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HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE DEEPA SHARMA

SANJIV KHANNA, J.

Ravi and his mother Bimla, by the impugned judgment dated 4th September, 2010 stand convicted under Section 302 read with Section 34 of Indian Penal Code, 1860 (IPC, for short), for causing death of Rajesh son of Om Prakash. By order of sentence dated 7th September, 2010, they have been sentenced to undergo imprisonment for life and fined Rs.10,000/- each and in default to undergo imprisonment for a period of 3 years. The impugned judgment arises out of charge-sheet filed in FIR No. 303/2008, P.S. Subzi Mandi.

2. The impugned judgment acquits 7 others from the charge under Section 302 read with Sections 120B IPC and convicts them under Sections 323/506 read with Section 34 IPC. By the order on sentence

dated 7th September, 2010, the said 7 accused were sentenced to the period undergone for the offence under Sections 323 read with Section 506 IPC. The State and the said accused have not preferred any appeal. Thus, in the present appeal, we are only concerned with conviction of the appellants Ravi and Bimla under Section 302 read with Section 34 IPC.

3. The fact that deceased Rajesh had died a homicidal death as a result of bullet injury on 30th October, 2008 stands proved from the MLC (Ex. PW30/A) of the Hindu Rao Hospital, Delhi. We shall be referring to the said MLC subsequently, but the factum that the said MLC, which record the name of the patient as unknown, pertains to the deceased is proved from the oral testimonies of the Investigating Officer, Inps. Virender Singh (PW30) and Rakesh Kumar (PW1) brother of the deceased Rajesh. Post mortem on the body of the deceased Rajesh was conducted by Dr. S. Lal (PW2), Specialist Forensic Medicine, Aruna Asaf Ali, Govt. Hospital, Mortuary, Subzi Mandi. He has deposed that the body had external injuries in form of reddish abrasion of 0.5 x 0.4 cm over left side forehead and multiple reddish abrasions in the area of 2 x 1.5 cm over bridge of nose and a fire arm entry wound of size 1.6 x 1.6 cm cavity deep present over the left side upper chest. The bullet was recovered from the soft tissue after it had entered the chest cavity and perforated the apical lobe of the left lung, the ascending aorta and then had entered right side of the chest cavity perforating the apical lobe of the right lung. The bullet had finally lodged itself in the soft tissue of the fourth inter coastal space. There was charring around wound indicating that the

fire arm was fired close of the chest i.e. within the range of the flame of the fire arm and was probably a contact wound.

4. The place of occurrence is also undisputed and stands proved beyond doubt from the oral testimonies of Rakesh Kumar (PW1) brother of the deceased, Monto (PW3) mother of the deceased, a Anita (PW4) a neighbour, SI Amar Singh (PW6) who was posted with the mobile crime team, Const. Ramesh (PW7) who had taken photographs (Ex. PW7/1 to 10), ASI Sunder Singh (PW12), and Insp. Virender Singh (PW30) I.O. A fire arm was used and the injury was caused in front of house No. T-1209 Kabir Basti, Delhi. The said address/house was the place of residence of the two appellants. The photographs (Ex. PW7/1 to 10) show blood spread over the lower portion of the staircase and the platform and outside on the street in front of the house. Blood at the spot is indicated and shown in the unscaled site plan (Ex. PW30/B) and the scaled site plan (Ex. PW5/A). Scaled site plan was prepared by SI Mahesh Kumar (PW5), Draftsman, Crime Branch, Police Headquarters.

5. At this stage, we deem it appropriate to reproduce relevant portion from the statement of appellant Ravi under Section 313 of the Code of Criminal Procedure 1973, (Cr.P.C for short) which reads:-

“I am innocent and I have been falsely implicated in this case. In fact on the day of incident at about 9.30 p.m. or 9.45 p.m. I along with my brother Vijay were present in our house when Ramesh S/o Om Prakash along with his brothers Ravi, Sonu and Sanjay, Vikash and other two – three persons came to our house and they were shouting. I heard the noise and they had knocked our door also. My brother Vijay opened the door and thereafter I heard my brother Vijay raising an alarm Bacho Bacho and when I came out I saw the Vijay was being beaten up and he was

stabbed by deceased Rajesh S/o Om Prakash and his brother Ravi was having a desi katta. I went to save my brother and on the stairs I caught hold of said Ravi and scuffle took place between me and all the accused persons and in the meanwhile Rajesh S/o Om Prakash stabbed me at my buttock. During the scuffle, the said desi katta went off and Rajesh S/o Om Prakash sustained injuries. They had come prepared with arms and ammunition and with knives and they had stabbed my brother Vijay and me and they had trespassed in our property.

After the incident in consultation with other persons they have concocted a false story and falsely implicated us in this case. I had made a complaint to the police and on my complaint FIR no. 304/08 with PS Subzi Mandi u/s 307/324/34 IPC was registered.”

6. As the aforesaid statement is in serialim and accepts the evidence on record i.e. oral testimonies as well as photographs (Ex. PW7/1 to 10), that the deceased Rajesh died as a result of fire arm wound. However, the appellant Ravi had stated that the deceased along with others were aggressors who had knocked at the door of their house and harmed Vijay by beating and stabbing him. The appellant Ravi had claimed that the deceased Rajesh had brought the fire arm i.e. desi katta and when the appellant Ravi tried to save his brother Vijay, a scuffle took place. The desi katta went off and the deceased Rajesh sustained the fatal injury. Ravi claimed that he was stabbed on his buttock by the deceased Rajesh.

7. Appellant Bimla in her statement under Section 313 Cr.P.C. had denied her involvement and claimed that the offence had not taken place in her presence. She was not present in the house on the date and time of occurrence.

8. A cross FIR namely FIR No. 304/2008 was registered at P.S. Subzi Mandi under Section 324/307/34 IPC on the complaint of Ravi,

the first appellant herein. Pursuant to the chargesheet filed, Sanjay, Sonu, Ravi @ Babli s/o of Om Prakash and Vikas Sonar were tried but stand acquitted by the same Additional District & Sessions Judge who had pronounced the present impugned judgment. As per the mandate of the Supreme Court on conduct of cross cases in *Sudhir vs. State of M.P. (2001) 2 SCC 688*, the evidence in the two cross FIRs were recorded separately on different dates. We have not examined and looked into the evidence in FIR 304/08, which has not been produced before us or even shown to us.

9. This brings us to the core issue and controversy whether the appellant Ravi had acted in self defence and, therefore, is not guilty of having committed murder of Rajesh or is guilty of a lesser offence and secondly, whether Bimla shared common intention with him and, therefore, is guilty of the offence of murder,

10. There is evidence to show that appellant Ravi and Vijay had got themselves medically examined at Lok Nayak Hospital, New Delhi. The trial court has referred to the injuries mentioned in the certified copies of the MLC's exhibited in the cross F.I.R No.304/08. The said MLC's were admitted on record vide order dated 9.8.2008 and collectively marked as DX-1. The trial court, assigning several reasons, held that the injuries were superficial and self-inflicted. MLC of appellant Ravi refers to date and time of examination as 11.30 PM on 30th October, 2008. He went to the LNJP Hospital on his own with alleged history of assault at 10.15 PM at his residence. He had wound on right glottal region approximately 2 x 1 cm and bite marks on his two hands. The MLC of Vijay refers to the alleged

history of stab wound at 10.15 PM today, i.e. 30.10.2008, at his residence. The patient had 2 cm incised wound over abdominal wall and superficial laceration 10 cm over epigastric region and 5 cm over chest. The patient, as per the MLC, was examined at 11.15 PM. Thus, the two MLCs (Ex. DX-1) record the time of assault as 10.15 PM on 30.10.2008. The purported injuries suffered by the appellant Ravi have been described as superficial, though purported injuries suffered by Vijay stand described as grievous. We have serious doubts on the said classification in the case of Vijay. Illustratively, the MLC (Ex. PW30/A) of the deceased records that he was examined at 10.10 PM on 30th October, 2008 in the Hindu Rao Hospital, Delhi. The said MLC record that the patient, i.e. deceased Rajesh was brought dead with a gunshot injury over left chest. Attempts were made to revive him by IV-fluids, intubation etc., but despite resuscitative measures, the patient could not survive and was declared dead at 10.30 PM. The patient was accompanied by a mob of 150 people who forcefully took away the dead body along with a bed from the casualty. Entire staff along with security guards and local police of P.S. Subzi Mandi were present, when the said incidence took place. The aforesaid MLC (Ex. PW 30/A) was written at 11.25 PM.

11. The aforesaid MLC (Ex. PW30/A) explicit that the deceased Rajesh was brought to the hospital at 10.10 PM and was declared as brought dead at 10.30 PM. There was also a huge mob of about 150 persons who had brought the patient. The time of occurrence and of gunshot as recorded in the MLC (Ex. PW 30/A), secures affirmation

from DD entry no. 36A (Ex. PW12/A) which refers to a complaint/communication being made at 9.55 PM. ASI Sunder Singh (PW12) has deposed that at 9.55 PM on 30th October, 2008, he was marked DD No. 36A and had reached the spot, where blood was found splattered on the street etc. On enquiry, he learnt that Rajesh has been shot by someone and removed to Hindu Rao Hospital.

12. In these circumstances, the time gap between 10.10 PM when the deceased Rajesh was taken to Hindu Rao Hospital, and 11.15/11.30 PM when Vijay and Appellant Ravi were examined at Lok Nayak Hospital, become extremely relevant and apposite. This time gap and difference demonstrates and signifies that the injuries mentioned in MLC's of the appellant Ravi and Vijay were not simultaneously with the firearm injury. The time crevice is substantial. Thus, the possibility of self-infliction or remote possibility of subsequent retaliation, post the occurrence resulting in Rajesh's fire arm injury should be accepted. The appellant Ravi had tried to explain the time gap by stating that out of fear and noticing the crowd outside Hindu Rao Hospital, he did not enter to get himself examined. The trial court had rightly rejected the said evidence noticing that there were several other hospital like Teerath Ram Hospital in the vicinity. Thus, the explanation of the appellant Ravi for not going to the adjacent and nearby hospitals is an afterthought and not plausible. We deem it appropriate to reproduce the reasoning of the trial court which reads: -

“25.I have no doubt in my mind that these injuries were self inflicted by accused Ravi to create a sham defence. The bite marks on his hands, if any, would indicate that somebody tried to flee from his clutches/grip or snatch something from him. Surprisingly,

this witness if he sustained any injuries did not go to any hospital nearby his place of residence and chose to get himself admitted after more than 1½ hours of the incident at LNJP Hospital which is about 10-12 km from his place of incident. So far as the injuries on the body of accused Vijay is concerned, that has been explained by PW4 Anita but PW 4 was not asked how or where he was stabbed. In my considered opinion, the 2cm incised wound on the stomach was also self inflicted. The wound only pierced into the outer wall and not penetrate enough so as to cause any serious damage. PW 4 too reached the hospital after more than one and half hour and there is no evidence who took them to the hospital located about 10-12 kms. from the place of occurrence.”

13. Noticeably, the crime team report (Ex. PW6/A) which had reached the place of crime and remained there between 11.30 PM to 12.30 AM, records the time of occurrence as 9.45 PM and further blood was spread at two places A & B, confirming the time mentioned in the MLC of deceased Rajesh (Ex. PW30/A). The distance between the two blood spots was 3 yards. Ex. PW6/A, the crime team report further mentions that the deceased and victims were already taken to the hospital. The report does record that blood at spots A and B were of different persons, but this assertion is merely hearsay as the crime team could not have conducted any test to ascertain the blood group or visually deciphered whether the blood was of the same person or different persons. Basis of the said assertion is not indicated. It is apparent from the MLCs of the appellant Ravi and Vijay (Ex. DX-1) that they had not suffered blood loss as a result of the said injuries and their blood could not have spilled on the street etc. as seen in the photographs (Ex. PW7/1 to 10).

14. This brings us to the oral testimonies of Rakesh Kumar (PW1), Monto (PW3) and Anita (PW4), the eye-witnesses. Three of them in

seriatim had deposed that on 30th October, 2008 they were attending a function of their cousin sister namely daughter of Uncle Titu who was also their neighbour. PW1, Rakesh has deposed that at about 9.30 PM, Rajesh (brother of Ravi) and Vijay @ Tofaan (correctly identified in court) came there and took away Rajesh (deceased) with them. When the deceased did not return, he became suspicious and went to house of Ravi, along with Anita (PW4). They saw that Rajesh (deceased) was being accosted by Nanhe and Vijay Toofan. Bimla brought two pistols from the house and gave them to the appellant Ravi and his brother Rajesh (acquitted from the charge under Section 302). Ravi fired at the deceased Rajesh, whereas his brother Rajesh fired in the air. Sardara and Vijay, other brothers of Ravi, had knives in their hands and warned the public. Sunil and Pradeep had caught hold of Rakesh (PW1). Anita (PW4) grabbed with the appellant Ravi and was able to take the pistol. She was thrown down by Rajesh (brother of appellant Ravi), who, then snatched the pistol from her. Deceased Rajesh was taken in a PCR Gypsy to Hindu Rao Hospital, where he was declared as brought dead. Rakesh (PW1) in the cross-examination had contradicted himself stating that he had not told the Investigating Officer that the appellant Bimla had brought two pistols and given it to Ravi and Rajesh. This is a relevant contradiction in the case of the appellant Bimla.

15. Monto (PW3), mother of the deceased, affirmed about the function and the factum that at 9.30 PM, deceased Rajesh had gone with the two brothers of the appellant Ravi, namely Rajesh and Vijay@ Toofan. Subsequently, one child came running and informed

about the fight between the deceased Rajesh and Ravi and his brothers. Terrified, PW3 ran towards the spot and Anita (PW4) and others followed her. On reaching at place of occurrence, she saw the deceased Rajesh being beaten up by appellant Ravi and others. Rakesh, her another son, was also present there but held captive. She was pushed hard by Vijay@Toofan and fell down. In the meanwhile appellant Bimla went to the roof of her house and brought two pistols and gave them to the appellant Ravi and Rajesh. Appellant Ravi fired at the deceased Rajesh. Blood started oozing out and the deceased Rajesh fell into her lap and she became semi-unconscious. In answer to a leading question, Manto (PW3) had stated that Anita (PW4) had snatched the pistol from the appellant Ravi, but his brother Rajesh grapple with her and repossessed the pistol. She affirmed that there was no prior enmity between the two families and Rajesh brother of appellant Ravi, was on friendly terms with her deceased son Rajesh. However, a year back quarrel had taken place between PW3's other son Sonu and the appellant Ravi.

16. Anita (PW4), who has been described as sister in law, was in fact a neighbour and not a blood relation of the deceased Rajesh. She had deposed on similar lines that the deceased Rajesh had left the lagan function of daughter of Titu and thereafter they learnt about the fight. She followed Monto (PW3) towards Arya Samaj Mandir and she heard shouting and abuses being hurled. She saw appellant Ravi, who came down from the steps and fired at deceased Rajesh. She ran towards adjoining street but was chased by Ravi and another boy. The appellant Ravi retrieved the pistol from her and ran away. On

seeing wounded Rajesh she became unconscious. Police arrived after some time and the deceased Rajesh was removed to hospital in a Gypsy.

17. No doubt, Rakesh (PW1) and Monto (PW3), are brother and mother of the deceased but this cannot be a ground to summarily reject their testimonies. The testimony of Anita (PW4) affirms their version that the deceased Rajesh had left lagan ceremony of daughter of Titu and had gone to the residence of appellant Ravi where firing took place. Testimony of Anita (PW4) is credible and forthright. In fact, PW4 scanted to accept that that she had seen appellant Ravi on the terrace with his mother Bimla. Subsequently, Ravi came down and fired on the deceased Rajesh. Importantly, Bimla at that time was trying to pacify the agitating boys. On cross-examined by the public prosecutor, PW4 denied that she had stated that the appellant Ravi and his brother Rajesh had assaulted deceased Rajesh and then Bimla came out with pistols and handed them to Ravi and his brother Rajesh. She denied that Sardare was having a knife and Vijay was assaulting the deceased Rajesh. She denied the suggestion that Neeraj @ Nanhe, Vijay Kumar, Pradeep @ Kaku, Ravinder @ Sardare and Sunil @ Sand were present on the spot. On cross-examination on behalf of the appellant Ravi, she asserted that Vijay had sustained stab injuries at the hands of Sanjay, a boy who lived in the neighbourhood. She fell down while trying to snatch the pistol from appellant Ravi. At that time Vijay had come to save appellant Ravi and tried to grapple. In this process, Sanjay stabbed Vijay to save her. PW4, however, accepted that she had not stated these facts to

the police earlier or in examination in chief. She denied the suggestion that the deceased Rajesh had stabbed Vijay.

18. At this stage, we would like to highlight discrepancies on the role of appellant Bimla. Monto (PW3) had stated that the appellant Bimla had gone to the roof of the house and brought two pistols and gave them to her two sons Ravi and Rajesh. Rakesh (PW1) had stated that Bimla Devi had brought two pistols and given them to the appellant Ravi and his brother Rajesh. The testimony of Anita (PW4) is to the contrary and opposite. Anita (PW4) deposed that Bimla was trying to pacify the boys. Given the aforesaid contradiction, we are inclined to give benefit of doubt to appellant Bimla by relying upon testimony of Anita (PW4).

19. Now, we would like to deal with some of the other contentions raised by the appellant Ravi, which we feel, are inconsequential exaggerations or minor discrepancies. Some contentions also relate to the investigation by the police. These, we feel, in the present case would not result in acquittal of the appellant Ravi. Rakesh (PW1) in his cross-examination on behalf appellant Ravi had stated that no injuries were suffered by Vijay. Whereas Anita (PW4) had stated that injuries were caused on Vijay by one Sanjay. As noticed above, she had also given reasons for the said injuries. Manto (PW3) had professed ignorance. We have already commented and dealt with the time of occurrence in which the gunshot wound was suffered by the deceased-Rajesh and the time of purported injuries mentioned in the MLC's of appellant Ravi and Vijay (Ex. DX-1). We have noted the observation of the trial court that the injuries were self-inflicted and

observed two eventualities that either the injuries were self-inflicted or were suffered by the appellant Ravi and Vijay pursuant to possible retaliation or retributive attack subsequent in point of time.

20. Rakesh (PW1), Monto (PW3) and Anita (PW4) had all stated that the deceased Rajesh was removed to hospital in PCR Gypsy. Rakesh (PW1) in examination in chief had stated that when he reached at place of occurrence, the said Gypsy was already parked there. However, in the cross-examination he stated that PCR Gypsy arrived subsequently to the call made by the appellant Ravi. He subsequently claimed that appellant Ravi brought the policeman from the PCR. Thereafter, the appellant Bimla brought the pistols and his brother Rajesh was killed in the presence of the police. He asserted that firing had taken place in the presence of the policeman. This is clearly an exaggeration and not a fact supported by Monto (PW3) or by Anita (PW4) who had stated that deceased Rajesh was moved in the PCR Gypsy to the hospital. Pertinently, Rakesh (PW1) had contradicted himself, as in the first paragraph of cross examination he had stated PCR Gypsy arrived subsequent to the calls made by the appellant Ravi. We agree and are inclined to believe the first part of the statement of Rakesh (PW1) to the effect that a PCR van stationed nearby had taken the deceased to the hospital and several others had also accompanied the deceased at that time. Failure of the Investigating Officer to examine the said officer of PCR van etc. in the facts of the present case would not be fatal. We accept that the Investigating Officer should have examined and verified the said aspect, and also procured copy of the police control room record, but

this is a failure, which at best was an irregularity in the investigation. This would not result in acquittal of the appellant Ravi.

21. Role of police in investigation is imminent, crucial and prominent bedrock in the criminal adjudication mechanism. The ineffective or improper investigation as a result of acts of omission or commission, deliberate or otherwise, by the Investigating Officers, have confounded the court. Whether or not the lapse is a mere irregularity which would not result in acquittal but an illegality which would adversely affect the case of the prosecution depends upon several factors including the conduct of the Investigating Officer. *Dayal Singh vs. State of Uttranchal* (2012) 8 SCC 263, contains discussion on the said aspects in the following words:

“19. Now, we will deal with the question of defective or improper investigation resulting from the acts of omission and/or commission, deliberate or otherwise, of the investigating officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions and then to examine its effects. In order to examine this aspect in conformity with the rule of law and keeping in mind the basic principles of criminal jurisprudence, and the questions framed by us at the very outset of this judgment, the following points need consideration:

- (i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation.
- (ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution.
- (iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.
- (iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions in regard to taking of penal or other civil action against such officer/witness.

20. In order to answer these determinative parameters, the courts would have to examine the prosecution evidence in its entirety, especially when a specific reference to the defective or irresponsible investigation is noticed in the light of the facts and circumstances of a given case.”

22. In *Hema vs. State* (2013) 10 SCC 192, the Supreme Court analysed the law on the subject and reiterated that if the evidence adduced is reliable, the contaminated conduct of the police officers and the defective investigation would not entitle the accused to be acquitted after observing:

“14. It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In *C. Muniappan v. State of T.N.* [(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402], the following discussion and conclusions are relevant which are as follows: (SCC p. 589, para 55)

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

16. In *Gajoo v. State of Uttarakhand* [(2012) 9 SCC 532 : (2012) 3 SCC (Cri) 1200 : (2012) 2 SCC (L&S) 782], while reiterating the same principle again, this Court held that: (SCC p. 540, para 19)

“19. ... A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court.”

17. Since, the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases: (*Gajoo case* [(2012) 9 SCC 532 : (2012) 3 SCC (Cri) 1200 : (2012) 2 SCC (L&S) 782] , SCC pp. 540-44, para 20)

“20. In regard to defective investigation, this Court in *Dayal Singh v. State of Uttaranchal* [(2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)”

23. The aforesaid decisions highlight as to when defective investigation is considered to be fatal. These are cases where certain factual aspects are held back or not brought on record resulting in grave suspicion or as a consequence have resulted in incompleteness or uncertainty. These are cases where queries remain unanswered and defective investigation has resulted in confusion or ambiguity. However, in every case of defective investigation an accused cannot be acquitted, if the evidence produced dehors the defective investigation, is sufficient to bring home the guilt beyond reasonable doubts. In such matters, accused cannot take advantage of defective investigation, unless defective investigation has cast reasonable doubt about the prosecution case.

24. It was suggested to us that the deceased Rajesh was wearing a vest and was not wearing party clothes as per the testimony of Dr. S. Lal (PW2) who had conducted the post mortem. The post mortem was conducted after death of Rajesh and after he had been given medical treatment. Rakesh (PW1) was categorical and in his cross-examination had asserted affirmatively that the deceased Rajesh was wearing a party dress which was a white shirt and a white pant. The serological report Ex. PW29/A and B, stated that the human blood of group A was found on the clothes of the deceased as well as the cemented portion and gauze of the cloth sample lifted from the earth. No doubt blood sample of Vijay or appellant Ravi were not collected or sent for serological examination, but this should not affect the judicial finding in view of the clear testimony of eye-witnesses Rakesh (PW1), Monto (PW3) and Anita (PW4). In the present case, the weapon of offence was not found but this again is not mandatory for accepting the prosecution case. The prosecution version is that the deceased was killed by a fire arm injury and this has been amply proved by post mortem report Ex. PW2/A as well as oral testimonies of Rakesh (PW1), Monto (PW3) and Anita (PW4).

25. The assertion that the small child was not examined, also does not impel us to reject the prosecution version. Rakesh (PW1) in his examination in chief stated that he had not informed the police about the small child as he did not feel that this was a relevant or material fact. However, in the court deposition the said fact was stated by Rakesh (PW1) and also by Monto (PW3).

26. In view of the aforesaid discussion, we partly allow the present appeal and conviction of Bimla is set aside as she is entitled to benefit of doubt. Conviction and sentence of appellant Ravi is upheld and sustained.

27. The appeal is disposed of. Trial Court record be sent back.

(SANJIV KHANNA)
JUDGE

(DEEPA SHARMA)
JUDGE

January 22nd, 2015
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