

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

Reserved on: 06.07.2015

Pronounced on: 16.07.2015

+ **CRL.A. 736/2012**

RAM CHANDER SHAHNI @ CHANDAN Appellant

Through: Ms. Aishwarya Rao, Adv.

versus

STATE Respondent

Through: Ms. Aasha Tiwari, APP with Insp.
Bhageshwar Kaushik, PS Vigilance

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE R. K. GAUBA

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1. The appellant was prosecuted in Sessions Case No. 28/2010 in the Court of Shri Sanjay Sharma, Addl. Sessions Judge-01 (East), Karkardooma Courts, Delhi on the charge that on 21.05.2009 at about 06:30 A.M. in House No. 84, Gali No. 2, Harijan Basti, Arya Nagar, Delhi, he had caused the murder of Rajender Shah (husband of his sister) and thereby committed an offence punishable under Section 302 of Indian Penal Code (IPC). At the conclusion of the trial, he was convicted on being found guilty by judgment dated 11.05.2011. By subsequent order passed on 13.05.2011, he was awarded sentence of imprisonment for life with fine of ₹5,000/-, in

default of which he is to undergo further simple imprisonment for two months.

2. The finding of guilty has been returned by the trial court primarily on the basis of oral testimony of Mukesh Kumar Shah (PW-7) and Deepak Shah (PW-10), both sons of the deceased and consequently nephews of the appellant. By the appeal at hand, the convicted appellant seeks to assail the correctness of the view taken by the trial court.

3. The background facts leading to the impugned judgment and order on sentence may now be taken note of.

4. Rajender Shah son of Ram Kishore Shah aged about 50 years, a native of village Mudutol Dih Basti Jehpur, Khutia District Samastipur, Bihar was residing at the relevant point of time (on or about 21.05.2009) in House No. 84, Gali No. 2 Harijan Basti, Arya Nagar, Karkardooma, Delhi within the jurisdiction of Police Station Anand Vihar with his two sons Mukesh Kumar Shah (PW-7) and Deepak Shah (PW-10), then aged about 12 years and 13 years respectively. The eldest son Arvind (PW-9) was working, even during those days, as plumber in Ludhiana (Punjab).

5. There is no reference in any material on record as to the status of residence of the wife of Rajender Shah. But then, nothing seems to turn on this fact omitted from narration since it is not the case of either side that she would be privy to the facts leading to the incident in question.

6. The evidence on record, particularly the facts reported in the FIR (Ex.PW-4/A) and the oral testimony of PW-7, PW-9 and PW-10, unchallenged to that extent, in addition to the word of Parmeshwar (PW-8)

a neighbour, unmistakably shows that the appellant is maternal uncle (*Mama*) to the said first three mentioned witnesses, he being the brother of wife of the deceased. The evidence particularly of PW-7 and PW-10 to the effect that their deceased father Rajender Shah (hereinafter referred to as “the deceased”) was engaged in the work of plying cycle rickshaw and giving rickshaw on hire has also gone un rebutted. The said evidence also brought out that the appellant had started living with this family for about 15 days prior to the incident in question and was earning his livelihood by plying rickshaw taken by him on hire from the deceased. The evidence to such effect, when put to the appellant at the stage of his statement under Section 313 of Code of Criminal Procedure (Cr.P.C.), was admitted to be correct.

7. As per the prosecution case, sometime around 07:49 hours of 21.05.2009, a telephonic information was received in the Police Control Room (PCR) from telephone No. 9818828539 about a person having been inflicted a cut injury with a sharp-edged instrument near gate of Pulia in Gali No. 1 Arya Nagar. The information passed on by PCR to the Police Station was logged vide D.D. No. 16-B (Ex.PW-16/A) by Head Constable Shesh Mani (PW-3), the D.D. writer on duty. The information was marked for needful action to Inspector Bageshwar Kaushik (PW-16). PW-16, who would be the Investigating Officer (IO) of the FIR that eventually came to be registered, proceeded for inquiry and reached House No. 84, Gali No. 2, Harizan Basti, Arya Nagar, Karkardooma, Delhi (hereinafter referred to as “the place of occurrence”), found the dead body and was met by PW-7, son of the deceased.

8. According to the scaled site plan (Ex.PW13/A) prepared by draftsman Head Constable Sonu Kaushik (PW-13), *inter alia*, with the assistance of the IO and a rough site plan (Ex.PW-16/C) prepared by the latter on 21.05.2009 itself, the house in question has a large open courtyard in front with a number of rooms built on the northern and north-east side. A cot was found in the courtyard. The corner room (the one in the north-east) is occupied by a person named Moti Lal while the room next to it is the one where the deceased was living with his family. The record shows that when the IO entered the said room, he found the door ajar. Inside, the dead body of the deceased, identified as Rajender Shah, was lying partially on the mattress. The deceased was clothed at that time only in a blue-coloured underwear. On the left side of the dead body, at a distance of about three feet, an axe (Ex.PW-7/Article-1) was found with blood-stains on its blade. The dimensions of the axe when measured were 8.5 x 4.5 in breadth and 14 x 13.9 cms in length. It was connected to a wooden handle of the length of about 73 cms and width 10.5 cms. The dead body had deep gash/wound on the left-side cheek and appeared to have been hit with the said axe. The IO recorded the statement (Ex.PW-7/A) of Mukesh Kumar (PW-7).

9. According to the prosecution case, founded essentially on the statement (PW/A) of PW-7, the deceased had taken exception to the habit of the appellant consuming liquor and causing disturbance to the neighborhood on daily basis. For this reason, the deceased had asked the appellant to leave the house. This had led to quarrels between the two of them. On the fateful night, i.e., the night intervening 20.05.2009 and 21.05.2009, the deceased was sleeping inside the room while his two sons PW-7 and PW-10 had slept on the terrace above. The appellant had retired for the night on

the cot in the courtyard. At about 6.30 AM on the next morning (21.05.2009) PW-7 and PW-10 came down stairs on hearing commotion and saw the appellant inflicting bleeding injury on the face of their father with an axe that had been picked up from within the house. When the two sons raised alarm, the appellant fled away leaving the axe behind. When police came, Rajender Shah was found to have died on the spot.

10. The IO made endorsement (Ex.PW-16/B) and sent the *rukka* to the Police Station through Constable Bharat Lal (PW-1). The *rukka* (Ex.PW-16/B) is shown dispatched from the place of occurrence at 09:15 hours of 21.05.2009. On its basis, Lady Head Constable Krishna (PW-4) registered the FIR (PW-4/A) at 09:30 hours on the same morning.

11. In the course of the investigation at the scene of crime, the IO called photographer Ravinder Kumar (PW-6) who took photographs of the scene with the help of a digital camera from different angles. He later developed the positive photographs which were proved during the trial as Ex.PW-6/A-1 to A-32. The photographs confirm the state of the scene as narrated by the IO in his endorsement in the FIR. It may be observed here that in one of the photographs depicting the dead body from a little distance, it is shown that it was partially on the mattress with lower limbs (hip downwards) almost on a mat placed alongside. The photographs give the impression that the deceased was hit while he was still asleep, giving him no occasion or opportunity to arouse or get up.

12. During the course of the investigation, the IO seized, in the presence of PW-7, and Constable (later Sub-Inspector) Subhash (PW-11), the axe (Ex.PW-7/Article-1), vide seizure memo Ex.PW-7/B, after its sketch

(Ex.PW-11/A) had been prepared; the blood-stained mattress and other parts of the bedding besides a towel (Ex.PW-7/Article-3 collectively) vide seizure memo Ex.PW-7/C; pieces of blood-stained flooring and earth control vide seizure memos Ex.PW-7/D and Ex.PW-7/F respectively. Sample of the blood of the deceased was also lifted from the scene of crime vide seizure memo Ex.PW-7/E.

13. PW-7 produced before the IO two empty half bottles bearing a label of 999 Power Star Whisky (Ex.PW-7/Article-4 collectively) which were seized vide Ex.PW-7/G. It is stated that these were the bottles from which the appellant would habitually consume liquor. PW-7 did falter in his testimony as to the number of liquor bottles he had handed over to the police. But then, this by itself is no reason why seizure of two half bottles is to be disbelieved.

14. Arvind (PW-9), the eldest son of the deceased, is stated to have been informed about the incident telephonically by PW-10 soon after the incident. It is the case of the prosecution that he first requested his friend Mohd. Zakir (PW-15) to reach out to his siblings for help and then himself reached Delhi. He would join investigation during the course of the day. The evidence of PW-9 and PW-15 is of no consequence to the charge against the appellant as neither of them is privy to the events of the night or morning in question.

15. The IO prepared a death report (Ex.PW-16/D) with brief facts (Ex.PW-16/E) on 22.05.2009 and shifted the body to the government mortuary at Subzi Mandi, Delhi where it was identified formally by PW-9 and one Ramnath Paswan (a relative) before post-mortem examination. The

autopsy on the dead body was conducted by Dr. S. Lal (PW-5) Junior Specialist of Subzi Mandi mortuary attached to Aruna Asaf Ali Hospital, Delhi on 22.05.2009.

16. PW-5 prepared post-mortem examination report (Ex.PW-5/A) which was formally proved by him during the trial indicating the following ante-mortem injuries having been suffered by the deceased:-

“(i) Cut laceration 14 x 1 cms x oral cavity deep on left side face horizontally placed, margins contused with underlying fracture of facial bone. The wound is placed 5 cms below the eye.

(ii) Cut laceration 6 x 1 cms x bone deep over left side face including pinna, placed 1 cm above the injury no. 1 associated with fracture of facial bone.

(iii) Cut laceration 5 x 1 cms x bone deep over left side fact, horizontally placed, 1 cm below the injury no. 1.

(iv) Cut laceration 3 x 0.5 cms x bone deep of left temporal area, horizontally placed, just above the upper border of pinna.”

17. In the opinion of the autopsy doctor, the afore-described four injuries had been produced by heavy sharp cutting weapon and were sufficient, individually and collectively, in the ordinary course of nature to cause death. In his view, the death had occurred on account of shock due to ante-mortem cranio-cerebral damage associated to injury due to force produced by heavy sharp cutting weapon. The autopsy had been carried out from 11:30 A.M. onwards on 22.05.2009. As per the opinion of PW-5, the death had occurred 24 to 36 hours anterior to the said examination. This would substantially coincide with the time of assault (06:30 A.M. approximately of 21.05.2009) reported in the FIR.

18. The appellant is stated to have fled away from the scene and could not be immediately traced. It is claimed by the prosecution that he was arrested, pursuant to a secret information received by the IO (PW-16), at about 23:15 hours on 24.05.2009 from New Delhi Railway Station, in the presence of Head Constable Narain Dev (PW-2) and Arvind (PW-9), after personal search (vide Ex.PW-2/C) as per arrest memo (Ex.PW-2/B). It is stated that appellant was interrogated in the presence of PW-2 and PW-7 when he made a disclosure (Ex.PW-2/D). It is also the case of the prosecution that the shirt, T-shirt and trousers (Ex.PW-7/Article-2 collectively) worn on his person by the appellant at the time of his arrest were found bearing some blood-stains. The said articles of clothing of the appellant were got removed and taken into formal possession by the IO in the presence of PW-2 and PW-7 vide seizure memo Ex.PW-2/A.

19. The axe (Ex.PW-7/Article-1) was sent to the autopsy doctor (PW-5) for his opinion on 09.07.2009. The autopsy doctor recorded his opinion vide endorsements Ex.PW-5/B and Ex.PW-5/C, in continuation of the post-mortem report, confirming that the four ante-mortem injuries found on the dead body could possibly have been caused by the said weapon.

20. There is evidence to show that all the aforementioned exhibits including the blood sample of the dead body preserved at the time of autopsy were sent to Forensic Science Laboratory (FSL) of the Govt. of NCT of Delhi. The report of FSL has been proved vide Ex.PW-14/A and indicates that blood of human origin of Group 'A' was detected on the articles of bedding (mattress, towel, etc.) with axe also bearing blood of human origin, ABO grouping whereof could not be established. The three

pieces of the clothing, stated to be of the appellant, were also found by FSL to be bearing stains of human blood but again with no conclusive result as to the grouping.

21. PW-7 and PW-10 testified substantially along the lines of the prosecution case before trial court. They have been believed in their version incriminating the appellant in the deadly assault by him with the help of axe on the person of the deceased resulting in his death.

22. The argument of the appellant is that he has been falsely implicated on the testimony of “interested” witnesses. It is his case that he was arrested not from New Delhi Railway Station but picked up from an area described as Jeevan Park, Near Chanakya Place, Uttam Nagar close to Janak Puri whereafter the case was foisted on him. He denies his involvement in the crime and stated that nothing was recovered from him or at his instance.

23. The respondent State, on the other hand, seeks to defend the impugned judgment arguing that the credibility of the prosecution evidence in general, and PW-7 and PW-10 in particular, cannot be doubted and the impugned judgment and order on sentence deserve to be upheld.

24. The learned counsel for the appellant submitted that the evidence of PW-7 and PW-10 cannot be relied upon since each falls in the category of “child witness” whose word ought not be acted upon unless it is corroborated in material particulars by other evidence. She submitted that the sequence of events narrated by PW-7 is not in *sync* with what was his original version in the FIR and further that PW-10 contradicts PW-7 in

certain material particulars. She argued that it is difficult to believe, on the basis of testimony of these witnesses, that the fatal blows were given in their presence. She further submitted that PW-7 has tried to introduce new facts to the story, which render his evidence of doubtful veracity. In this context she argued that the statement of PW-7 about the mobile call from the appellant even while the police was engaged in preliminary investigation at the scene of crime is a fiction added rendering the case for the prosecution a suspect.

25. According to the version of the first informant (PW-7), the appellant had the habit of consuming liquor on daily basis and would not desist even though the deceased would ask him not to so indulge for the reason consumption of alcohol was spoiling the atmosphere of the house and disturbing the people in the neighbourhood. PW-7 further stated to the IO that due to this, his father (the deceased person) had asked the appellant to leave his house which had led to a quarrel between the two. PW-7 further stated that on 20.05.2009 after dinner his father had gone to sleep inside the room while he had gone to sleep on the terrace at about 11:00 P.M. and his brother (PW-10) continued watching television with the appellant having gone to sleep on the cot in the open courtyard at about 10:30 P.M. His brother would come up to the terrace for sleeping at about 02:00 hours past midnight.

26. According to the statement (Ex.PW-7/A) of PW-7 before the IO, he and his brother (PW-10) had woken up on 21.05.2009 at about 06:30 hours on hearing the voice of the appellant and when both of the them came down, they saw the appellant shouting, daring Rajender Shah (the deceased)

as to how he could ask him to leave the place and stating that he would find peace only after finishing him. PW-7 further stated that the appellant had gone inside the room, picked up the axe and, in the presence of PW-7 and PW-10, hit on the left-side cheek of their father, who was sleeping on the floor, causing bleeding injury. As per PW-7, the appellant had had left the axe behind and fled from the scene, on alarm being raised which had attracted the attention of the people from the neighbourhood. Someone from the neighbourhood informed the police which came and found Rajender Shah to have died on the spot.

27. PW-7 and PW-10 have deposed about the background facts including as to the habit of the appellant in habitual consumption of alcohol resulting in disturbing behavior, causing disquiet all around and to which their deceased father had objected asking the appellant to leave his house. It may be added here that the prosecution also relied on the testimony of Parmeshwar (PW-8) as to the habitual consumption of alcohol by the appellant resulting in frequent quarrels with the deceased.

28. The law does not prescribe any specific age as a determinative factor as to competence of a person to give evidence in the Court. Section 118 of the Evidence Act plainly declares that all persons are “competent to testify”, the exception to the said general rule being a case where such person is prevented from understanding the questions put or giving rational answers thereto, which phenomenon can occur for a variety of reasons that include tender years, extreme old age, disease (whether of body or mind) or “any other cause of the same kind”. This rule is reinforced by the explanation which uses negative expression to render even a “lunatic” to be competent

to testify unless for reasons of such lunacy his capacity of “understanding the questions put to him and giving rational answers to them” is impaired.

29. It is well settled law and has been consistent view of the Courts now for long, that a child, even one of tender years, is a competent witness and his evidence is not to be rejected only because he is a child, provided, of course, that he passes the muster of Section 118 Evidence Act. The testimony of a child witness may form the sole basis of conviction if the Court is satisfied that it has the requisite intellectual capacity to understand questions and give rational answers thereto and is reliable, this even in the absence of oath. The evidence of a child witness and its credibility depends on circumstances of each case. There is no rule or law that in every case the evidence of a child witness must find corroboration before a conviction can be allowed to stand on its basis. At the same time, the Courts have been conscious of the fact that a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. Thus, as a rule of prudence, evidence of a child witness is generally evaluated more carefully and with greater circumspection. The Courts search for corroboration to the testimony of a child witness from other dependable evidence on record, after ruling out the possibility or likelihood of the witness having been tutored. [*Rameshwar vs. The State of Rajasthan* AIR 1952 SC 54; *Dattu Ramrao Sakhare and Others vs. State of Maharashtra* (1997) 5 SCC 341; *Panchhi and others vs. State of U.P.* (1998) 7 SCC 177; *Suryanarayana vs. State of Karnataka* (2001) 9 SCC 129; *Ratansinh Dalsukhbhai Nayak vs. State of Gujarat* (2004) 1 SCC 64; and *Golla Yelugu Govindu vs. State of Andhra Pradesh* (2008) 16 SCC 769)]

30. Learned counsel for the appellant argued that the evidence of PW-7 and PW-10 ought not be relied upon since they are children of young age and possibility of them having been tutored cannot be ruled out. It was her submission that the narration of the events by one is at variance from the account given by the other and in view of the discrepancies it cannot be said with certainty as to whether they were actually present at the scene when the fatal assault was inflicted.

31. PW-7 and PW-10 may have been persons of young age (12 years and 13 years respectively) but indeed they cannot be described as children of tender years. Learned trial Judge had had the benefit of observing their demeanor and has found each of them possessing requisite intellectual capacity to comprehend what is asked and give rational answers thereto. Their competence to testify thus cannot be doubted.

32. It does appear that testimony of PW-7 in the Court was not wholly in sync with the version in Ex.PW-7/A attributed to him, with regard to the reasons on which account he had come downstairs in the morning of 21.05.2009. In FIR, he had indicated that his sleep and that of his brother (PW-10) was disturbed waking them up at about 6:30 AM on hearing the shouts of the appellant. In contrast, in the Court, during his examination-in-chief he spoke about waking up at about 6:00 AM "in routine". According to the FIR, PW-7 had come downstairs accompanied by his brother PW-10 both moving together. In the Court, PW-7 spoke only about himself and when questioned in this regard during his cross-examination explained that PW-10 had come down after some time. PW-10, on the other hand, confirmed the original version of PW-7 by stating that both of them had

woken up and come downstairs on hearing the cries. Since the material on record indicates the deceased was assaulted in sleep, the cries heard by PW-7 and PW-10 would be the noise created by the appellant, the person who had assaulted their father with the axe.

33. PW-7 had reported in Ex. PW-7/A that in his presence the appellant had brought out the axe and hit on the face of his father who was sleeping on the floor. In his examination-in-chief in the Court PW-7 deposed that on entering the room he had found his father bleeding from the injury on the left cheek even while the appellant was standing nearby with an axe in his hand. He was cross-examined by the learned Prosecutor when he confirmed the original version stating the injury with axe was inflicted in his presence. PW-10 corroborated his word stating that he was also present when the axe was used by the appellant for the assault. What is pointed out, however, in his testimony by the counsel for the appellant is the assertion that only one blow was given whereafter both the brothers had started shouting, in the wake of which the appellant had run away leaving the axe behind.

34. The above-noted variations in the statements of PW-7 and PW-10, in our judgment, are not such as can lead to the veracity of PW-7 and PW-10 being doubted. It is to be borne in mind that they are young sons of the deceased who were living under the same roof also with the appellant. In their presence, their father had been virtually slaughtered by a close member of the extended family. The incident had occurred on 21.05.2009. They were called to the Court for giving evidence more than a year after occurrence. It is quite natural that over the period the memory as to the

exact sequence of the events may have become slightly fuzzy in the minds of these children. The broad crucial facts, however, remain the same and their testimony is consistent with each other fully matching, on all fours, with the case originally reported.

35. It is quite possible that noises which made at least PW-10 wake up though apparently created by the appellant in the courtyard below would not have been so loud as to awaken his younger sibling (PW-7). It needs to be remembered that the said noises had not disturbed even the deceased person who was sleeping inside the room close to the said open courtyard. It is not necessary that PW-7 and PW-10 must have woken up together so as to be believed as eye-witnesses to the occurrence. The sleep of one may have been disrupted by the noise and of the other in routine. We would rather believe both PW-7 and PW-10 about their presence in the houses-hold and they having come downstairs in the early morning hours.

36. Having regard to the nature of the injuries found on the dead body, it is clear that the deceased did not have any chance to escape. Undoubtedly, he was at the receiving end of more than one blow by the axe. The autopsy report takes note of four serious injuries in the head region. The depth to which lacerated wounds were inflicted shows the amount of force that was applied. Such injuries resulting in death on the spot would have been inflicted in quick succession. The entire incident thus happened in a matter of few moments. In these circumstances, it is not fair to doubt the testimony of PW-7 and PW-10 suspect only because they were speaking of one axe blow. They were children of the victim, and having regard to their young age, would have been horrified by the gory scene playing out in front

of their eyes. In such fact situation, it is not fair to expect that they would be counting the number of axe blows of which their father had been at the receiving end.

37. PW-10 spoke about an effort on his part to catch hold of the appellant. It is argued by the counsel for the appellant that in this process he would have received some blood stains on his clothes. The submission is that the clothes of PW-10 were neither seized nor are shown in any other manner to be recipient of blood stains of the deceased.

38. We are not impressed with this line of argument. Firstly, it is not necessary that at the time of assault with axe on the person of the deceased the clothes of the appellant would have received such amount of blood as could possibly be passed on to the clothes of any other person who came in its brush. Secondly, the effort, if made, to catch hold of the appellant would be part of an effort to block the attack wherein the children of such young age would hardly be in a position to do anything but clutch to some part of the clothing of the assailant. This effort need not necessarily result in the blood stains passing on from the assailant to the eye-witness.

39. It does appear that PW-7 has spoken about the mobile phone call from the appellant even while the police was engaged in investigation at the scene of crime. As per PW-7, the appellant from the other end of the phone call had asked him "*film dekhkar maja aaya?*". This phone call, if made, would undoubtedly be designed to instill fear in the mind of the child who had witnessed the crime. Such, phone call, if received would ordinarily be shared by the child witness with the police official. But, for all we know, the phone call, if received, may have had the intended effect on the mind of

the child creating fear psychosis. If so, it is possible that the child may not have immediately shared such information with the police official. There are possibilities of all kinds galore on this count. The fact, however, remains that such phone call was not mentioned in the statement of PW-7 which formed the basis of the FIR. In these circumstances, we would not give any credence to it. At the same time, we reject the arguments that this part of the testimony of PW-7 is a figment of imagination rendering him unreliable.

40. The counsel for the appellant then pointed out that in the seizure memo of the blood stained axe (Ex.PW-7/B), the date mentioned against the signatures of the IO as 29.05.2009. The argument is that since the incident had occurred on 21.05.2009 and the entire investigation at the scene of crime was concluded at the same date, the axe Ex.PW-7/3 has been planted later. We do not agree. The date 29.05.2009 is clearly a clerical error. Without doubt, such error should not have occurred. But then, we have available on record enough material to show that the said weapon of offence was actually found near the dead body on day one. The photographs Ex.PW-6/A-1 to PW-6/A-31 confirm this fact beyond the pale of all doubts. The *rukka* (Ex.PW-16/B) in which the IO described the crime scene as noticed by him after arrival at the scene mention the blood-stained axe lying near the dead body. This description found its way in the FIR (Ex.PW-4/A) which had been registered by 9:30AM of 21.05.2009. At the time of seizure of the axe, its sketch (Ex.PW-11/A) was also prepared. This document confirms the said exercise to have been carried out on 21.05.2009. Therefore, we reject the theory of the weapon of offence having been planted.

41. Arguments were also raised as to the discrepancies in statements of PW-2 and PW-7 with regard to the time and place of arrest of the appellant. These arguments were stretched so as to raise doubts also about the seizure of clothes, said to be blood stained, of the appellant. Since no incriminating evidence has come forth from the clothes worn by the appellant at the time of arrest, we do not think this line of argument can be of any assistance to the appellant.

42. The fact remains that the evidence showing that the appellant was not found in the house where fatal attack on the deceased took place is not refuted. The police case is that the appellant was traced on 24.05.2009 at about 11:15 PM at New Delhi Railway Station when he was arrested (Ex.PW-2/B). The appellant, on the other hand, has claimed that he was picked up from Jeevan Park near Chanakya Puri, Uttam Nagar. He does not dispute the date of the arrest. Even if his version about the arrest from Uttam Nagar were to be believed, it only reinforces the prosecution case that he had suddenly abandoned residence in the house of the deceased where he had been concededly living during preceding fortnight. This inference only leads to natural corollary that the appellant had gone away from the scene of crime immediately after occurrence to render himself unavailable. Such conduct is indicative of guilty mind in the back drop of the afore-noted circumstances, but has not been explained by the appellant in any manner.

43. Aside from the deceased, the appellant was the only other adult member of the house-hold. He concededly was living under the same roof with the family and was present in the house on the night in question. Soon

after the offence came to light he went missing, to be arrested three days later. As noted earlier there is no explanation offered for his absence for such duration. PW-7 and PW-10 are closely related to him. Their presence in the house cannot be doubted. They were witnesses, *inter alia*, to the occurrence, in as much as the assault took place in the early hours of 21.05.2009 around the time when they had woken up and come down stairs. PW-7 and PW-10 have come out as witnesses whose word can be trusted. There is nothing on record to doubt that they were tutored at any stage. They have corroborated each other describing the event, pointing finger towards the appellant. They have no reason to falsely implicate the appellant who is brother of their mother and who was living with them as part of the family. In the given facts and circumstances, the absence of further corroboration in the nature of bloodstains on the clothes of the appellant is inconsequential. We accept the eye-witness account of PW-7 and PW-10 and uphold the findings returned by the trial judge that the murder was committed by the appellant.

44. There is no dispute as to the cause of death. We accept the opinion of the autopsy doctor that the injuries were inflicted with the axe which was found lying nearby. Given the nature of injuries we accept the case of the prosecution that it was a case of culpable homicide amounting to murder. The injuries with axe inflicted in the head region, a vital part of the body, could not have been caused but with the intention of causing death, within the meaning of the first clause of Section 300 IPC. The appellant has been rightly convicted and sentenced under Section 302 IPC.

45. In above facts and circumstances, the ocular testimony of PW-7 and PW-10 has been rightly believed and acted upon. The guilt of the appellant has been proved beyond the pale of all doubts. We, thus, find no error or infirmity in the judgment of the trial court.

46. For the foregoing reasons, the appeal is found devoid of substance. It is dismissed. The appellant be informed of the result through the Superintendent Jail, and a copy of this judgment be delivered to him.



**R.K.GAUBA
(JUDGE)**

**SANJIV KHANNA
(JUDGE)**

JULY 16, 2015
ik/vld/mr