

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

Reserved on: 14.08.2015
Date of Decision : 15.09 2015

+ CRL.A. 83/2000

VIJAY AND ANR.

..... Appellants

Through: Mr. Dinesh Mathur, Sr. Advocate
with Mr. Ravi Dabas and Mr. Shahrukh
Hussain, Advocates for appellant-Vijay.

Mrs. Rebecca M. John, Sr. Advocate with Mr.
Ravi Dabas, Mr. Harsh Bora, Mr. Nikhil
Ahuja, Ms. Rudrani Tyagi and Ms. Nigy
Paulson, Advocates for appellant-Sanjay.

versus

STATE

..... Respondent

Through: Mr. Varun Goswami, APP with
Mr. Inder Singh, ACP (Retd.) and Inspector
Narender Yadav, PS-Kanjhawala.

+ CRL.A. 89/2000

PARVEEN AND ANR.

.... Appellants

Through: Mr. Mohit Mathur, Sr. Advocate
with Mr. Badar Mahmood, Mr. Ravi Dabas,
Mr. P.N. Mathur and Mr. Devender Dedla,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Varun Goswami, APP with
Mr. Inder Singh, ACP (Retd.) and Inspector
Narender Yadav, PS-Kanjhawala.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R. K. GAUBA

R. K. GAUBA, J:

1. On 13.11.1994 at about 11:00 AM Suresh Kumar s/o Attar Singh, aged 30 years suffered unnatural death in village Kanjhawala within the jurisdiction of police station Kanjhawala. His wife Krishna (PW6) statedly suffered grievous injuries in the course of the same incident which became subject matter of investigation of the first information report (FIR) no.121/1994 under Sections 302/307/120-B of Indian Penal Code ('IPC') and under Section 25 Arms Act of police station Kanjhawala.

2. On conclusion of investigation into the said FIR, report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.') was submitted. It led to trial in Sessions Case no.29/1995 in the court of Additional Sessions Judge, Delhi. Seven persons were prosecuted on the charge under Section 302/34 IPC for the murder of Suresh Kumar (hereinafter referred to as the "*the deceased*" or "*the victim*") and under Section 307/34 IPC for the attempted murder of Krishna (PW6). They would include Vijay s/o Attar Singh, accused no.1 ("A-1"), Parveen s/o Attar Singh, accused no.2("A-2"), Sanjay s/o Attar Singh, accused no.3 ("A-3"), Jagdish s/o Raghbir Singh, accused no.4 ("A-4"), Anand Swarup s/o Ragnath, accused no.5 ("A-5"), Smt. Saroj w/o Parveen, accused no.6 ("A-6") and Smt. Raj Bala w/o Vijay, accused no.7 ("A-7"), all residents of village Kanjhawala.

3. By judgment dated 24.12.1999, A-5 to A-7 were acquitted. The other four were held guilty and convicted on the charge for the offence

punishable under Section 302/34 IPC. The charge for the offence under Section 307/34 IPC was held not proved. Instead, the said four were held guilty and convicted for offence punishable under Section 325/34 IPC for having intentionally caused grievous injuries on the person of Krishna (PW6). By order dated 12.01.2000, the learned trial court awarded imprisonment for life with fine of Rs.1000/-, in default further rigorous imprisonment for three months for offence punishable under Section 302/34 IPC and rigorous imprisonment for two years with fine of Rs.500/-, in default rigorous imprisonment for one month each for offence punishable under Section 325/34 IPC, also directing the substantive sentence to run concurrently and convicted persons to be entitled to the benefit of Section 428 Cr.P.C.

4. Aggrieved with the judgment and order on sentence, two appeals have been preferred, one (Crl. A.83/2000) by Vijay (A-1) and Sanjay (A-3) and the other (Crl.A.89/2000) by Parveen (A-2) and Jagdish (A-4). The said Jagdish (A-4) died on 21.02.2012. The proceedings against him have, thus, abated.

5. Contentious issues may take a backseat for now. We first proceed to map out the undisputed (or indisputable) territory.

6. The case at hand involves individuals tracing their family tree to one Prabhu. Prabhu (since deceased) resident of Kanjhawala had three sons, namely, Sunder Singh, Attar Singh and Shakti Singh (PW5). Sunder Singh was married to Parmeshwari. Vijay (A-1) is their son. The second son of Prabhu, i.e. Attar Singh, on the other hand, was married to Chand Kaur. From out of the said wedlock, two children were born, they being daughter Bijender (with whom the case has no

connection) and son Suresh Kumar (“the victim”). It appears that Sunder Singh and Chand Kaur died. Their respective spouses, Parmeshwari and Attar Singh, then got married. Parmeshwari and Attar Singh have two sons Parveen (A-2) and Sanjay (A-3). Thus, Vijay (A-1) on one hand, and Parveen (A-2) and Sanjay (A-3) on the other, are uterine brothers to each other, having taken birth from the same mother Parmeshwari, though from out of her two marriages, first with Sunder Singh and then with Attar Singh. In contrast, Parveen (A-2) and Sanjay (A-3) would be step-brothers to Suresh Kumar (the victim) since they have the same father (Attar Singh), from his two marriages, first with Chand Kaur and then with Parmeshwari.

7. Shakti Singh (PW-5) being the third son of Prabhu would, thus, stand in the relation of uncle (*chacha*) to the three said appellants and the deceased (Suresh Kumar).

8. Saroj (A-6) and Raj Bala (A-7), who were acquitted by the trial court are wives of Parveen (A-2) and Vijay (A-1) respectively. Jagdish (A-4) (who was also convicted but has since died) was a cousin of Saroj (A-6). Anand Swaroop (A-5) is son of the *bua* (sister of the father) of the appellants and the deceased.

9. It may be mentioned here that Anand Swaroop was working at the relevant point of time as Assistant Sub-Inspector (driver) in Delhi Police with posting in Security Lines, Vinay Marg, New Delhi. His plea of alibi based, *inter-alia*, on departmental inquiry resulted in doubts being entertained by the trial court as to his presence and role in the alleged incident, inuring in order of acquittal in his favour. The learned trial court was also not convinced as to the alleged participation in the attack,

on the persons of Suresh Kumar (deceased) and Krishna (PW6), on the part of Saroj Bala (A-6) and Raj Bala (A-7). The consequent acquittal of the said two, as indeed of Anand Swaroop (A-5), has not been assailed by the State by way of independent appeal(s).

10. The evidence on record shows that family of Prabhu owned extensive property mainly in the form of agricultural land. It clearly emerges that after the death of their predecessor-in-interest, particularly Attar Singh, the two sides were locked in dispute over their respective share in the estate. It is the prosecution case that the property dispute eventually culminated in the incident of 13.11.1994 at 11:00 AM wherein seven persons (who were prosecuted) had allegedly attacked Suresh Kumar, intentionally causing injuries to him resulting in his death, also inflicting grievous injuries on the person of Krishna (PW-6) who had tried to come to the rescue of her husband. Joining issue with allegation that there had been a dispute over the shares in inheritance, the defence during the trial tried to show, *inter-alia*, through testimonies of Balbir Singh (DW-3), Dayanand (DW-4) and Vinod Kumar (DW-5), that the property had been properly partitioned and the dispute settled to the satisfaction of one and all in 1983. But material on record leaves no room for doubt that the dispute regarding shares in the property had persisted and was still simmering on the date of incident (13.11.1994). This is shown not only by the oral testimony of Krishna (PW-6) but also by documentary proof adduced by the appellants themselves.

11. In order not to leave any ambiguity on this score, it may be noted at this very stage that police proceedings unmistakably show that the incident of 13.11.1994 was preceded by a quarrel that took place on

09.11.1994. This earlier episode became the subject matter, *inter-alia*, of DD no.26B (Ex.PW6/B) recorded in the afternoon of 09.11.1994 on the basis of verbal report of Krishna (PW6) in the police station wherein she alleged that she had gone (in the afternoon of the said date) to look after the mustard crop in her agricultural fields, when she found that her *devars* (younger brothers of her husband) were in the process of diverting the crop in their portion (“*apni taraf karke uske beech mein doli bana rahe the*”) and when she asked them - naming Parveen (A-2), Sanjay (A-3) and son of their maternal uncle to desist, they had become abusive and beaten her up.

12. During the course of evidence, the defence brought on record copy of DD No.22B (Mark C) also logged on 09.11.1994 at the instance of Parveen (A-2). It is clear from the bare perusal of this DD entry that it concerned the same very incident respecting which Krishna (PW-6) had (later in the day) made a report vide DD No.26B vide Ex.PW-6/B. In this DD entry, Parveen (A-2) claimed that certain hutments (*jhuggis*) and a brick kiln (*Bhatta*) existed on the agricultural lands under his possession and cultivation. He alleged that his brother Suresh (the deceased) was living separately had been authorisedly picking up bricks from the said kiln in trucks for quite some time past. He stated that on the said date, when he had gone to his fields, he had found two vehicles parked near the brick kiln in which bricks were being loaded and, upon he raising objection, Krishna (PW-6) had come and hit him with a brick causing injury on his person.

13. A copy of DD no.14A (Mark-Z) recorded in the evening of 09.11.1994 was brought on record during the statement of PW23

Inspector Inder Singh Dahiya, Investigating Officer. By this DD entry, the police official ASI Bhagat Ram (PW11), to whom the matter arising out of DD no.22B (Mark-C) and DD no.26B (Ex.PW6/B) had been entrusted, documented the action taken. The proceedings, thus recorded, indicate that during the enquiry when both sides (PW6 Krishna and A-2 Parveen) were being questioned near the brick kiln of Lal Chand, Parveen (A-2) had made gesticulations to launch assault on the person of Krishna (PW6) also extending threats asserting his right vis-a-vis the parcel of land. On account of such conduct, ASI Bhagat Ram (PW11) had found it a case of apprehension of breach of public peace and, thus, arrested Parveen (A-2) under Sections 107/151 Cr.P.C.

14. In addition to the above material, during the cross-examination of Inspector Inder Singh Dahiya (PW-23), the Investigating Officer, the defence also introduced on record copies of complaints dated 28.04.1994 and 09.11.1993 (Ex.PW-23/DA and B) lodged by Parveen (A-2) against Krishna (PW-6). It was rather suggested specifically to PW-23 and he conceded it as a fact that Krishna (PW-6) was habitual of coming to the police station to make complaints that the accused persons would quarrel with her and her husband (the deceased) regarding agricultural lands.

15. The facts that Suresh Kumar died an unnatural death, in the forenoon of 13.11.1994 in village Kanjhawla, that his death was a case of culpable homicide and that his dead body was found by the police in a house in village Kanjhawla are also such facts as have been established by the prosecution beyond the pale of any doubt. The

dispute raised by the defence is restricted to the identity of the house where the dead body was found by the police.

16. On 13.11.1994, at 12.15 PM, information was received in the police station through police control room (PCR), on wireless network, that murder had been committed in house No.333 of Attar Singh in Village Kanjhawla. This input was logged vide DD No.15A (Ex.PW-9/A) by Head Constable Rajender Singh (PW-9), then working as duty officer. The matter was entrusted to SI Rajinder Singh (PW-12) who, accompanied by ASI Bhagat Ram (PW-11), Constable Swaraj (PW-17) and Constable Raj Kumar (PW-18), reached the spot. The evidence of these witnesses – SI Rajinder Singh (PW-12), ASI Bhagat Ram (PW-11), Constable Swaraj (PW-17) and Constable Raj Kumar (PW-18) – shows that when they reached house no.333 of Attar Singh in village Kanjhawla, it was learnt that the dead body of Suresh Kumar son of Attar Singh was lying in the courtyard of house of Zile Singh. These witnesses were joined by Inspector Inder Singh Dahiya (PW-23), who was posted as SHO in the police station on the relevant date, he having set out from the police station at 12.20 PM vide DD No.16A (Ex.PW-9/B).

17. It does appear that PW-23, in his testimony, would state that after reaching the spot he had found dead body of Suresh lying inside the house of Attar Singh. The discrepancy as to the place (where the dead body was actually found by the police) is a subject matter of dispute raised by the appellants. We shall consider this in due course of this judgment. For the present, we may note that evidence of other witnesses and documentary proof reflects that the dead body was found

in the courtyard of the house of Zile Singh in village Kanjhawla. The documents include the *rukka* (Ex.PW-23/A) sent by Inspector Inder Singh Dahiya (PW-23) himself at 3.30 PM on the same date on the basis of which FIR (Ex.PW-9/I) was registered along side DD No.17A (Ex.PW/I) at 4.35 PM followed by DD No.18A (Ex.PW/E) recorded at 4.15 PM.

18. The oral testimonies of the above mentioned police witnesses Inspector Inder Singh Dahiya (PW-23), SI Rajinder Singh (PW-12), ASI Bhagat Ram (PW-11), Constable Swaraj (PW-17) and Constable Raj Kumar (PW-18), unchallenged to this extent, bring out that the dead body of Suresh Kumar son of Attar Singh (the victim), lying in the courtyard in the house of Zile Singh (in village Kanjhawla) bore extensive bleeding injuries. Inspector Inder Singh Dahiya (PW-23) left ASI Bhagat Ram (PW-11) and certain other officers for guiding the scene and proceeded to Deen Dayal Upadhyay Hospital (hereinafter referred to as “the hospital”) since no eye-witness was available at the spot and it had been learnt that Krishna (PW-6), wife of deceased Suresh Kumar, who had also been injured, had been taken there by the PCR vehicle. We shall refer to the facts concerning status and version of Krishna (PW-6), and what happened at the hospital, later. For the purposes at hand, we may revert to the steps taken by the Investigating Officer, on return to the scene, during investigation in the wake of registration of FIR (Ex.PW-9/D) at 4.35 PM.

19. Inspector Inder Singh Dahiya (PW-23) had called Tejvir (PW-13), a private photographer running his business in the name and style of J. K. Studio in village Kanjhawla. This witness has affirmed on oath that

as per instructions of the SHO, he had taken five photographs of the scene with the help of negatives (Ex.PW-13/1 to 5) on which basis he had later developed positive photographs (Ex.PW-13/6 to 10). The Investigating Officer, thereafter, set about taking the necessary steps including preparation of the site plan (Ex.PW-23/N) which, in turn, became the basis of scaled site plan (Ex.PW-8/A) prepared by SI Manohar Lal (PW-8). He picked samples of blood with the help of cotton swab from near the dead body in two different glass vials and blood stained earth again in two different glass vials vide (Ex.PW-11/A and B), also collecting earth control and preparing the inquest form (Ex.PW-23/B). The death report (Ex.PW-23/B) was attested by Shakti Singh (PW-5) and Rajinder Singh (PW-4), both residents of village Kanjhawla. As mentioned earlier, Shakti Singh (PW-5) is real uncle (*chacha*) both to the deceased and to the appellants Vijay (A-1), Parveen (A-2) and Sanjay (A-3). The death report also mentions that the dead body had been found in the house of Zile Singh in village Kanjhawla.

20. After the dead body had been identified by Shakti Singh (PW-5) and Rajinder Singh (PW-4), on the basis of request (Ex.PW-23/D) made by the IO, submitted along with inquest papers, it was subjected to post mortem examination in the mortuary of Civil Hospital, Delhi on 14.11.1994 by Dr. L. K. Baruah (PW-14). Dr. Baruah (PW-14) has proved the post mortem examination report (Ex.PW-14/A) prepared by him.

21. The autopsy doctor noted the injuries, all (except injury no. 4) ante-mortem, on the dead body of Suresh Kumar, in the following manner:-

- (i) *Segregated tattoo marks are seen on right shoulder front (just in front of right axillary fold involving an area of 5" x 4" and scattered tattoo marks are seen - right arm on its medial aspect. Scattered tattoo marks are also seen on right side of neck, right ear, the right mastoid area. Similar segregated tattoo marks are seen on left side lower part of chest and left upper flank of abdomen in three different groups at about 3 to 4 cm apart and are below the other. There are also scattered tattoo marks in left hypochondrial, umbilical and left lumbar area. However, directions of these tattoo marks could not be ascertained.*
- (ii) *One lacerated wound of size 3 cm x 1 cm seen over parital region, one CLW 2.5 cm x 1 cm over occipital and another 2 cm x 1.5 cm over left temporo parital region.*
- (iii) *One incised wound of size 3 cm x 1 cm muscle to bone deep on left zygomatic area.*
- (iv) *One incised wound size 3.5 cm x 2 cm thyroid cut (2/3) placed almost horizontally. --- Seen at borders or around chin wound and is post mortem in nature. Both the angles and chin wound acutely cut.*
- (v) *One incised wound of size 3 cm x 1.5 cm seen. Supra sternal notch area and another incised wound of size 2 cm x 1.5 cm x ? seen at the same level and slightly on right side. These two wounds are connected by incised scratches of skin deep. Angles are acutely cut.*
- (vi) *Incised wound on right side lower part of neck and 2.5 cm above the base of the neck of size 2.5 cm x 1 cm x ? placed obliquely. The angles are seen acutely cut.*
- (vii) *Incised wound just above right lowest rib in front of abdomen placed obliquely of size 2.5 cm x 1 cm x ?. Its lateral upper end is blunt and medial is acutely cut suggesting single edged weapon injury.*
- (viii) *Incised wound on left side of epigastrium obliquely placed of size 2.5 cm x 1 cm x ?. Its upper medial end of wound is blunt and lower lateral end is acute suggesting single edged weapon injury.*
- (ix) *One small incised wound of size 1 cm x 0.5 cm skin deep seen on left side lower front of chest.*

- (x) *Right hand middle finger on its radial border showing one incised wound of size 2 cm x 1 cm muscle is bone deep.*
- (xi) *Right index finger tip is completely cut and seen hanging.*
- (xii) *One incised wound on left upper front of chest just below the outer third of left collar bone of size 2 cm x 1 cm x ? both angles are seen acutely cut.*
- (xiii) *Incised wound on posterior aspect of right arm (upper part) size 2.5 cm x 1 cm x ? both angles are seen acutely cut.*
- (xiv) *Incised wound medial aspect of right arm 5 cm away from axillary pit of size 1.2 cm x 0.8 cm.*
- (xv) *Incised wound on lateral angle of upper part of chest just below post axillary fold of size 2.5 cm x 1 cm x ?.*
- (xvi) *Small incised wound on left angle of chest 6 cm below and lateral to left nipple size 1 cm x 0.5 cm skin deep.*
After exploration injury no.13, 14 and 16 are caused by same blow. During its course, it had cut the axillary blood vessels.
- (xvii) *Incised wound on the left side back of chest 3 cm of lateral mid line size 3 cm x 1 cm x ? both angles are seen acutely cut.*
- (xviii) *Incised wound size 2 cm x 0.5 cm skin is muscle deep over back of neck just below posterior hair line.*
- (xix) *Two small incised wounds on back side nap of neck, size 1 cm and 1.5 cm and skin is muscle deep.*
- (xx) *Incised wound on mid back of chest at the level of medial angle right shoulder blade of size 3 cm x 1 cm x ?. The upper outer end is blunt and the other end acute.*
- (xxi) *Another incised wound on the right side back of chest (middle part) placed vertically of size 3 cm x 1 cm x ? upper end is blunt and lower end acute.*
- (xxii) *Two incised wounds of sizes 1.5 cm and 2 cm seen on back side waist and are muscle deep only.*
- (xxiii) *One incised wound on left lumbar region (back side) at size 2 cm x 1 cm x ? both angles are seen acute.*
No other external injury seen on the body

The internal examination

The skull over left temporal region showed fracture extending to middle cranial fossa and also to occipital region. This fracture underneath injury no.2. Brain is seen to be pale.

On examination of neck injury no. 4 it did not have any blood clot at borders and around the wound and is post mortem in nature.

Injury no. 5 had cut deep trachea and injury no. 6 had cut the jugular vein and under muscle.

Injury no. 7 had cut the liver. Total depth of the injury is about 4 cm.

Injury no. 8 had cut the stomach. Stomach contains blood clots.

Injury no. 9 is only skin deep.

Injury no. 10, 11 have been already described.

Injury no. 12 had entered the chest cavity and had cut its upper lob of left lung. Total depth of this injury is about 5 cm.

Injury no. 15 had again entered the left chest cavity and have cut left upper lob of lung. Total depth of this injury is about 7 cm.

Injury no. 17 had entered the chest cavity from back and had cut the left lung (lower lobe). Total depth of this injury is about 7 cm.

Injury no. 20, 21, 22 and 23 are also muscle deep while deflecting the chest muscle of chest and abdomen.

One cupro nickel jacketed bullet is seen lodged on muscle of the chest in front of right axillary fold.

Stomach contain small amount of digested food. No abnormal smell of stomach contents. Rectum and bladder half filled.

All the injuries are ante-mortem except injury no.4. The incised wound are caused by sharp edged weapon.

The tattoo marks are caused by firearm projectile fired from a distance range. The injury to the head is caused by a blunt weapon causing fracture of skull bone.

The injury no.2,5,6,7,8,12,13,15 & 17 are individually sufficient to cause death in ordinary course of nature.

The death is due to hemorrhagic shock resulting from injury.

Time since death is about 28 hours. Sample of blood, cloth, bullet preserved, sealed and handed over to police along with sample and seal.”

22. There is a dispute raised as to the import of the observation in the autopsy report with regard to the recovery of bullet (Ex. P-8) statedly found on the muscle of the chest in front of right axillary fold and its connection with the firearm (Ex.P-3), allegedly recovered from the possession, and at the instance, of Vijay Kumar (A-1). We shall examine the veracity of such evidence and the submissions of the defence in such regard later. For the present, it only needs to be observed that the autopsy report (Ex.PW-14/A) and the other material on record, noted above unmistakably prove that Suresh Kumar (the victim) was assaulted and inflicted multiple wounds, *inter alia*, with the aid of sharp-edged weapon.

23. Going by the nature, extent and number of injuries, there can be no two views about the fact that the assailants intended to inflict the said injuries with intent to cause death. Indeed most of them were sufficient, even individually, to cause death in ordinary course of nature. Thus, the prosecution has brought home that death of Suresh Kumar is a case of culpable homicide within the meaning of Section 299 IPC which, unless the case can be shown to fall within any of the exceptions, would ordinarily amount to murder within the mischief of clauses first to third of Section 300 IPC.

24. The evidence as to the injuries suffered by Krishna (PW-6) wife of the deceased, also in the forenoon of 13.11.1994 is again beyond

reproach. Dr. Hari Singh (PW-16) and Dr. Abha Sood (PW-21) proved medico legal report (MLC) (Ex.PW-16/A) which had been recorded in the hospital at 1.15 PM on 13.11.1994 by Dr. Veena, the medical officer on duty in the casualty. Dr. Veena, the author of the document had left the services of the hospital and her present whereabouts could not be ascertained. Both PW-16 and PW-21 were brought in, in her lieu, to prove the MLC. Both the witnesses affirmed on oath that they are acquainted with the writing and signatures of Dr. Veena since they had seen her writing and signing in due course of the official business. We have no reasons to disbelieve the claim of both the said doctors on this score. Since the author of the MLC was not readily available, the prosecution rightly relied on other colleague medical officers to prove the document.

25. It may be noted here that Dr. Hari Singh (PW-16) also proved three endorsements on the MLC (Ex.PW-16/A), one at point 'C' (Ex.PW-16/B) in the hand of Dr. A. Kulshreshta and the other two at points 'B' and 'E' (Ex.PW-16/C and 16/D respectively) in the hand of Dr. Mansoor, again affirming that he was acquainted with their respective writing and signatures for similar reasons.

26. The MLC (PW-16/A) and the endorsements thereupon collectively show that upon being brought to the hospital (by PCR official), Krishna (PW-6) was found by the examining medical officer to have suffered the following injuries:-

- “(1) Two CLWs over head, one was 5 x 6 cm while other was 8 to 10 cm incised.*
- (2) Punctured wound over the outer canchus of right eye.*
- (3) Blunt injury over the left arm and left shoulder.*

(4) Blunt injury over the chest.

(5) Blunt injury over right wrist and forearm.”

27. After the initial medical examination, and preparation of MLC, Krishna (PW-6) was referred by Dr. Veena to the Department of Surgery, Orthopedic and Gynae for further treatment and management. The endorsements at exhibit PW-16/D in the hand of Dr. Mansoor confirm that Veena was declared fit for statement. But, the time at which the said opinion was recorded is not mentioned.

28. On the basis of X-ray examination in the radiology department, to which Krishna (PW-6) had been referred, Dr. Yashpal (PW-15) gave his report vide Ex.PW-15/A. The said report has been proved by the radiologist affirming that Krishna (PW-6) had suffered multiple fractures of both bones of the right arm at the lower end.

29. The above evidence establishes that Krishna (PW-6) had suffered a number of injuries including a punctured wound and grievous hurt within the meaning of the expression defined in Section 320 IPC.

30. During the course of investigation Inspector Inder Singh Dahiya (PW-23) had prepared a site plan (Ex.PW-23/W), indicating the layout of the houses in the area. Later, on 11.01.1995, SI Manohar Lal (PW-8), draftsman of the North West District, would prepare scaled site plan (Ex.PW-8/A) on the basis of inspection of the place with assistance of the Investigating Officer. We find that the scaled plan (Ex.PW-8/A) and the rough plan (Ex.PW-23/W) give a general idea of the locality though, noticeably both do not indicate the location of the house of Attar Singh, reference to which had come in the first intimation received through PCR vide DD No.15A (Ex.PW-9/A). Both these plans, however, do

show that the house of Zile Singh son of Chandgi Ram (which is the house in the open courtyard of which the dead body was statedly found) is located on the west side of a street 340 cms wide, across from the house of another person bearing the same name Zile Singh (son of Nathua), the house next to it being that of one Laxmi Narayan. The *gali* (street) abutting these houses runs from north to south and meets, at T-point, with another *gali* moving from west to east. It is on the said other portion of the *gali* (the one from west to east) that the houses of Shakti Singh (PW-5) and Vijay (A-1) are located. During the course of arguments, it was pointed out by the defence that Krishna (PW-6) had conceded during her cross-examination (on 24.07.1997) that the houses of Attar Singh and Zile Singh (son of Chandgi Ram) are located at a distance of 20-25 yards from each other.

31. The prosecution had relied on the ocular testimony of three witnesses namely Krishna (PW-6), Shakti Singh (PW-5) and Mukhtiar Singh (PW-1). PW-1 and PW-5 have not supported the prosecution with regard to its case that the incident had occurred in their presence. While both of them do confirm that Suresh Kumar had died an unnatural death, they would not state as to who was the author of fatal injuries suffered by him. Noticeably, both of them affirm that they had seen the dead body of Suresh lying in a pool of blood in the house of Zile Singh.

32. Krishna (PW-6) is the only witness who would narrate the sequence of events affirming her version in the FIR, registered on the basis of her statement (Ex.PW-6/A) made to Inspector Inder Singh Dahiya (PW-23). It is primarily her testimony, which has been believed by the learned trial court to return findings about the participation of A-

1 to A-4 in the fatal assault on the person of Suresh Kumar. Before we take up the criticism directed by the appellants against her veracity, it is necessary that the version of Krishna (PW-6) in the FIR is taken note of.

33. Krishna (PW6) had told Inspector Inder Singh Dahiya (PW23), in her statement (Ex.PW6/A), that Vijay (A-1), Parveen (A-2) and Sanjay (A-3) were insisting that the estate (left behind by late Attar Singh) be divided into four parts, whereas her husband (Suresh Kumar) was entitled to half share and that, on this account, a dispute had been going on between the two sides. She referred to the incident of 09.11.1994 wherein Parveen (A-2) had picked up quarrel with her, assaulting her on the issue of share in the lands and bricks generated by the kiln. She stated that Parveen (A-2) had been arrested by the police on her said report and that he had been released on bail only on 12.11.1994 and thereafter had been moving around intending to kill her husband. She stated that at 11:00 AM on 13.11.1994 when her husband (Suresh Kumar) had set out alone for work from his house, he was accosted, on the way in the street, by Vijay (A-1), Parveen (A-2), Sanjay (A-3), Jagdish (A-4) and Anand Swaroop (A-5). She stated that Vijay (A-1) was armed with a pistol, Sanjay (A-3) was armed with a knife, Parveen (A-2) and Anand Swaroop (A-5) was carrying axes (*kulharies*), while Jagdish (A-4) was wielding an iron rod (*saria*). She alleged in the FIR that Jagdish (A-4) had hit on the head of her husband with iron rod, immediately whereafter he (Suresh Kumar) started running away to save himself. She was also present at the scene and while her husband had entered into the house of Zile Singh son of Chandgi, he was followed by all said five persons. She reported that as soon as her husband

had entered the house of Zile Singh, he was stabbed in the waist several times by Sanjay (A-3). As her husband fell down, Vijay (A-1) fired several shots at him with pistol, while Parveen (A-2) hit him on his head and Anand Swaroop (A-5) hit on the neck, both using axes. She stated that her husband was given several knife wounds on the abdomen and chest region even while he had fallen. She tried to come to his rescue but was hit by Vijay (A-1) on her right hand and, upon Parveen (A-2) and Sanjay (A-3) exhorting, Anand Swaroop (A-5) and Jagdish (A-4) had hit on her head with axe and iron rod respectively. She stated that her husband died on the spot as a result of the said injuries. She also stated that Saroj Bala (A-6) and Raj Bala (A-7) had also joined by causing injuries with brick pieces.

34. During course of investigation, Vijay (A-1), Parveen (A-2) and Jagdish (A-4) were arrested on 21.11.1994, from the house of Parveen (A-2), after personal search vide memos Ex.PW20/F, Ex.PW20/D and Ex.PW20/E respectively. It is claimed by the investigating agency that upon interrogation, these appellants made disclosures which were reduced into writing (Ex.PW20/C, Ex.PW20/A and Ex.PW20/B). It is basic that these disclosures attributed to A-1, A-2 and A-4 cannot be relied upon unless the prosecution is able to show that information gathered therefrom led to discovery of any material relevant to the prosecution case, in their wake.

35. It is the case of the prosecution that Vijay (A-1) had made disclosure, *inter-alia*, about a pistol (allegedly used in the crime), the barrel whereof had broken off in the course of the incident and led to its recovery (excluding the barrel) from beneath a dump of cow dung cakes

(*uple*) behind his house (*gher*) in village Kanjhawala, in the presence of Uday Singh (PW2), Head Constable Inder Pal Singh (PW22) and Constable Ajit Singh (PW20) vide pointing out-cum-seizure memo (Ex.PW2/E). It is stated that before the said firearm with broken barrel (Ex.P-3) was formally seized, its sketch (Ex.PW2/D) was prepared in the presence of the witnesses. It is further the case of the prosecution that during the police remand, upon further investigation, Vijay Kumar (A-1) made another disclosure (Ex.PW22/D) on 23.11.1994 in the presence of Head Constable Inder Pal Singh (PW22) leading to the recovery of the broken piece of the barrel (Ex.P-1) from the same place (*bitorha*), whereupon it was seized vide memo (Ex.PW3/B), this recovery being witnessed by Head Constable Inder Pal Singh (PW22) and Ram Kumar (PW3). Ram Kumar (PW3) is the brother of Krishna (PW6) and is stated to have joined in the investigation on 23.11.1994 prior to the arrest of the aforementioned three accused persons.

36. It is further the case of the prosecution that pursuant to disclosure made by Parveen (A-2), and at his pointing out, an axe (*kulhari*) (Ex.P-4) was recovered on 21.11.1994 in the presence of same set of witnesses (PW2, PW20 and PW22) from an almirah in the house of Parveen Kumar (A-2) in village Kanjhawala, vide pointing out-cum-seizure memo (Ex.PW2/B), after its sketch (Ex.PW2/A) had been prepared. The blade of the axe is shown to be 5 inches long and 3 inches wide.

37. The prosecution further stated that on 21.11.1994, in the wake of disclosure and pursuant to pointing out of Jagdish (A-4), an iron rod (Ex.P-2) was recovered from beneath wood pieces kept on the roof of his house in village Kanjhawala, once again the recovery being

witnessed by the same set of witnesses (PW2, PW20 and PW22) vide memo (Ex.PW2/C).

38. The prosecution also claimed that, on 28.11.1994, Sanjay (A-3) was arrested from his house in village Kanjhawala by Inspector Inder Singh Dahiya (PW23), in the presence of Head Constable Inder Pal Singh (PW22) after personal search vide Ex.PW23/J. It is stated that upon interrogation Sanjay (A-3) made a disclosure Ex.PW22/A which led to recovery of knife (Ex.P-6) and its broken handle (Ex.P-7) in the presence of Head Constable Inder Pal Singh (PW22) vide memo Ex.PW22/C, after its sketch Ex.PW22/B had been prepared. The seizure memo and the evidence of the witnesses indicate that knife and its broken handle were recovered from the place of its concealment beneath a dump of cow-dung cakes behind the house (*gher*) of Sanjay (A-3) in the village Kanjhawala.

39. It may be mentioned here that the arrests of the four accused persons mentioned above (appellants before this court), and the recoveries made statedly pursuant to their respective disclosures, have been affirmed by the attesting witnesses including Ram Kumar (PW3), ASI Bhagat Ram (PW11), ASI Ajit Singh (PW20) and Head Constable Inder Pal Singh (PW22), corroborating the word of Inspector Inder Singh Dahiya (PW23) in such regard. Uday Singh (PW2) who was also stated to be an attesting witness, however, was hostile to the case of the prosecution and denied having been joined in any such proceeding or having seen any such recovery.

40. As noted earlier, according to the report (Ex.PW14/A) of the post-mortem examination, and the evidence of autopsy doctor (PW14), a

cupro nickel jacketed bullet (Ex. P-8) had been recovered during autopsy upon it being found lodged on the muscle of the chest in front of right axillary on the body of the deceased. The autopsy doctor had preserved the said bullet in a glass vial along with sample of the blood of the deceased and his clothes, all in separate parcels which were taken over by the investigating officer (PW23) vide seizure memo (Ex.PW23/G). The said bullet (Ex. P-8) recovered from the dead body and the firearm (Ex. P-3) with its barrel (Ex.P-1) were sent, in due course, to Central Forensic Science Laboratory (CFSL) with other exhibits. The prosecution relies upon report (Ex.PW23/L) of the ballistics expert of the CFSL confirming the barrel (Ex.P-7) to be part of the pistol (Ex.P-3) and the bullet (Ex.P-8) to have been fired from the said pistol (Ex.P-3).

41. On 02.01.1995, the investigating officer (PW23) submitted before the autopsy doctor (PW14), the knife (Ex.P-6) with its broken handle (Ex.P-7), axe (Ex.P-4), iron rod (Ex.P-2), pistol (Ex.P-3) and its broken barrel (Ex.P-1) seeking his opinion about their possible use in inflicting the injuries found on the person of deceased. PW14 gave his opinion vide (Ex.PW14/B) stating that injury no.2 as mentioned in the autopsy report could possibly have been caused by the said iron rod or the blunt side of the axe. He further stated that injury no.11 could possibly have been caused with help of axe and all the incised wounds mentioned in the post-mortem report possibly inflicted with the said knife. He was, however, unable to give any definite opinion about any specific injury with help of the firearm.

42. The record further shows that on 10.01.1995 all the exhibits had been submitted to CFSL, *inter-alia*, for ascertaining presence of blood. Two reports of CFSL, one of Senior Scientific Officer (Biology) (Ex.PW23/K) and the other of senior scientific officer (Serology) (Ex.PW23/M), collectively show that the blood on the wearing apparels of the deceased, preserved during autopsy, and samples of blood and blood stained stone pieces seized from the scene of crime, showed that the blood group of the deceased was "O". The bullet (Ex.P-8) recovered from the dead body also bore human blood of same group, thus, confirming its recovery during autopsy. Similar is the finding with regard to the axe (Ex.P-4) shown by the evidence to have been recovered pursuant to disclosure, and at the instance, of Parveen Kumar (A-2). The iron rod (Ex.P-2) and knife (Ex.P-6) shown by the evidence to have been recovered pursuant to disclosures and at the instance of Jagdish (A-4) and Sanjay (A-3) respectively were also found having blood stains of human origin, though the grouping could not be established.

43. It is primarily on the basis of evidence to above affect that chargesheet dated 22.01.1995 was submitted before the Metropolitan Magistrate, seeking trial of Vijay (A-1), Parveen (A-2), Sanjay (A-3) and Jagdish (A-4) for offences punishable under Sections 302/307/34 IPC, Section 120B IPC and Section 25 Arms Act. The names of Anand Swaroop (A-5), Saroj Bala (A-6) and Raj Bala (A-7) were shown in column no.2. The chargesheet referred, *inter-alia*, to the departmental enquiry conducted by Delhi Police indicating that Anand Swaroop (A-5) was possibly not present at the scene at the time of the incident.

Similarly, Saroj Bala (A-6) and Raj Bala (A-7) were kept out by investigating police on the ground that the investigation had shown that they had not caused any specific injury since they had come on the scene later.

44. The case was committed by the Metropolitan Magistrate to the Court of Sessions for trial of A-1 to A-4 only. The learned Additional Sessions Judge to whom the case was made over, however, by his order dated 11.10.1995, found that case was made out against A-5, A-6 and A-7 as well. He proceeded to take cognizance against them under Section 193 Cr.P.C. and issued processes. Thus, seven persons stood trial leading to the impugned judgment and order on sentence.

45. As mentioned earlier, the learned trial Court has believed the eye-witness account of Krishna (PW-6). It has also found the evidence of Ram Kumar (PW-3), ASI Bhagat Ram (PW-11), ASI Ajit Singh (PW-20), HC Inder Pal Singh (PW-22) and Inspector Inder Singh Dahiya (PW-23) with regard to various recoveries believable. It found the reports of CFSL lending corroboration to the other evidence, particularly about bullet (Ex. P-8) having been discharged in the course of incident from pistol (Ex. P-3) and use of knife (Ex. P-6), axe (Ex. P-4) and iron rod (Ex. P-2) thereby confirming the participation in the incident on the part of Vijay (A-1), Sanjay (A-3), Parveen (A-2) and Jagdish (A-4), respectively.

46. It is the argument of the appellants that the view taken by the learned trial Court as to the veracity of prime witness Krishna (PW-6) is inherently contradictory in that her testimony has been disbelieved to the extent it incriminated A-5 to A-7 but believed qua A-1 to A-4. It is

their submission that the benefit of the doubts entertained by the trial Court with regard to the truthfulness of Krishna (PW-6) against A-5 to A-7 should have been extended also to A-1 to A-4 and since the statement of Inspector Inder Singh Dahiya (PW-23) brings out the possibility that the dead body had been removed from the place where the incident occurred, it cannot be concluded with certainty that the incident happened in the manner narrated by Krishna (PW-6). We find these submissions naive and unmerited. We set out our reasons hereinafter.

47. It does appear that the trial court held that the prosecution has failed to prove its case against Anand Swaroop (A-5). But then, to reach this conclusion, it referred to the statement of Inspector Inder Singh Dahiya (PW23) that interrogation of the witnesses present at the spot at the time of incident had confirmed that the said accused (A-5) was not present at the time the assault took place. It was noted by the trial court that Anand Swaroop (A-5) had not been interrogated nor his disclosure statement recorded and nor any weapon of offence recovered at his instance. It also mentioned that the disclosure statements of A-1 to A-4 would also not reflect the part played by Anand Swaroop (A-5).

48. In our view, the above approach of the learned trial court to the appreciation of evidence against Anand Swaroop (A-5) was misdirected. Inspector Inder Singh Dahiya (PW23) has not been specific as to interrogation of which of the witnesses had “confirmed” to him that Anand Swaroop (A-5) was not present at the spot at the time of incident. On the contrary, report U/s 173 Cr.P.C had relied upon the testimonies of Mukhtiar (PW1) and Shakti Singh (PW5) in addition to that of

Krishna (PW6) showing otherwise. If Anand Swaroop (A-5) was not interrogated, it was a serious lapse on the part of the investigating officer. It certainly would not reflect adversely on the eye-witness. It is not a requirement of law that before an accused can be found guilty, the prosecution must show some disclosure made by him. The recovery of weapon of offence is similarly not a *sine qua non* for conviction. The disclosure of co-accused cannot be used for corroboration of the prosecution case against another individual.

49. The learned trial court accepted the plea of *alibi* though recording reservations about the mode of proof of some material adduced in its support. Illustratively, some of the DD entries concerning the duty relating to visit to a motor vehicle workshop were referred without original record being produced. One of the said DD entries (DD no.19) was found deficient, in that it would not even show the return of Anand Swaroop (A-5) with Inspector Paras Nath (DW-11) with whom he had claimed to have gone, on official errand, to the area of Sarai Kale Khan. The discussion of the evidence concerning the plea of *alibi* in the impugned judgment (para 67) gives the impression that the trial court proceeded more on assumptions than actual proof.

50. In above view, we find that the result of trial against Anand Swaroop (A-5) can, at best be taken as an acquittal on benefit of doubts. In the discussion, qua the said accused, the evidence of Krishna (PW6) was not even considered. In our view, the findings respecting Anand Swaroop (A-5) are erroneous and unacceptable to the extent learned trial court failed to take into account evidence of Krishna (PW6). In such a scenario, it would not be correct to say that Krishna (PW6) was

disbelieved, in so far as her testimony incriminated Anand Swaroop (A-5). His acquittal, does not help and resolve the issue in favour of the appellants.

51. We are conscious that Anand Swaroop (A-5) was acquitted by the trial court and the said result has attained finality in as much as the State did not file any appeal challenging the same. We were, however, constrained to examine and make comment on the quality of the evidence led by the prosecution vis-à-vis the accusations against Anand Swaroop (A-5) for the reason the appellants (who were convicted) seek to derive advantage from the conclusions reached by trial court. Our disapproval of the reasoning of the trial court is meant only to deal with the arguments advanced in these appeals. In this fact situation the ruling of *Lakhwinder Singh v. State of Punjab* 2003 Cri LJ 3058 does not help appellants.

52. It is, however, correct that the learned trial court held that evidence of Krishna (PW6) does not prove the culpability of Saroj Bala (PW6) and Raj Bala (PW7). But then, it was never the case of the prosecution that the said two accused persons had caused such injuries to the deceased (Suresh Kumar) or to his wife Krishna (PW6) as could lead to the offences of murder or attempt of murder respectively. No specific injury caused by the said two women to any of the victims has been pointed out. Such result of the case against Saroj Bala (A-6) and Raj Bala (A-7) cannot bring a cloud of suspicion over the credibility of Krishna (PW6).

53. Placing reliance on *Sunil Kumar and Ors. V. State of MP* (1997) 10 SCC 570, the appellants argue that that statement (Ex.PW-6/A) of

Krishna (PW-6), which is the basis of FIR (Ex.PW-9/D) cannot be allowed to be used for the reason that the intimation about the incident having been received vide DD No.15A (Ex.PW-9/A), it is that document which must be treated as the first information report (FIR) within the meaning of the provision contained in Section 154 Cr.P.C. and in that event the statement (Ex.PW-6/A), would at best be a statement under Section 161 Cr.P.C.

54. The view taken by the Supreme Court in the case of *Sunil Kumar* (supra) about the telephonic information given by the witness who reported the incident to the police is to be seen in the factual matrix of the said case. The telephonic information there had disclosed the requisite particulars about the cognizable offence. Unlike the said case, the intimation given here through PCR to the police station vide DD No.15A (Ex.PW-9/A) was too cryptic to be of any help. It only indicated that murder had been committed in a particular house. Who had been killed or by whom or in what circumstances was not intimated. It would not even show as to in what circumstances the factum of murder had come to notice to the person who had passed on the information. Rather, even the source of this intimation is not known. In these circumstances, DD No.15A (Ex.PW-9/A) cannot be treated as the FIR. The argument of the defence, thus, must fail.

55. We find no substance in the defence plea that the dead body had been removed from the place where the incident occurred. The testimony of Krishna (PW6) clearly shows that the assault on Suresh Kumar (the victim) was not restricted to a particular place. The attack began in the *gali* outside the house of the deceased immediately after he

had set out for work. Krishna (PW6) was present near the gate of her house sweeping the area. On hearing the commotion, she had rushed to the scene. It is clear from her deposition that the deceased had started running in order to save himself, but was chased by the appellants. In the course of this pursuit, the deceased had entered the house of Zile Singh son of Chandagi. As mentioned earlier, the *gali* in front of the house of the deceased runs from west to east and meets, at T-point, with another *gali* running from north to south. For entering the house of Zile Singh son of Chandagi, a person moving from west to east would need to turn right into *gali* running from north to south. The distance between two places i.e. point of beginning of the attack and the house of Zile Singh son of Chandagi is not much. As her husband was being pursued and attacked, Krishna (PW6) was moving along. In this sequence, the attack which had begun near the house of Attar Singh culminated in the courtyard of Zile Singh son of Chandagi. That, thus, is the place where Suresh Kumar eventually fell down to be stabbed, assault and fired at several times.

56. The first intimation about the incident, resulting in DD no.15A (Ex.PW9/A) is attributed to HC Rajender Singh of PCR. The said official witness of PCR was not called in, to prove the source of this information. Since the document would not reveal as to who had informed the PCR, it has to be inferred that it was conveyed by some by-stander. The source of such intimation, cryptic as it was, may not have been privy to the entire sequence. In these circumstances, reference to house no.330 of Attar Singh in village Kanjhawala as the

place where murder had been committed cannot be the final word. It was, after all, only an initial tentative input which required to be probed.

57. A stray sentence in the testimony of Inspector Inder Singh Dahiya (PW-23) that on arrival in village Kanjhawala, he had found the dead body of Suresh Kumar lying beside the house of Attar Singh cannot belie the other wholesale evidence available, including some proceedings drawn by the said very official witness. As noticed earlier, no questions have been raised to Mukhtiyar (PW1), or Shakti Singh (PW5), with regard to their testimony that the dead body was found lying, by each of them immediately after the occurrence, in the courtyard of the house of Zile Singh son of Chandgi Ram. In fact, no serious attempt was made to discredit the word of Krishna PW6) on this score either. What clinches the issue is the documentary evidence contemporaneously prepared in the form of site plan (Ex.PW23/N), and death report (Ex.PW23/B) by Inspector Inder Singh Dahiya (PW23) himself; this, in addition to his own endorsement (Ex.PW23/A) on the statement of Krishna (Ex.PW6/A) leading to the registration of the FIR. The defence did not call upon Inspector Inder Singh Dahiya (PW23) to reconcile such record with his assertion that he had found dead body of Suresh Kumar lying inside the house of Attar Singh. It is clear that PW23 had erroneously made such a statement. We are satisfied that the prosecution has proved that the dead body of Suresh Kumar was in the house of Zile Singh son of Chandgi when the police arrived. That is the place where the assault had concluded.

58. The defence argues that the non-examination of Zile Singh son of Chandgi must lead to adverse inference. It is pointed out that it is the

courtyard of the house of said person where the dead body had been found lying and, therefore, as per the submission, the said witness owed some explanation. We find the argument fallacious. The evidence on record shows Zile Singh son of Chandgi Ram was not even present at his house when the incident occurred. His family of small children or women folk only were present. They are not shown to be witnesses to the sequence of events. Instead, for them the incident would be a matter of shock and surprise. In the course of the attack, Suresh Kumar had entered their house in the hope of finding some escape route. In absence of material to show that the occupants of the said house were privy to what had happened, their non-examination as witnesses at the trial is inconsequential.

59. The learned counsel for the appellants argued that Krishna (PW6) has given contrary version with regard to the incident of 09.11.1994, which was a precursor to what had happened on 13.11.94. Some variation in the sequence of events of 09.11.1994 as mentioned in the DD no.26B (Ex.PW6/B) dated 09.11.1994 and in the statement (Ex.PW6/A), on which the FIR was founded, is noticeable. What is most vivid is the discrepancy as to how the quarrel had begun in the afternoon of 09.11.94. In the report lodged on that day Krishna (PW6) had mentioned that Parveen (A-2) and Sanjay (A-3), with their cousin, had meddled with her mustard crop. In the FIR, she mentioned the dispute to be about the brick kiln. Noticeably, this is what Parveen A-2 had mentioned as the root of the dispute in his report vide DD no.22B (Mark-C). Even if we accept the submission of the defence that Krishna (PW6) was a quarrelsome lady who would, at times, raise unnecessary

controversies, nothing follows. We also proceed on the assumption that there was mis-reporting of the incident by Krishna (PW6) on 09.11.1994. But, that cannot mean that her word about the incident of 13.11.1994 is rendered doubtful. Her husband died as a result of a vicious attack. The evidence clearly shows that she was also assaulted at the same time; so much so that two bones of her upper limb were broken in the process. It is well settled that the testimony of a witness, who is himself injured in the incident about which he deposes comes with an in-built assurance as to his presence at the scene of crime also for the reason he is unlikely to spare the actual assailants in order to falsely implicate someone else [*Inder Singh & Ors. V. State of Rajasthan 2015 (2) SCC (Cri.) 215, Abdul Sayeed V. State of MP 2010 (10) SCC 259 and Sheesh Ram (supra)*]

60. The claim of PW-6 as to presence at the spot, thus, must be believed. There is no reason why she would falsely implicate a person in a case of such serious nature.

61. Whilst on the subject, we also reject the contention of the defence that the presence of Krishna (PW6) at the scene of incident is suspect because her name does not appear in the brief facts (Ex.PW23/E). We may add here that the object of “brief facts”, part of the inquest papers, was not to chronicle the information then available in entirety. It was only for purpose of assisting the autopsy doctor in discharge of his duty vis-a-vis the dead body.

62. Krishna (PW-6) turns out to be the solitary witness, who supported the case for prosecution. The other witnesses presented to support her version viz. Mukhtiar Singh (PW-1) and Shakti Singh (PW-

5) turned out to be reluctant. Given the close relation of Shakti Singh (PW-5) with both parties, we can understand the predicament he would have faced. He seems to have adopted a position of neutrality. Such conduct of the said two other “eye witnesses” (as per prosecution), however, cannot turn the testimony of Krishna (PW-6) incredible.

63. Undoubtedly, Krishna (PW-6) is related to the victim (being his wife). But, close relationship does not make her susceptible to falsehood. Mechanical rejection of her evidence for this reason alone would not be fair [*Shyamal Ghosh v. State of West Bengal* 2012 (7) SCC 646 and *Sheesh Ram & Ors. V. State of Rajasthan* 2014 (3) SCC 689]. It only means that her version is to be examined closely. Her deposition, seen in entirety, in the overall facts of the case, inspires confidence. There are no such inconsistencies or contradictions as could render her version implausible. Indeed, she has stood by the case set out in the FIR registered at her instance. The fact that she herself was seriously injured, both bones of her upper limb having been broken, leaves no room for doubt as to her presence at the time of the assault primarily against her husband. In the above circumstances, the appellants cannot derive any benefit from the cases reported as *Sujit Gulab Sohatra V. State of Maharashtra* 1997 Cri LJ 454, *Mohan Lal @ Tony & Ors. V. State (NCT of Delhi)* 2009 (4) JCC 2824 and *Balaka Singh V. State of Punjab* AIR 1975 SC 1962.

64. It is trite that evidence of a hostile witness cannot be rejected in toto. A witness may be withholding the truth in one part but his testimony in other part may be truthful. The doctrine of ‘*Falsus in uno, falsus in omnibus*’ has no application in India and it is the duty of the

court to separate grain from chaff. It is the duty of the Court to find the truth and, in such venture, it can accept, and act upon, such part of the testimony of even a hostile witness as finds support from other reliable evidence on record. [*Rohtash Kumar v. State of Haryana* JT 2013 (8) SC 181; *Lahu Kamlakar Patil & Anr. V. State of Maharashtra* 2013 (6) SCC 417; *Sheesh Ram (supra)*; *Paulmeli & Anr. V. State of Tamilnadu* 2014 (7) SCALE 508 and *Yogendra @ Yogesh & Ors. V. State of Rajasthan* 2013 Cri.L.J.3239].

65. The evidence of Mukhtiar Singh (PW-1); and, Shakti Singh (PW-5), may be silent on the core incident but it lends corroboration to the word of Krishna (PW-6) in as much as they confirm having reached, immediately after the occurrence, the house of Zile Singh son of Chandgi where they found Suresh Kumar (the victim) lying dead with bleeding injuries. It is in their presence that the police set about the task of investigation into the FIR registered on the word of Krishna (PW-6) indicating the culpability of the appellants against which these witnesses would not lodge any protest.

66. It is the argument of the appellants that the prosecution evidence itself shows that they had never absconded and were available all along to join investigation. Reference is made to the evidence concerning arrests of Vijay (A-1), Parveen (A-2) and Jagdish (A-4) from the house of Parveen (A-2) on 21.11.1994 and of Sanjay (A-3) from his own house on 28.11.1994. The submission is that the investigating officer has claimed knowledge about their respective presence on the basis of secret information which, in absence of disclosure of the source, ought

not be believed. Reliance is placed on *Kanhai Mishra V. State (2001) 3 SCC 451*.

67. In our view the judgment in the case of *Kanhai Mishra* (supra) has to be understood in the context of the factual matrix of the said case. It was not laid down as an unexceptional rule that any information gathered from secret sources cannot be used unless the source is disclosed by the police officer. Such approach rather would be contrary to the privilege granted by the statutory provision contained in Section 125 of the Evidence Act. Be that as it may, even if we proceed on the assumption that the appellants had not absconded and were moving around in the village after the occurrence, that by itself cannot mean that they were innocent.

68. The appellants relied upon *Pulukuri Kottaya & Ors. V. King Emperor 1947 MWN Cr 45*; *Trimbak V. State of Madhya Pradesh AIR 1954 SC 39*; *Kora Ghasi v. State of Orissa (1983) 2 SCC 251*; *Arun & Ors. V. State (Crl. A.773/2011 decided on 18.03.2014)*; and *Dinesh Kumar V. State ILR (1998) 1 Delhi 310* to argue that the evidence about the recovery of the weapons of offence from them cannot be relied upon since no independent witnesses were joined and the recoveries are shown made from places which were open and accessible to public at large. We note that the evidence as to the recovery of the incriminating material in the cases cited was disbelieved on account of various inconsistencies and contradictions. There cannot be a thumb rule that recovery if made from a place open to public at large must invariably be disbelieved. It is indeed desirable that investigating agency joins independent witnesses to confirm the proceedings relating to seizure of

important pieces of evidence. But then, it is well known that people at large are generally reluctant to lend co-operation in such endeavours. The reluctance to co-operate may stem for various reasons including the possible pressure that one faces later at the hands of the party against whom one is expected to depose as also the possible discomfort or harassment which participation in the judicial proceedings entails. If the investigation concerns a case as grave as that of culpable homicide, resulting from a family feud on account of property dispute against the backdrop of rural social fabric, hesitation on the part of the co-villagers to co-operate with investigation is even more acute. The reasons for this are not far to seek. Joining hands with one side and speaking against the other only breaks the façade of neutrality which unconnected people generally tend to adopt. The testimonies of Mukhtiar Singh (PW-1), Shakti Singh (PW-5) and Uday Singh (PW-2) in the case at hand provide a ready illustration underscoring these ground realities.

69. We would rather examine the reliability of evidence respecting various recoveries on the basis of intrinsic worth of the testimonies of corresponding witnesses.

70. Before we do so, however, we must deal with one more argument of the defence, founded on *Des Raj @ Dass V. the State* 2000 Cri LJ 2083 and *State of Maharashtra V. Prabhu Barku Gade* 1995 Cri LJ 1432. The submission of the appellants is that the prosecution did not prove the sealing of the exhibits or the fact that CFSL forms were prepared and duly sent. The argument is that the possibility of tampering with the exhibits has not been ruled out. We find no substance in such submissions. No enquiry was made, despite

opportunity being available, to show that CFSL forms were not filled up in the manner required. The CFSL reports (Ex.PW-23/K, Ex.PW-23/L and Ex.PW-23/M) declare that the exhibits were sent in properly sealed conditions with seals found intact as per the specimens also sent with the communications. The defence did not even suggest to the investigating officer anything to the contrary.

71. It is the contention of Vijay (A-1) that he had not been a party to the dispute over property and his name does not figure in the context of the incident of 09.11.1994. He also submits that the firearm (Ex.P-3), with its broken barrel (Ex.P-1), have been planted. It is submitted on his behalf that the post-mortem report (Ex.PW14/A) does not show that the bullet (Ex.P-8) had caused any injury to the victim (Suresh Kumar). The learned senior advocate arguing on his behalf submitted that mere tattooing on the dead body cannot prove use of the firearm, particularly as the autopsy doctor would not point out any specific entry wound connecting it with the bullet (Ex.P-8).

72. The submission that Vijay (A-1) had not been a party to the property dispute cannot be accepted, inasmuch as, the evidence clearly shows he to be on the other side of the divide. It makes no difference to the case of prosecution that Vijay (A-1) was not physically present at the scene of incident of 09.11.1994. We are concerned with his participation in the incident of 13.11.1994 which resulted in the death of Suresh Kumar and grievous hurt on the person of Krishna (PW-6).

73. We have carefully examined the evidence concerning the recovery of the country-made pistol (Ex.P-3) on 21.11.1994 and of its broken barrel (Ex.P-1) on 23.11.1994 vide seizure memos (Ex.PW-2/E

and PW-3/B) in the presence of Head Constable Inder Pal Singh (PW-22), ASI Ajeet Singh (PW-20) and Ram Kumar (PW-3). In our opinion, the depositions of the said witnesses are consistent and corroborate the testimony of Inspector Inder Singh Dahiya (PW-23). The reluctance of Uday Singh (PW-2), who was signatory to the seizure memo (Ex. PW-2/E), to confirm the police proceedings is inconsequential. Noticeably, PW-2 was not able to explain as to how he was a signatory to the seizure memo if the steps leading to the recovery had not been witnessed by him. There are no contradictions in the testimony of the witnesses pertaining to the recovery of the fire arm and its barrel pursuant to the disclosure and at the instance of Parveen (A-1). We have, thus, no hesitation in accepting the evidence of the prosecution in this regard.

74. It is basic that mere fact that a fire-arm has been used against a human being as the target does not necessarily mean that it would invariably cause a penetrating wound. Much depends on the velocity of the projectile which is discharged, the direction or the trajectory of the bullet in its travel from the weapon to, or around, the intended target and the energy subsisting in the bullet by the time it completes the said journey. Country made handguns are known to vary from ineffective muzzle velocities to substantial values such as 500 ft. per second. A bullet of low velocity may only cause contusion or laceration at the point of contact. Such bullets are easily deflected and get deformed upon striking some hard object and would often lodge in or on the body. The shape of the marginal abrasion at the point of contact with the human body would vary according to the angle at which it strikes. Whilst all bullets may ricochet if they strike at a hard object at a low

angle, the problem is multiplied if jacketed bullets are used. The ricocheting bullet may cause a penetrating or a non-penetrating injury. Injuries from the pistols or .22 rim bullets are generally confined to tissue or organ directly in their path. If a weapon is used for firing from close to the body, the section surrounding the area targeted is usually scorched, blackened by smoke, or tattooed with unburnt grains of gunpowder or smokeless propellant powder [*Modi's Medical Jurisprudence & Toxicology, Twenty Second Edition*].

75. In the case in hand, the fire-arm (Ex. P-3) with barrel (Ex. P-1) recovered from the possession of Parveen (A-1) was found by the CFSL ballistic expert to be non-standard .315 country made pistol. The bullet (Ex. P-8) handed over by the autopsy doctor was found by the ballistic expert to be .315 bullet which had been fired from the said country made pistol. The bullet (Ex.P-8) is cupro nickel jacketed one. The fact that the barrel (Ex.P-1) had come off from the firearm (Ex.P-3) shows that it may not have been in a position to discharge the bullets with proper direction or trajectory. The tattoo marks found scattered over a large area of the body of the victim (including right arm, right side of the neck, mastoid area, left upper abdomen, left hypocondrial area, umbilical area and lumber region) confirm the oral evidence of Krishna (PW-6) that he was fired at several times. The autopsy doctor assessed the firing to have been from a distant range. In the given circumstances where the barrel of the firearm was to break off in the course of the firing, the bullets discharged obviously would not get proper direction, would have miscued trajectory and also loose energy substantially and, thus, not be capable of causing penetrating wounds. No wonder, then,

that one of the bullets got lodged on the muscle of the chest in front of right axillary fold.

76. The absence of any penetrating entry wound is, therefore, inconsequential. The presence of the bullet (Ex.P-8) lodged on the muscle of the chest of the victim only reinforces the testimony of Krishna (PW-6) as to the presence, and participation, of Parveen (A-2) in the fatal assault collectively launched against her husband, inasmuch as the firearm used for firing the said bullet was recovered from the possession of the latter.

77. The learned senior counsel representing Parveen (A-2) argued that the recovery of the axe (Ex.P-4) vide memo Ex.PW-2/B has been falsely shown. His submission was that even otherwise the evidence about the possible use of the said tool as a weapon of offence is not convincing. It was pointed out that Krishna (PW-6) has spoken about the axe blow being given by Parveen (A-2) on the head of Suresh Kumar. The autopsy doctor (PW-14), in his report, (Ex.PW-14/A) did find three lacerated wounds one on the parietal region, another over occipital area and third over left temporal parietal area (all described as injury No.2), also noticing corresponding fracture of the scalp bone on left temporal area extending to the middle cranial fossa and occipital region. But when his further views were solicited with regard to the possible use of the axe, he opined that the axe may have been used but by its blunt end.

78. We reject the contentions of the defence on the above lines for the simple reason Krishna (PW-6) would not have been in a position to say

with certainty (nor has she attempted to do so) as to whether the axe was used from its sharp edge or by its blunt side.

79. We also reject the contention that the recovery of axe should be disbelieved because it is shown effected from under an almirah in the house of Parveen (A-2) or because that it is a place open and accessible to other occupants of the house. The fact that the axe was concealed beneath an almirah makes it a matter of his special knowledge. The CFSL reports (Ex.PW-23/K and Ex.PW-23/M) confirm that the blood of human region of group 'O', same as that of the deceased, was found on the axe (Ex.P-4). This confirms the word of Krishna (PW-6) about the participation (in the attack on her husband) on the part of Parveen (A-2).

80. The learned senior counsel arguing for Sanjay (A-3) questioned the veracity of evidence respecting the recovery of knife (Ex.P-6) with its broken handle (Ex.P-7) from him on 28.11.1994 vide Ex.PW-22/C. The counsel submitted that the witnesses are not consistent including about the location of the dump of cow dung cakes used for concealing the said weapon of offence.

81. We are not impressed with the criticism directed in above regard against Head Constable Inder Pal (PW-22) and Inspector Inder Singh Dahiya (PW-23). It makes no difference if PW-23 was silent about the polybag in which the knife found had been kept beneath the cow dung cakes. The reference to heap of wood in this context in the testimony of PW-23 does not belie the memo of recovery which was contemporaneously prepared.

82. Reliance has been placed on *Sanjay @ Nagin @ Sohan V. State 2006 (3) JCC 1805* and *Staila Sayyed V. State 2009 (107) DRJ 153*

(DB) to submit that blood stains were not seen on the knife by the autopsy doctor when the said weapon was presented before him for opinion and that, at any rate, this weapon has not been properly connected to the crime since the blood group has not been established.

83. The use of knife (Ex.P-6) in the fatal attack on Suresh Kumar on 13.11.1994 is confirmed by the further opinion of the autopsy doctor (PW-14) to which reference has already been made. It is further reinforced by the finding of traces of blood of human origin on its blade by CFSL in its two reports referred to above. It is not necessary that blood stains should have been mentioned by the autopsy doctor in his further opinion. The exhibit was taken to him for his views as to its possible use in inflicting the stab wounds. The fact that the blood group could not be established with certainty by the serologist would not dilute the fact of this recovery. The presence of blood of human origin on the knife concealed from public view by Sanjay (A-3) tells its own story. Sanjay (A-3) owed an explanation for the presence of blood on the knife recovered from him. Since he drew a blank in this context, an adverse inference is bound to be raised. [*Khujji @ Surendra Tiwari v. The State of Madhya Pradesh (1991) 3 SCC 627*]

84. On careful scrutiny, we find the testimony of Krishna (PW-6) wholly reliable. In our judgment, the learned trial court has correctly appreciated the evidence in the light of her deposition and has reached appropriate conclusions, finding corroboration from the other material on record. We uphold the finding that the three appellants with their associate Jagdish (A-4), since dead, had collectively attacked on the person of Suresh Kumar (the victim) with firearm, axe, knife and iron

rod and intentionally inflicted the injuries which resulted in his death. The defence has not been able to show any material as can attract any of the exceptions to Section 300 IPC so to render it to be a case other than that of murder punishable under Section 302 IPC. The view taken by the learned trial court holding Vijay (A-1), Parveen (A-2) and Sanjay (A-3) guilty for the offence under Section 302/34 IPC for the murder of Suresh Kumar and for the offence under Section 325/34 IPC for having voluntarily caused grievous injuries to Krishna (PW-6) cannot be faulted.

85. Thus, the appeals at hand must fail. They are dismissed.

86. Vijay (A-1), Parveen (A-2) and Sanjay (A-3) were released on bail pending hearing on these appeals. They are directed to surrender to custody within fifteen days of this judgment to serve the sentences awarded against them. We direct the learned Additional Sessions Judge presiding over the trial court (the Successor Court) and Station House Officer (SHO) of Police Station Kanjhawla to take necessary steps to ensure compliance with above directions in accordance with law.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

SEPTEMBER 15, 2015
ss/~~sd~~/mr/sh