu and Sushma were in the police station when the second and third incident took place. Hence, this Court is not inclined to place reliance on this piece of evidence relied by the prosecution.

41. As regards second incident is concerned, from the testimony of Rahul Nishad only three persons have been identified to have entered the house of Narender in the first instance namely Anchal Mishra, Akash and the juvenile as they were the first ones to enter. Further, admittedly Rahul Nishad and Ram Kishan reached the spot much later for the third incident after the PCR call had already been made and police had arrived. Though this witness in his statement states that in the second incident subsequently Deepak, Suraj, Guddu @ Passi, Naushad and other boys also entered and Naushad pushed Ram Kishan; besides Anchal, Akash and juvenile other



persons gave beatings to Narender, however in view of the fact that Naushad, Guddu @ Passi, Suraj @ Tinda and Deepak @ Dutta were not arrested at the spot, this Court is required to look for corroboration in respect of their involvement. As per the case of the prosecution all these four appellants were arrested subsequently. It is evident from the evidence of the Police Officers that when they reached the spot, the incident of assaulting Narender was going on and there is no averment that the four appellants Suraj @ Tinda, Jitender @ Guddu Passi, Deepak @ Dutta and Naushad had run away. Further, the manner in which these three appellants have been arrested by HC Ajay Kumar of Crime Branch, Prashant Vihar on 25th April, 2017 and thereafter leading to the recoveries of three *dandas* from the same place at the same time at the instance of three appellants also creates a doubt on the recovery. The disclosure statements of these three appellants, namely, Naushad, Suraj and Deepak have been exhibited as Ex.PW-5/G, PW-5/H and PW-5/I respectively.

42. Appellant Naushad, Deepak and Suraj @ Tinda were arrested by the Crime Brach official HC Ajay on 24th April, 2017 from Service Road, near All Heavens banquet hall, Wazirpur Indl. Area vide arrest memo Ex.PW-13/A, C and E respectively. Disclosure statements of Naushad, Deepak and Suraj @ Tinda (Ex.PW-13/G, H and I) were also recorded and the appellants stated that they could get the *dandas* used by them at the time of incident and the clothes worn by them. Thereafter, Naushad, Deepak and Suraj @ Tinda were formally arrested by IO/Insp. Satish when the appellants were produced before the Ld. Magistrate at Rohini Court vide memo Ex.PW-5/D, F and E. Another disclosure statement (Ex.PW5/G) of





appellant Naushad was recorded by Insp. Satish, wherein he stated that while running away from the spot, he threw the *danda* at the empty road at Gali No.8, Mukundpur. Similarly, in their disclosure statements (Ex.PW-5/I and H), appellant Deepak and Suraj @ Tinda respectively, also stated that while running away, they threw the *dandas* used by them at an empty plot. Pursuant thereto, the appellants Naushad, Deepak and Suraj @ Tinda got recovered the *dandas* from the bushes at Golf Course, opposite to Bhalswa Jheel, which was seized vide memo Ex.PW-23/B, A and C. It is not clear as to when *dandas* were thrown at the empty road and empty plot, how they reached inside the bushes. Thus the alleged recoveries of *dandas* being from open road and plot, and that too, after 27 days cannot be relied upon.

43. Further, dealing with joint disclosures and joint recoveries, Hon'ble Supreme Court in the decision reported as AIR 2005 SC 3820 State Vs. Navjot Sandhu held:

"145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs 10 lakhs from the truck in which they were found at Srinagar is in issue. Learned Senior Counsel Mr Shanti Bhushan and Mr Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the





accused informants. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr Gopal Subramaniam. Whether and to





what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel."

44. Appellant Jitender @ Guddu Passi was arrested by Crime Branch official HC Sohan Lal (PW-12) on 9th May, 2017 from Village Amora, District Azamgarh, UP vide arrest memo Ex.PW-12/B. His disclosure statement Ex.PW-12/E was also recorded and the appellant stated that he could get recovered the knife used by him and the clothes worn by him at the time of incident recovered. Thereafter, he was formerly arrested by IO/Insp. Satish when the appellant was produced before the Duty Magistrate at Gulabi Bagh vide arrest memo Ex.PW-5/C. Another disclosure statement Ex.PW-6/C of the appellant was recorded by IO/Insp. Satish wherein the appellant stated that while running away from the spot, he threw the knife used by him at the Bhalswa Jheel Jungle. Pursuant thereto, the appellant got recovered the knife from the Bhalswa Jheel Jungle vide site plan Ex.PW-26/F and sketch (Ex.PW-8/A) of the said knife was prepared.

45. The *dandas* recovered at the instance of the appellants Naushad, Deepak and Suraj @ Tinda and the knife recovered at the instance of appellant Jitender @ Guddu Passi were sent for FSL examination, as per which no blood was found on these exhibits. Further, there is no evidence that these *dandas* and the knife were sent to the doctor conducting the postmortem examination for his opinion. Hence, the purported recoveries of *dandas* and knives cannot be used in evidence against appellants Naushad, Deepak, Suraj and Jitender @ Guddu Passi.



46. Thus, from the evidence on record, it is clear that the appellants Naushad, Deepak, Suraj @ Tinda and Jitender @ Guddu Passi were not arrested from the spot and there is no corroborative evidence to support the case of the prosecution qua these four appellants and therefore, benefit of doubt must be given to these appellants.

Conclusion

47. In terms of the aforesaid discussion, this Court concludes as follows:

- a) Appellant Dilip Mishra cannot be stated to have participated in any of the three incidents in question in the present case and thus, he is acquitted of all the charges. The impugned judgment of conviction and order on sentence qua Dilip Mishra are hereby set aside. Dilip Mishra be released forthwith, if not required in any other case. Accordingly, Crl.A.1087/2018 is disposed of.
- b) Appellants Sushma and Neelu alongwith appellants Anchal, two juveniles and two unknown persons assaulted Rahul for which this Court finds no infirmity in the conviction of the appellants Sushma and Neelu for offences punishable under Sections 147 IPC and Sections 325/149 IPC. However, this Court finds that appellants Sushma and Neelu were not present in the second and third incident. Thus Sushma and Neelu are acquitted of the offence punishable under Sections 302/149 IPC, for which also they had been convicted by the learned trial court. From the perusal of the nominal roles dated 16th February, 2023, appellant Neelu had undergone a period of 7



years 6 months and 8 days (including remissions) and appellant Sushma had undergone 6 years 2 months 1 day (including remissions). Appellants Neelu and Sushma were awarded sentence of rigorous imprisonment for seven years and fine of ₹5000/- for offences punishable under Section 325/149 IPC. The sentence of Neelu and Sushma is modified to the period already undergone. They be released forthwith, if not required in any other case. CrI.A.1082/2018 and CrI.A.1086/2018 are accordingly disposed of.

- c) Appellants Naushad, Deepak @ Dutta, Suraj @ Tinda and Jitender @ Guddu Passi are entitled to benefit of doubt in the absence of any firm evidence establishing their role in the commission of the offences in the second and third incidents for which they were convicted. The impugned judgment convicting them for offences punishable under Sections 147, 148, 302/149 and 452/149 IPC and the order on sentence to this extent are set aside. The appellants Naushad, Deepak @ Dutta, Suraj @ Tinda and Jitender @ Guddu Passi are thus, acquitted and they be released forthwith, if not required in any other case. CrI.A.1230/2018, CrI.A.268/2019, CrI.A.76/2019 and CrI.A.798/2019 are accordingly disposed of.
- d) From the evidence on record, as regards the offence punishable under Section 325/149 IPC, it is evident that the appellants Neelu, Sushma and Anchal and juveniles were present and some unknown persons were also involved, and thus, there is



no infirmity in conviction of appellant Anchal for offences punishable under Section 147 IPC, Section 148 IPC and Section 325/149 IPC and thus, the conviction of appellant Anchal qua these offences is upheld.

- e) As regards the second and third incident, i.e. for offences punishable under Section 452/149 IPC and Section 302/149 IPC, the prosecution has failed to conclusively establish the presence of five or more persons so as to attract Section 149 IPC. Thus, the conviction of the appellants Akash and Anchal for offences punishable under Sections 452/149 IPC is modified to offence punishable under Sections 452/34 IPC and the conviction for offences punishable under Sections 302/149 IPC is modified to offence punishable under Sections 302/34 IPC. However, the sentence as awarded by the learned Trial Court will remain the same. Crl.A.1088/2018 and Crl.A.1096/2019 are accordingly disposed of.

48. Copy of the judgment be uploaded on the website of this Court and be also communicated to the Superintendent Tihar Jail for updation of records, intimation to the appellants and compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023/‘vn/ga’