

\$~R-43-C, D, E & F

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

% *Judgment reserved on : 11.12.2015*

Judgment delivered on : 22.12.2015

+ CRL.A. 1220/2012
RAMESH CHAND

..... Appellant

Through Ms.Geeta Luthra, Sr. Advocate
with Mr.V.N.Jha, Mr.Sanjeev
Sahay and Ms.Divya Soni,
Advocates.

versus

C.B.I.

..... Respondent

Through Mr.Narender Mann, Spl. P.P.
along with Mr.Manoj Pant,
Advocate.

+ CRL.A. 1167/2012
INDER SINGH RANA

..... Appellant

Through Mr.Mukul Gupta, Sr. Advocate
with Ms.Saumya Sharma,
Advocate.

versus

C.B.I.

..... Respondent

Through Mr.Narender Mann, Spl. P.P.
along with Mr.Manoj Pant,
Advocate.

+ CRL.A. 1423/2012 & Crl. M. (B) No.98/2015
SATISH KUMAR KADIAN

..... Appellant

Through Mr.Gurbaksh Singh and
Ms.Richa Advocates.

versus

C.B.I.

..... Respondent

Through Ms. Rajdipa Behura, SPP along
with Ms.Monica Gupta, Adv

+ CRL.A. 1066/2012
KEWAL KISHAN ARORA

..... Appellant

Through Appellant with his counsel
Mr.Mukesh Gupta, Advocate.
versus
C.B.I. Respondent
Through Ms. Rajdipa Behura, SPP along
with Ms.Monica Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 These appeals are directed against the impugned judgment and order on sentence dated 09.8.2012 and 18.8.2012 respectively wherein out of the four appellants three of them namely Satish Kumar Kadian, Inder Singh Rana and Ramesh Chand were convicted for the offences punishable under Sections 323/342/304/34 of the IPC as also under Section 218 read with Section 109 of the IPC. The fourth appellant K.K.Arora had been convicted for the substantive offence under Section 218 of the IPC. Accused Jagmal Singh Yadav had died during the course of trial and the proceedings stood abated against him. The maximum sentence imposed upon Satish Kumar Kadian, Inder Singh Rana and Ramesh Chand was RI for a period of 10 years. This was for their conviction under Section 304 of the IPC. Each of them had also been sentenced to pay a fine of Rs.25,000/- which was to be paid by

way of compensation to Kashmiri Devi, widow of the deceased Gopi Ram. In default of payment of compensation they were to undergo SI for 1 year. For their conviction under Sections 323/342 of the IPC each of them had been sentenced to undergo RI for 1 year for each offence. For their conviction under Section 218 of the IPC read with Section 109 of the IPC each of them had been sentenced to undergo RI for a period of 3 years. Convict K.K.Arora had been sentenced to undergo RI for a period of 3 years and to pay a fine of Rs.5000/- in default of payment of fine to undergo 6 months. Sentences were to run concurrently. Benefit of Section 428 of the Cr.P.C. had been granted to the appellants.

2 Nominal rolls of the appellants have been requisitioned which reflects that Satish Kumar Kadian, Inder Singh Rana and Ramesh (presently in judicial custody) have undergone incarceration of almost about 4 years which includes the remissions earned by them. K.K.Arora is on bail. He had not undergone incarceration for any period.

3 The version of the prosecution is that on the intervening night of 22-23.8.1986 at about 10.45 p.m. the then SI Satish Kumar Kadian, the then Divisional Officer SI Inder Singh Rana, along with the then Constables Ramesh Chand and Constable Jagmal Singh Yadav, (since
Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

expired) posted at police station Patel Nagar had gone to the house of Sudesh Kumar (PW-9) and picked him up while he was sleeping. They started beating him. On hearing his shrieks, his maternal uncle Gopi Ram (deceased) came out. He was also given beatings by the said police officials. Both PW-9 and the deceased Gopi Ram were dragged to the police station where they were again given beatings with a saria and danda. Gopi Ram became unconscious. In the morning of 23.8.1986 Gopi Ram was taken to the Khera Hospital, a private nursing home in Patel Nagar, where he was declared dead. Thereafter the deceased was removed to the RML Hospital where his MLC was prepared by Dr. Y.K.Mishra who declared the victim as brought dead. The record shows that the victim had been brought to the hospital by his nephew Sudesh Kumar (PW-9).

4 Inquest proceedings were ordered. Dr.L.T.Ramani conducted the post mortem of the deceased and gave his report (23.8.1986). There were 10 injuries on different parts of the body of the deceased.

5 The post mortem report had described the external injuries as follows:

- i. *Bruise bluish in colour 5"x 1" present transversely on the left side front of chest 1" below the nipple, cleical area is pale and injuries are bluish red in colour.*
- ii. *Multiple bruises reddish purple in colour 2" to 5" long present transversely on the postero lateral aspect of left arm, elbow and postero lateral aspect of left forearm.*
- iii. *Diffuse swelling on the back of left hand.*
- iv. *Three bruises 3" to 5" long x 1" wide present transversely on the postero lateral aspect of right arm.*
- v. *Swelling on the back of right hand.*
- vi. *Five bruises 3" to 4" long x 1½" wide present transversely on the anterior lateral part of right thigh having pale central area and reddish injuries*
- vii. *Two bruises 4" to 9" x1" on the anterior aspect of left thigh.*
- viii. *Multiple bruises (8-9) scattered on the buttocks and back of thighs.*
- ix. *Three bruises marks 4" x1 ½" size each on the postero aspect of left leg.*
- x. *Bruises 2" x1" on the lateral aspect of right leg and abrasion.*

6 The internal injuries were delineated as under:

Scalp tissues normal. Skull bone are intact, brain is pale, base of skull –NAD, neck tissues normal, hyoid bone and thyroid

*cartilage intact, trachea normal, ribs are intact, lungs are ple,
heart –NAD, Rt. Side chambers contain blood, stomach contain 4-
3 pink watery fluid, nucosa is haemorrhagic at places, some fruity
smell emanating from stomach contents and blood fluid, bowls-
NAD. Liver is enlarged and shows fatty changes. Spleen and
kidneys are pale, bladder and rectum are empty.*

All injuries are ante mortem caused by blunt object/weapon.

The cause of death was kept pending.

7 The deceased was cremated. The CFSL examined the viscera of the deceased vide its first report dated 30.9.1986. Dr.L.T.Ramani in view of the history of drug intake of the deceased had requested a second report to determine the percentage of alcohol in the blood. The second report dated 29.12.1986 found positive evidence of morphine and ethyl alcohol in the blood of the deceased. This report revealed 294 mg of ethyl alcohol per 100 mg of blood. Both these reports were given by the Senior Scientific Officer cum Chemical Analyst, CFSL, K.K.Aora (accused). On the basis of these reports Dr.L.T.Ramani opined that the alcohol and morphine present in the blood was sufficient to cause respiratory depression and death; the injuries were not sufficient to cause death in the ordinary course of nature.

8 Investigation was thereafter handed over to the CBI under the orders of the Apex Court. A third report was obtained on the viscera of the deceased. This was on 28.9.1989 from the Senior Scientific Officer Dr.S.C.Sharma, FSL, Agra. This report stated that the viscera did not contain any chemical poison. However, because of the insufficient quantity of blood, test for alcohol could not be conducted.

9 Owing to these contradictory reports a Medical Board was constituted by the Maulana Azad Medical College comprising of three senior doctors. The report of K.K.Arora was found not tenable. Cause of death of Gopi Ram was opined to be shock consequent upon the multiple injuries upon his body caused by a blunt object like lathi.

10 Further version of the prosecution is that to cover the death of Gopi Ram accused Satish Kumar Kadian recorded a false entry (DD No.11A) in his writing on 23.8.1986 to the effect that Gopi Ram was an addict selling smack and could be arrested and apprehended if a raid was conducted; this had led the police party to apprehend him but Gopi Ram had managed to escape.

11 In the statement of the accused persons recorded under Sections 313 Cr.P.C. all of them pleaded innocence. Inder Singh Rana stated that
Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

he being a Division Officer in the police station and as per duty roster after finishing his duty he had left the police station in the civil dress at 10.30 p.m.; he has been falsely implicated. SI Satish Kadian stated that the drug mafia of that area had colluded against him to get this false FIR lodged; he had recorded DD 11A at 8.05 a.m. on 23.8.1986 giving the true facts. Constable Ramesh Chand also pleaded innocence, stating that he was on duty between 8.00 a.m. to 8.00 p.m. on that day; there was also no evidence against him. The defense of K.K.Arora was that he had conducted the analysis as per the procedure. Specific particulars were given to a viscera box and the file which was opened qua deceased Gopi Ram was bearing no.86/T-4611. The report of FSL, Agra related to viscera box no.1295 was not the viscera of Gopi Ram.

12 In defense 13 witnesses were examined.

13 On the basis of the material collected by the prosecution both oral and documentary the accused persons were charged, put up for trial and convicted and sentenced as aforenoted.

14 On behalf of the appellant Inder Singh Rana arguments have been addressed in detail by learned Senior Counsel Mr.Mukul Gupta.

Attention has been drawn to the version of PW-8 who was alleged to be
Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

the complainant. Submission is that it is not clear to the prosecution as to whether the complaint was forwarded by PW-9 or PW-8; both of them in their versions have stated that they had penned the complaint. PW-8 was even otherwise a constable who was working in the Delhi Police and as such was well versed with the knowledge as to what the police could do which included third degree treatment. It is difficult to believe that if his brother and nephew had been dragged by the police to the police station in his presence and were beaten even while being dragged, PW-8 did not think it proper to find out their fate till the next day when he learnt about the death of his brother in the normal course. This clearly casts a doubt upon his version. This version is liable to be discarded in toto. Even otherwise PW-8 had surfaced after three years from the date of the offence; his first statement was recorded only on 16.9.1989. No reliance can be placed upon this version which is highly suspicious. Reliance has been placed on 1997 SCC (Cri) 156 Paramjit Singh and Ors. Vs. State of Punjab and Ors. to substantiate the submission that such a statement has to be necessarily overlooked. Submission being that in that case the statement of a witness recorded after 3½ - 4 months had not been relied upon. Qua the version of PW-9

Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012 Page 9 of 52

it is pointed out that the Trial Judge had rightly not relied upon his deposition as he was not cross-examined. The provisions of Section 33 of the Indian Evidence Act could not be pressed. To support this submission learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reports as (1975) 3 SCC Mulkh Raj Sikka Vs. Delhi Administration as also another judgment of the Apex Court reported as 2004(4) SCC 236 Sashi Jena and Ors. Vs. Khadal Swain and Another. Submission being that Section 33 would only apply if the adverse party had been given a right of cross-examination. On the merits of the version of PW-9, attention has been drawn to the affidavit filed by PW-9 dated 26.9.1991 (D37) wherein PW-9 had stated that his version was a tainted version; this was reiterated in his subsequent affidavit (D38) dated 18.12.1991. Inder Singh Rana was not present in the police station at the relevant time. This was the reason why he had not been named in the FIR. Attention has also been drawn to the version of PW-10 (Zile Singh) and PW-12 (Naresh Chand Mudgal) which is to the effect that Inder Singh Rana had reached the police station at 10.30 p.m. on the night of 22.8.1986 and then gone home. His defense is further substantiated by the testimony of PW-24 and PW-25

CrI. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012 Page 10 of 52

(Raj Singh Chauhan and H.C. Ram Singh) wherein PW-24 stated that when a Divisional Officer leaves the police station it is not necessary for him to make either an arrival or a departure entry. Attention has also been drawn to the statement of DW-3 (Karta Ram) and DW-5 (Biri Singh) both posted in police station Patel Nagar at the relevant time. DW-3 deposed that he was informed by DW-5 that SI Inder Singh Rana had left for his home at around 11.30 p.m after informing DW-5. To the same effect is the version of DW-5 who had stated that in fact there are two SIs with the name of Inder Singh and one writes his name simply as Inder Singh and the other writes his name as Inder Singh Rana. Submission on this count being that this could also be a reason for confusion in the wrong naming of the appellant who had no connection with the present offence. The appellant was a bachelor and living alone, this was another reason why he could not bring any family member to substantiate his defense that that he had left the police station at about 10.30 p.m. on 22.8.1986. The defense of the appellant was always consistent. This has not been considered by the Trial Judge in its correct perspective.

addressed by learned counsel Mr.Gurbaksh Singh. Attention has been drawn to the testimony of PW-8. It is pointed out that there were inherent contradictions in the version of PW-8 and if the arguments propounded by the learned Senior Counsel for Inder Singh Rana are accepted and the testimony of PW-8 is disregarded there would be nothing left with the prosecution to base its case. Testimony of PW-9 who was not cross-examined cannot be read. Attention has been drawn to the post mortem report (Ex.PW-29/A). Submission is that there were 10 injuries noted in this post mortem report but a perusal of the same reveals that none of them were on any vital part of the body of the victim. Therefore no intention or knowledge can be attributed to the appellant that by his act he could have caused the death of the victim. To support this argument, learned counsel for the appellant has placed reliance upon ILR (2014) 11 Delhi 1489 Wasim vs. State. This argument has been taken in the alternate. The first submission being that the appellant has no role to play in this alleged offence. At best the offence under Section 323 of the IPC is made out as the injuries were only simple in nature. The conviction of the appellant is unfounded.

addressed by learned Senior Counsel Ms.Geeta Luthra. Submission is that the appellant Ramesh was not present at the spot. PW-9 in his version has exonerated appellant Ramesh and has only named the other three accused namely Satish Kumar Kadian, Inder Singh Rana and Jagmal Singh Yadav. Even on specific query the name of the present appellant has been excluded. The testimony of PW-8 has to be discarded in toto as there appears to be no explanation as to why he had surfaced only on 16.9.1989 when the offence is dated 22.8.1986. Even presuming that PW-8 was apprehensive from constable Jagmal Singh Yadav (which is his version), yet he having given his narration to PW-12, it is impossible to digest that PW-8 had to wait for three years to muster courage to relate the incident to the CBI. The CBI had registered the R.C. on 27.7.1988 and the statement of PW-8 was not recorded even for one year thereafter. Learned Senior Counsel for the appellant has also drawn attention of this Court to the affidavit which had been filed by PW-8 before the Apex Court wherein he had sought a transfer of the investigation from local police to the CBI as also his application seeking cancellation of bail. Submission in this background being that nothing prevented PW-8 from giving his statement before the investigating

CrI. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

Page **13** of **52**

agency. He could have even made an anonymous call. Testimony of PW-8 is highly suspicious. It is liable to be discarded. Additional submission being that the in the investigation carried out by the local police, name of the present appellant had not been mentioned and he had not been charge sheeted. He has been indicted only by the CBI and this was for an ulterior purpose. Attention has been drawn to Ex.PW-18/X (the duty roster for 22-23.3.1986). Submission being that the appellant (Constable Ramesh having no.1064) was on beat duty at that point of time i.e. between 8.00 a.m. to 8.00 p.m. This clearly establishes his defense that he was not present at the spot.

17 On behalf of the appellant K.K.Arora arguments have been addressed by learned counsel Mr.Mukesh Gupta. Submission is that the conviction against the appellant is unsustainable. The FSL, Agra had examined the viscera contained in box No. 87/T-1295 which was the viscera of Subhash Chand; the exhibits of deceased Gopi were contained in the box No. 86/T-4611; this is clear from the seizure memo dated 28.05.1989; what was actually examined by the FSL Agra was the viscera of another person. The confusion qua the serial numbers 1295 and 4611 remained unearthed and unanswered. The Trial Court had

CrI. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

committed a gross illegality in relying upon the FSL, Agra report and to discard the report of the appellant to sustain his conviction. The stand of the prosecution is in fact contrary in itself. In its reply (which the CBI had filed to an application preferred by the applicant in the Trial Court) the stand of the department was that the viscera of Subhash Chand had never been sent to the malkhana of police station Patel Nagar. This stand took a 'U' turn subsequently when the department in the year 2003 moved an application under Section 311 Cr.P.C. wherein the averment was that the viscera of Subhash Chand had been sent back to the police station Patel Nagar and was destroyed by data entry dated 29.11.1988. This was only to cover up their blunder which was evident from the seizure memo dated 28.05.1989. Additional submission being that Dr.L.T.Ramani was not examined before the Trial Court for reasons best known to the CBI; they had deliberately chosen to substitute him for Dr.L.K.Barua (PW-29); this was to ward off crucial questions which would have been put to Dr.L.T.Ramani in his cross-examination qua the earlier reports sent by the CFSL and the fact that it was at his asking that the second report dated 29.12.1986 was generated.

considered. Record has been perused.

19 The arguments addressed by learned counsel for the appellant K.K.Arora qua his role shall be answered first.

20 K.K.Arora was a convict under Section 218 of the IPC. This provision postulates that a public servant who is Incharge of the preparation of any record or writing frames that record with an intention to cause loss or injury to the public or to any other person and with an intent to screen that person from legal punishment is guilty. The essential ingredient being that an intentional preparation of a false record with the object of saving any person or property.

21 The evidence on record shows that the CFSL, Lodhi Road through its Scientific Officer i.e. the appellant K.K.Arora had submitted two reports. These reports were based on the viscera and blood sample of the deceased Gopi Ram. The first report dated 30.9.1986 was proved as Ex.PW-22/A. There were four parcels which had been sent for examination of which Ex.1 and Ex.2 contained the stomach, intestine, liver, spleen and the kidney content of the deceased. Ex.3 was a phial containing 10 ml of blood but it was allegedly over written to be read as 100 ml. Ex.4 contained a preservative. As per this report the first three

exhibits i.e. Exs.1,2 and 3 tested positive for morphine and ethyl alcohol. When this report was put up before Dr.L.T.Ramani (the post mortem doctor) he vide his note dated 19.11.1986 requested a blood-alcohol concentration level to be obtained.

22 Pursuant thereto a second report was obtained from the FSL. This was also authored by the appellant K.K.Arora. This report is dated 29.12.1986. It was proved as Ex.PW-22/B. Four sealed parcels which included the viscera of the deceased and 60 ml. of blood (Ex.3) were examined. This report opined that the contents of Ex.3 i.e. 60 ml. of blood contained 294 mg of ethyl alcohol qua 100 ml. of blood. In this report column D which contained the preservative exhibit has been struck off meaning thereby that preservative had not been used.

23 On the basis of the aforementioned second report which had been forwarded by K.K.Arora the cause of death had been opined by Dr.L.T.Ramani to be the high blood alcohol concentration and the presence of morphine which were sufficient to cause a severe respiratory depression and death; injuries as such were not sufficient to cause death in the ordinary course of nature. This subsequent opinion on the death of Gopi Ram was given on 13.01.1987 (Ex.PW-29/C).

24 The matter did not rest here.

25 The victim i.e. the wife of deceased Gopi Ram was unhappy with the manner in which the investigation had been conducted by the local police. On her application which had been filed before the Apex Court, the Apex Court on 25.4.1988 transferred the investigation from the local police to the CBI. The Crime Branch CBI registered an RC in the present case on 27.7.1988.

26 In view of the two conflicting reports obtained from the CFSL, Lodhi Road, the CBI had thought it fit to get the viscera of the deceased re-examined. The memorandum of seizure Ex.PW-3/A dated 26.5.1989 of deceased Gopi Ram was effected from the Malkhana of police station Patel Nagar. These exhibits were then sent to the FSL, Agra for a third forensic examination.

27 Before advertng to Ex.PW-3/A it would be relevant to highlight a submission that what was finally examined by the FSL, Agra was not the viscera of Gopi Ram but it was the viscera of Subhash Chand as the seizure memo stated that the wooden box had a marking 87/T-1295. Submission being that the wooden box containing the viscera of a deceased is always given a permanent number which is not changed in

the entire course of the investigation; the number 87/T-1295 belonged to Subhash Chand; the marking of deceased Gopi Ram had a different number i.e. 86/T-4611. The parcel of Ex.PW-3/A shows that what had been seized had a number 87/T-1295 which was thus the viscera of Subhash Chand.

28 Admittedly, the wooden box seized by memo dated 26.5.1989 and sent to the FSL Agra was a box bearing no.87/T-1295. This is also clear from the letter dated 12.8.1998 addressed by the DSP, CBI J.P.Verma to the Director FSL, Agra. It made reference to the seizure memo dated 26.5.1989. The FSL, Agra (vide its report dated 28.9.1989-Ex.PW-17/B) opined that no chemical poison could be detected in this viscera; the blood was, however, insufficient for determining the test of alcohol.

29 These conflicting reports had led the CBI to get a Medical Board constituted. This Medical Board was constituted by the Maulan Azad Medical College comprising of three members of whom all were professors. The three conflicting reports and the opinion of the post mortem doctor as also other relevant documents had been studied by them. The Medical Board was of the opinion that the cause of death

was shock consequent upon multiple injuries on the body of the deceased caused by some blunt object like lathi but not Iron rods (Ex.PW-16/A). It was opined that the doctor who had conducted the post mortem examination had been misled by the chemical analysis reports from the CFSL Delhi which according to them was not tenable. The Medical Board had noted if there is 294 mg of alcohol detected in the blood at the time of viscera analysis a strong smell of alcohol should emanate at the time of post mortem but in this case the contents of the stomach gave a fruity smell and there was no smell of alcohol. As such the correctness of the reports given by the CFSL, Delhi was under a cloud.

30 Another relevant point to be noted in the context of these arguments is that when appellant K.K.Arora had moved an application before the Special judge seeking permission of the Court to get the record of 87/T-1295 preserved a reply (dated 29.11.1995) had been filed by the CBI. The relevant extract of the said reply reads herein as under:

“That it is wrong to say that wrong investigation was done by the investigating agency by taking a Viscera Box. N.87/T-1295 for reanalysis instead of box No.86/T-4611. The wooden box bearing

No.87/T-1295 concerning FIR 336/86 was seized from Sh.Shri Ram ASI Police Station Patel Nagar, as per seizure memo dated 26.5.89 by the I.O. in the presence of the accused K.K.Arora and other witnesses. The said Viscera box was sent by P.S.Patel Nagar, and Viscera concerning the aforesaid FIR was sent to FSL, Agra, for the expert opinion. The enquiry made in the Mal Khana of P.S.Patel Nagar, also revealed that no Viscera concerning FIR No.336 is lying in the Malkhana of P.S. Patel Nagar, moreover the Viscera concerning with 87/T-1295 was never sent back to P.S.Patel Nagar by CFSL and destroyed by themselves. Hence there is no question of sending wrong box of Viscera.”

31 This reply revealed the stand of the CBI which was to the effect that the viscera concerning 87/T-1295 was never sent back to police station Patel Nagar by the CFSL and it was destroyed by themselves. This stand of the CBI changed subsequently. The CBI in the year 2003 moved an application under Section 311 of the Cr.P.C. before the Special Judge. They sought to rely upon Register No.19 to show that viscera in box No.87/T-1295 of Subhash Chand had stood destroyed vide DD no.32A on 27.02.1987 at police station Patel Nagar and as such the seizure memo dated 26.5.1989 making reference to the wooden box having a marking of 87/T-1295 was obviously incorrect; what had

actually been sent vide seizure memo dated 26.5.1989 to FSL, Agra was the viscera of Gopi Ram. This application was allowed by the Special Judge on 13.11.2003.

32 The Special Judge while passing its order on 13.01.2003 noted the defense of K.K.Arora which was to the effect that what had been examined by the FSL, Agra was the viscera of Subhash Chand and not of deceased Gopi Ram had held that this defense at that stage was premature and would be examined after evidence had been led by the respective parties.

33 PW-6 (Krishan Lal) was the technician who used to assist the technical report prepared at the Civil Hospital. He was assisting the doctor at the time when the post mortem was conducted. He has been shown Ex.3. As per his version (alleged to contain the remnants of the viscera of Gopi Ram) Ex.3 had the signatures of Dr.L.T.Ramani and part of the signatures had been identified by him. His submission was that this Ex.3 did not bear the signatures of Bharat Singh but contained the signatures of Dr.L.T.Ramani. This witness has been heavily relied upon by the prosecution to support their stand that the signatures of Dr.L.T.Ramani on Ex.3 verified the version of the prosecution that what

had been sent to Agra was the viscera of the deceased Gopi Ram.

34 PW-17 Dr.Suresh Chand Sharma was working as a senior scientific at FSL, Agra. He had examined the contents of the viscera which had been sent to him by the CBI and which had been seized by them on 26.5.1989. He had given his report dated 28.9.1989. He had resealed the exhibits with the seal of FSL Agra. Testimony of PW-6 is relevant in this context. PW-6 had purportedly identified the signatures of Dr.L.T.Ramani on Ex.3. PW-6 had come into the witness box on 18.3.2004, meaning thereby that as on this date the exhibits already stood examined by the FSL, Agra and had been re-sealed by the FSL, Agra. This is clear from the version of PW-17. Thus the signature on Ex.3 of Dr.L.T.Ramani becomes doubtful. Ex.3 would contain the seal of the FSL, Agra and the signatures of the concerned doctor at Agra. This also creates a doubt on the veracity of Ex.3.

35 Another relevant witness was PW-26. He was H.C.Ram Singh posted as a Constable at police station Patel Nagar at the relevant time and working as MHCM. This witness has been recalled, pursuant to the application filed by the CBI under Section 311 of the Cr.P.C. He had produced entry no.647 pertaining to DD No.32A evidencing the version

of the prosecution that the viscera of one Subhash Chand was destroyed on 29.11.1988. The entry was proved as Ex.PW-26/D.

36 The defense of the appellant K.K.Arora from inception was that he is innocent; he has been falsely framed. The order of framing of charge was challenged by him but orders were deferred. Trial Judge was of the view that the application was premature. This submission being that what had been sent to FSL, Agra was not the viscera of Gopi Ram; it was the viscera of Subhash Chand and whether or not it was destroyed in 1988 was also examined by the Special Judge who vide order dated 13.11.2003 opined that this defense will also be considered after trial.

37 From the record it is also clear that the CBI has taken two wholly conflicting and contrary stands. Whereas in their first version (the reply to the application of the applicant seeking preservation of record of 87/T-1295) was to the effect that the viscera of Subhash Chand was never sent back to police station Patel Nagar by the CFSL; their application filed in 2003 under Section 311 of the Cr.P.C. seeking permission of the Court to get the D.D. Entry 32A proved to establish that the viscera of Subhash Chand stood destroyed at police station Patel

Nagar in the year 1988 was a whole new strategy; it was a complete 'U' turn. This in the view of this Court was nothing but to cover up the categorical admission in the document (Ex.PW3/A) i.e. the seizure memo dated 26.5.1989 which evidenced that the viscera which had been sent to the FSL, Agra was contained in box No.87/T-1295 and which number belonged to deceased Subhash Chand; the wooden box containing of the exhibits of Gopi Ram had a number of 86/T-4611.

38 Dr.S.R.Singh (PW-2), Director CFSL, New Delhi had come into witness box. He detailed the procedure followed by the CFSL to open a file and to do markings in the box of the CFSL. He admitted that when exhibits are received from a police station, the case assistant opens a file in the concerned department and the exhibits received have one singular number assigned to that file for all references and that reference number is reflected on the packing in which the exhibits are forwarded and returned.

39 From this version of PW-2 it is clear that there is only one reference number given to exhibits of one victim. The wooden box bearing No.87/T-1295 belonged to the deceased Subhash Chand. Even on a specific query put to the learned counsel for the CBI on this count,

the CBI cannot shy away from this fact that No.87/T-1295 was the number given to the exhibits of Subhash Chand. Thus what was sent to the FSL, Agra for analysis was the viscera of Subhash Chand. This is further fortified by the CBI turning turtle and taking two conflicting stands as to whether the viscera of Subhash Chand was destroyed by the CFSL itself or at police station Patel Nagar. This version having been set up years later only to fill up the lacuna which had appeared from their own document showing that what had been seized on 26.5.1989 was wooden box No.87/T-1295.

40 The worksheets Ex.PW-2/B, Ex.PW-2/C and Ex.PW-2/D highlighted by the learned counsel for the appellant also show that the blood which had been taken for the purposes of analysis was 100 ml. There was no doubt that in Ex.PW-2/C and Ex.PW-2/D there is an overwriting on the 10 ml to read it as 100 ml but these worksheets were the subject matter of scrutiny before the post mortem doctor who had not raised any objection that the quantity of the blood which he had sent was 10 ml and how it had now inflated to 100 ml. In this context, testimony of PW-6 (the technician at the CFSL) is relevant. He had in his cross-examination admitted that the quantity of blood taken at the

CrI. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012 Page 26 of 52

time of post mortem for a chemical analysis is to be decided by the doctor; he would decide whether the quantity would be 10 ml, 50 ml or 100 ml. DW-4 (the Senior Scientific Assistance at the CFSL, Lodhi Road) who was working under K.K.Arora had stated that the phials available in the CFSL had the capacity of 500 ml to 200 ml and 50 ml. He admitted that the estimation of the quantity of alcohol in the blood would be the same irrespective of the fact that 20 ml of blood or 50 ml of the blood is sent. In this background, the submission of the learned counsel for the appellant that there was no reason whatsoever for K.K.Arora to have converted 10 ml of blood to read it as 100 ml is a forceful submission. It cannot be ignored.

41 Prosecution has thus failed to establish that what had been sent for analysis to the FSL, Agra was the viscera of deceased Gapi Ram. There is a glaring doubt on this. The reports furnished by K.K.Arora had become doubtful only because they were in conflict with the third report which had been obtained from the FSL, Agra. At the cost of repetition, the third report obtained from the FSL, Agra did not relate to the viscera of deceased Gopi Ram. This Court is not inclined to convict a man on

the evidence which is shaky and doubtful. Giving benefit of doubt to K.K.Arora, he is entitled to an acquittal. He is accordingly acquitted.

42 The charge against the other co-accused i.e. Satish Kumar Kadian, Inder Singh and Ramesh Chand for their conviction under Section 218 read with Section 109 of the IPC is also set aside. This is for the reason that if the substantive charge under Section 218 of the IPC qua the main accused K.K.Arora is set aside, the question of abetment of this offence would not arise. The aforementioned appellants i.e. Satish Kumar Kadian, Inder Singh and Ramesh Chand are accordingly acquitted of the charges under Section 218 read with Section 109 of the IPC.

43 The role of the other co-accused qua their other convictions shall now be discussed.

44 The Trial Judge had relied upon the version of PW-8 to return a finding of conviction qua the appellants Satish Kumar Kadian, Inder Singh Rana and Ramesh for the offence under Section 304 of the IPC.

45 PW-8 was in fact the star witness of the prosecution. PW-8 had on oath deposed that in the year 1986 he was living in house No.1203/II-C, Prem Nagar, Patel Nagar, Delhi. Gopi Ram was his elder brother.

Sudesh Kumar was his nephew. They were living in house No.1203/II-C, Prem Nagar. Gopi Ram used to run a tonga. On 22.8.1986 at about 11.00-11.15 p.m. Satish Kumar Kadian, Inder Singh Rana and Jagmal came to their house. These persons started beating Gopi and Sudesh who were both sleeping in the lane outside the houses. They then took away both Gopi Ram and Sudesh while continuously beating them. PW-8 ran away from there to save himself. There was sufficient light in the street to see the accused persons. Further deposition being that a few days earlier Constable Jagmal had unnecessarily taken him to the police station therefore when he saw all of them beating Gopi Ram and Sudesh he had run away from the spot. Next morning he went for his duty at police station Roop Nagar. In the afternoon his nephew Pratap informed him that Gopi had died. At about 11.00 -11.15 p.m. he was officially informed that Gopi had died. The local police was reluctant to lodge an FIR. The FIR was later on lodged by the CBI. Complaint was written by him.

46 In his cross-examination several questions were put to him about the family history of Gopi to elicit information largely to the effect that Gopi and his family were dealing in smack; they were drug addicts and

several members of their family both from the maternal and paternal side had died at a young age which was largely attributable to their taking drugs. This part of the cross-examination which runs into several pages may not be relevant for the time being. In another part of his cross-examination PW-8 admitted that on the date of the incident he had returned home at 9.15 p.m. from his duty. He was not sure if he was intoxicated on that day. He was confronted with his statement Mark X recorded before local police G.S.Sharma wherein he had not stated that he was an eye-witness to the beatings given by the accused to Sudesh. In the same breath he stated that he had seen the beatings being given to Gopi and Sudesh for half a minute. He had then managed to escape. He reiterated that the accused were continuously beating Gopi and Sudesh while they were proceeding towards the police station. He did not object to it. He did not go to the police station Patel Nagar in the morning to inquire about the fate of Gopi and Sudesh. It was at about 6.00 p.m. on the following date that he was informed by his nephew that Gopi had died. He admitted that FIR no.335/85 was registered at police station Patel Nagar for rioting in which (as per record) PW-8 was arrayed as an accused. He admitted that Kashmiri Devi wife of Gopi

Ram had moved an application seeking cancellation of bail of the accused Satish Kumar Kadian and Inder Singh Rana. He was confronted with the said application (Crl.Misc.Main. 1397/1986) in which there was an affidavit filed by PW-8 in support of the application. On the perusal of this document PW-8 was evasive and stated that he could neither admit or deny this affidavit. He reiterated that in 1986 he had not made any representation or statement to the police that he was an eye witness of the incident. His first statement was recorded on 30.8.1989. He did not make any PCR call to the police about the incident. He admitted that he was in the police force and if any person is illegally detained the said information can be passed on even through telephone. He had not made any complaint about the illegal detention of Gopi or Sudesh. He admitted that he had never made any complaint about the incident to any police officer before this.

47 The incident had taken place on the intervening night of 22-23.8.1986. PW-8's first statement was recorded by the CBI only on 16.9.1989. There is no explanation for this wholesome and unjustifiable delay. PW-8 was a member of the police force. He was a constable posted at police station Roop Nagar at the relevant time. He had seen

his elder brother and nephew Sudesh being dragged by the accused persons to the police station and even while being dragged they were continuously being beaten. Admittedly, PW-8 did not make any effort to find what had happened to them throughout the night of 22-23.8.1986 or even in the morning hours. In fact, from his version, it is clear that he did not care to or bother about what had happened to his brother and nephew. While on normal duty at police station Roop Nagar he was informed by his nephew Pratap at 6.00 p.m. on the following day that his brother had died.

48 This conduct of PW-8 is wholly unnatural. It is difficult to believe that a member of the police force who is well versed with the legal knowhow and the manner in which the police deals with the victims and he being allegedly an eye witness for half a minute yet did not care to find out about their fate assumes great importance in view of his further version that on the following day he went to report for his duty at police station Roop Nagar in a normal routine manner. The submission of the prosecution that PW-8 was scared of Constable Jagmal and this fear psychosis had prevented him from doing so is not borne out from the evidence. Although from one part of the statement

of PW-8 it is evident that he had stated that Constable Jagmal had unnecessarily a few days earlier taken him to the police station, yet nothing beyond that was forthcoming.

49 Assuming that he was scared nothing prevented him from making an anonymous call to the PCR; he could have set the law in motion. He was not a lay person. He was aware of the law on this aspect. He was a constable in the police force. His conduct was far from natural.

50 This conduct creates a suspicion in the mind of the Court as to whether PW-8 was actually an eye-witness or not. This is also fortified by the fact that the first statement of PW-8 was recorded by the Investigating Agency only on 16.9.1989 i.e. more than 3 years after the date of the incident. There is absolutely no explanation for this. This is unjustified. Even accepting the version of the prosecution that PW-8 was terrified of Jagmal (although difficult to believe as both of them were admittedly of the same rank) yet there was a long intervening gap of three years before PW-8 surfaced as a witness. Again assuming for the sake of arguments that the local police was hand in glove with the accused and was not investigating the case properly yet after the transfer

of the investigation to the CBI by the Supreme Court, the CBI had

registered the FIR/RC on 27.7.1998; yet he was examined even then one year later.

51 The fact that PW-8 was well versed with the nuances of law is supported by the fact that he had filed an affidavit in the High Court of Delhi (Crl.Misc.Main 1397/1986) seeking cancellation of bail granted to Satish Kadian and Inder Singh Rana. This application was supported by the affidavit of PW-8. This was filed on 04.9.1986. This clearly shows that PW-8 was aware of the legal procedure and if he had courage to move an application for cancellation of bail of the accused; nothing prevented him from informing the higher ups in the police or in the Court that he was an eye-witness and his statement was deliberately not being recorded by the police. A perusal of this application (Crl.Misc.Main 1397/1986) shows that it is running into 8 pages; in this entire narration where the incident of 22-23.8.1986 has been described and the manner in which Gopi was killed and Sudesh was pressurized to give a false statement there is no whisper of PW-8 being an eye-witness.

52 Another lacuna which has been brought to the notice of this Court (for discarding the testimony of PW-8) is the admission of PW-8 in his cross-examination wherein he admitted that on 30.8.1987 he had given a

Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012 Page 34 of 52

statement to the local police i.e. to G.P.Sharma; this statement had been confronted to PW-8 and marked as 'Y'. A perusal of this statement shows that G.P.Sharma of the local police had recorded the version of PW-8 (Shankar) under Section 161 Cr.P.C. Even in this narration there was not a whisper that PW-8 was an eye-witness.

53 In the judgment of the Apex Court in Paramjit Singh (supra) where the statement of the alleged eye-witness had been recorded 4 ½ months after the incident, for which there was no explanation, testimony of that witness was discarded by the Supreme Court holding that it was wholly unsafe to accept his testimony as there was no justification for recording this version after such a long gap of time.

54 PW-8 appears to be a planted witness. His version is far from credible. It cannot be relied upon. At the cost of repetition there is no explanation as to why he did not get his statement recorded for three years. His statement recorded on 16.9.1989 for the first time noted that he was an eye-witness to the incident. PW-8 admitted that his earlier statement was recorded by (one G.S.Sharma) on 30.8.1987 wherein there was no mention that he was an eye-witness. This was also not mentioned at the time when he filed an affidavit (Cril.Misc.Main Cril. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

Page 35 of 52

no.1397/1986) on 04.9.1986. The fact that he is not an eye-witness is further corroborated by his own version wherein admittedly even after seeing the beatings being given to his brother and nephew in front of him did not bother to find out about their fate; he reported for his duty at police station Roop Nagar in an ordinary routine manner. He learnt about the death of his brother Gopi on 23.8.1986 at 6.00 p.m.

55 The fact that PW-8 is an interested witness being the brother of the victim is also noted. Testimony of such a witness has to be looked at with a greater scrutiny.

56 Applying all the aforementioned tests, this Court is not inclined to accept the deposition of PW-8 which is accordingly discarded.

57 If the version of PW-8 is discarded, the Trial Judge would probably have nothing left to convict the accused. This is for the reason that the Trial Judge had not considered the testimony of PW-9 noting that since PW-9 not being subjected to cross-examination and as such his testimony cannot be read.

58 This is a fallacy which has been committed by the Trial judge. Section 33 of the Indian Evidence Act was disregarded.

59 Section 33 of the Indian Evidence Act reads herein as under:

“33.Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.- Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided-

that the proceedings was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the question in issue were substantially the same in the first as in the second proceedings.

Explanation- A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”

60 Section 33 of the Evidence Act is contained in two parts. The first part deals with relevancy of evidence of a dead witness or a witness who could not be found in a subsequent judicial proceeding whereas the second part deals with testimony of that dead and unfound witness in a

later stage of the same judicial proceeding. The proviso applies to the first part when the evidence of a dead or unfound person has to be considered in the subsequent judicial proceedings. This is clear from the three conditions stipulated in the proviso whereas last condition specifically speaks of the first and second proceedings, the second condition also makes a reference to the first proceeding. The first condition as is evident would also apply to two sets of proceedings. The present case relates to the same judicial proceedings. The judgments relied upon by the learned counsel for the appellant Inder Singh Rana reported as Mulkh Raj Sikka (supra) and Sashi Jena and Ors. (supra) are thus wholly inapplicable. Reliance upon the judgment reported as (2009) 7 SCC 412 State of Orissa Vs. Prasanna Kumar Mohanty is misplaced. In this case, where the witness had been examined in-chief but could not cross-examined in spite of opportunities having been granted to the defence to cross-examine, Section 33 of the Evidence Act was held to be inapplicable. No application for cross-examination of the witness through a commissioner had also been filed. The Apex Court while disposing of this appeal had, in fact, stated that this order passed under Article 142 of the Constitution of India may not be construed as a

Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012 Page 38 of 52

precedent.

61 Law on this aspect has been reiterated by the Apex Court in JT 2001 (Suppl.1) SC 545 Satnam Singh(dead) by LRs. And Others Vs. Sadhu Singh. The Supreme Court had held that where examination-in-chief of a witness had been completed but he could not be put for cross-examination on account of his death, the evidence of such a witness could not be rejected. Relevant extract of the said observation of the Supreme Court read herein as under:

“3....So far as the question whether the plaintiffs failed to prove the agreement for sale is concerned, the First Appellate Court as well as the High Court rejected the evidence of plaintiffs on irrelevant ground. It has come on evidence on record that Teja Singh, one of the attesting witnesses, after his examination-in-chief dies and therefore, he could not put up for cross-examination. Under such circumstances, the evidence of Teja Singh could not have been excluded.”

62 The evidence of PW-9 should have been read in evidence. The rider of course is that the testimony of such a witness has to be scrutinized with a greater care and caution as the accused persons did not have a right to cross-examine this witness.

63 In this background, testimony of PW-9 shall be appreciated.

64 PW-9 was the nephew of deceased Gopi. He was a cobbler by profession. He had on deposed that on 22.8.1986 Satish Kumar Kadian, Jagmal and Inder Singh Rana had come to their house on a motorcycle. While he was sleeping Satish Kumar Kadian woke him up. House of Gopi was at a distance of 20-25 steps. Gopi used to run a tonga. They woke up Gopi also and starting beating them. They also took PW-9 along with Gopi to the police station. They were cruelly treated and given third degree treatment and even asked to drink their urine. They were beaten throughout the night. Satish Kumar Kadian made an illegal demand of Rs.10,000/-. At 6.00 a.m. Gopi became unconscious. Satish Kumar Kadian kicked him. No police persons were present there. Ramesh was not present when they were given beatings. Gopi died in his arms. They were taken to the RML Hospital in a mini bus. PW-9 accompanied the dead body of Gopi. The doctor in the hospital gave him a slip and stated that Gopi had died because of taking smack. His dead body was taken to the mortuary where PW-9 identified it. Dead body of Gopi was taken to the electric crematorium where the body was cremated. He had given a complaint Ex.PW-9/A; it bore his thumb impression. PW-9 had also exhibited certain other documents which

Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

included the receipts of the cremation ground which also bore his thumb mark. This is the gist of his version. This witness was not cross-examined.

65 Testimony of PW-9 shows that he along with Gopi had been dragged to the police station. Relevant would it be to note that in his version he had named three accused persons at three places but the name of Ramesh is missing. Specific role has been attributed to Satish Kumar Kadian , Inder Singh Rana and Jagmal but Ramesh has been excluded. In fact in one part of his version, he stated that Ramesh was not present at the time when they were being given beatings.

66 The complaint Ex.PW-9/A purported to have been written by him had become the basis of the FIR. Defense of appellant Ramesh all along was that he was not present at the spot and he was not a part of this incident.

67 Testimony of PW-18 (retired SI Ved Prakash) is relevant on this count. He was Duty Officer at police station Patel Nagar at the relevant time. He admitted that as per the duty roster dated 22-23.8.1986 Constable Ramesh Chand No.1064 (appellant) was on beat staff duty and in the night patrolling Constable Ramesh No.1629 was on duty as

Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

per the Duty Roster. This is also evident from the document Ex.PW-18/X. The duty of Constable Ramesh No.1064 (appellant) was between 8.00 a.m to 8.00 p.m. Night patrolling duty was thereafter marked to another constable named Ramesh but his number was 1629. PW-23 (Dharam Pal) working as ASI in the police station Patel Nagar also stated that the police officers perform their duty as per the duty roster. Raj Singh Chauhan (PW-24) who was the senior officer posted at the police station at the relevant time also on seeing the duty roster of the relevant date had deposed that names of SI Inder Singh Rana, SI Satish Kadian had been mentioned as Divisional Officers and the name of Constable Ramesh and Constable Jagmal had been shown as beat constables on 22.8.1986 and 23.8.1986.

68 These documents coupled with the version of PW-9 who had given no role to Constable Ramesh persuades this Court to hold that prosecution has failed to establish the presence of Constable Ramesh No.1064 (appellant) on the scene of occurrence. Testimony of PW-9 and the documents aforementioned are clear on this aspect. The appellant Ramesh is entitled to an acquittal. He is accordingly acquitted of the charges leveled against him.

69 On the scrutiny of the testimony of PW-9 which on applying the rule of care and caution and noting that PW-9 was not subjected to a cross-examination yet his version being clear and categorical and his complaint Ex.PW-9/A also having formed the basis of the FIR, both SI Inder Singh Rana, SI Satish Kumar Kadian cannot escape their fate. Both these officers who were posted as Divisional Officers in police station Patel Nagar at the relevant time had gone to the house of Sudesh and Gopi and dragged them to the police station Patel Nagar while continuously beating to them to meet their illegal demand of Rs.10,000/-. PW-9 was an eye-witness on this count. He had witnessed the manner in which his maternal uncle Gopi was beaten to death. He had deposed in detail his version in Ex.PW-9/A which was the complaint penned down by PW-12 for him and corroborated by the version of PW-12. It had become the basis of the FIR. Gopi had died while in police custody. To cover up their offence the police officers first took Gopi to the emergency sector of the Khera Hospital and then to RML Hospital. The injuries received by the victim had been detailed in the post mortem report and have been discussed supra. These are 10 internal injuries at various parts of the body of the deceased. The

Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012 Page 43 of 52

internal injuries have also been noted. It appears that the perverted minds of the two Senior Divisional Officers was not satisfied till they had beaten Gopi to death which was only because the poor man could not meet their illegal demand of Rs.10,000/- This is clear from the version of PW-9.

70 PW-21 Dr.Anil Kumar was working as the resident doctor in the Khera Hospital. He had first examined the deceased Gopi when he was brought to the hospital and his version was that the patient was lying on the examination table was clinically dead and further deposition of PW-21 was that death certificate could also be given but the police officers were not satisfied and without waiting for any other comments they left the hospital. The deceased was taken to the RML Hospital. PW-11 H.C.Harnam Singh posted as duty constable at RML Hospital was present at the time when the CMO declared Gopi to be “brought dead”. Gopi was accompanied with his nephew Sudesh and there were three police officials along with him, all posted at police station Patel Nagar. Further deposition of PW-11 being that those three police officials had told him that Gopi had been found lying in unconscious condition in a park near Patel Nagar. Five packets of smack were

recovered from the search of the dead body. The fact that these packets of smack were not found by PW-21 but were only revealed in the RML Hospital substantiates the submission of the prosecution that this smack was falsely planted upon the deceased to give it a colour that the deceased was a smack addict for which FIR No.337/1986 had been got recorded against Gopi on 23.8.1986 on which date Gopi was already a dead man on 22.8.1986.

71 This also reflects on the complicity of the accused in trying to build up a false case that Gopi had died because of an excess drug intake. DD No.11A recorded at police station Patel Nagar at 8.05 a.m. by Satish Kumar Kadian is clearly fabricated. DW-3 and DW-5 (relied upon by appellant Inder Singh Rana) were rightly disbelieved by the Trial Court. Testimony of DW-3 is hearsay and his information is based upon the version of DW-5. DW-3 in his cross-examination has also admitted that that since he was busy in his work he could not say whether Inder Singh Rana and Jagmal were present at the police station at the relevant time. DW-5 was also unaware as to when Inder Singh Rana had come on duty on 23.8.1986. The duty roster Ex.PW-18/A clearly evidenced that Inder Singh Rana was posted as a Divisional Crl. A.Nos.1220/2012, 1167/2012, 1423/2012 & 1066/2012

Officer in the police station Patel Nagar in the intervening night of 22-23.8.1986.

72 The last rites of deceased Gopi were also not permitted to be performed by his family and his body was not handed over to them. His body was cremated on the same day.

73 The submission of the learned defense counsel appearing for Satish Kumar Kadian that if the Court inclined to acquit K.K.Arora, the original report given by Dr.L.T.Ramani which is based on the CFSL analysis given by K.K.Arora would stand revived is an argument which this Court is not inclined to accept.

74 The Court has acquitted K.K.Arora of the charge under Section 218 of the IPC for the technical flaws which had weighed in his favour. The technical flaw being that the prosecution has been failed to establish that the viscera sent to the FSL Agra was in fact the viscera of deceased Gopi. The Medical Board had found fault with the report of K.K.Arora primarily for this reason noting that there were unjustified contradictions in the report of K.K.Arora qua the FSL,Agra which had led the Medical Board to disbelieve the reports of K.K. Arora. The reports of K.K.Arora had accordingly been discarded.

75 The Medical Board comprised of three senior doctors; they were Professor Dr.Bishnu Kumar, Professor Dr.S.N.Aggarwal and Professor Dr.Shameem J.Rizvi. The first doctor was from the Maulana Azad College, New Delhi, the second one was from Lady Harding Medical College, New Delhi and the third doctor was from J.L. Medical College. Aligarh Muslim University, Aligarh.

76 The patterned injuries noted on the body of the victim had been noted. The Medical Board had relied upon the post mortem report No.1844 dated 23.8.1986 wherein it had been suggested that some lathi like object having a diameter of one inch or so was the cause of these injuries. This post mortem report has opined that there was no smell of alcohol and in fact the stomach content had emanated a fruity smell. The Medical Board while giving its report (Ex.PW-16/A) had further noted that if there is 294 mg. of alcohol in blood a strong smell of alcohol at the post mortem should emanate but in the present case the stomach content had given a fruity smell and not the smell of alcohol. This Court has already held that the third report which was the chemical analysis conducted by the FSL, Agra was not upon the exhibit/viscera of

deceased Gopi Ram. Benefit of doubt has accordingly be given to the appellant K.K.Arora on this count.

77 The Medical Board comprising of the aforementioned three senior doctors had opined that the cause of death was shock consequent upon the multiple injuries on the body of the victim caused by some blunt object like lathi but not an iron rod.

78 The Apex Court in 2002(2) ACR 2901 (SC) Lakshmi and Ors. Vs. State of U.P. had in the context of a case where the cause of death could not be ascertained had made the following observation laying down that it is not inflexible that in all cases the cause of death must stand established. The following observations of the Apex Court in this regard are relevant:

“Undoubtedly, the identification of the body, cause of death and recovery of weapon with which injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where there aspects are not established, it would be fatal t the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charge with the offence of murder. It

would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in absence of identification of body and cause of the death.”

79 The Medical Board had applied its independent mind to the injuries which had been noted in the post mortem conducted by Dr.L.T.Ramani on 23.8.1986 which had revealed ten external injuries upon the victim besides the internal damage. The opinion of Dr.L.T.Ramani in this post mortem report dated 23.8.1986 (Ex.PW-29/A) had been relied upon. The observation of the post mortem doctor being that these injuries were all ante mortem and had been caused by a blunt like object. Dr.L.T.Ramani had also noted that a fruity smell was emanating from the stomach content of the deceased. These facts are admitted facts.

80 Thus on this count the unimpeachable evidence is that there was no smell of alcohol in the stomach content of the deceased; there was in fact a fruity smell emanating and as per the Modi's Text on Medical Toxicology a fruity smell would not emanate if the person has consumed a drug or alcohol. The ten external injuries all being ante mortem had been caused by a blunt object and this was noted

categorically by Dr.L.T.Ramani who was the post mortem doctor and who was the senior doctor who had clinically examined the deceased.

81 The three senior doctors of the Medical Board had also applied their individual mind to the external and internal injuries suffered by the victim and had concluded that the cumulative effect of the injuries was the cause of death. The fact that these injuries were caused by some blunt like object was not only the opinion of the Medical Board alone but Dr.L.T.Ramani had also opined the same on 23.8.1986, the date on which he had conducted the post mortem.

82 In AIR 1977 SC 45 State of Andhra Pradesh Vs. Rayavarapu Punnayya and Anr. where several persons had beaten the victim with sticks after dragging him into a house and caused multiple injuries on his body including 16 lacerated wounds on his arms and legs, a hematoma on the forehead and a bruise on the chest even though individually none of these injuries were sufficient to cause death but cumulatively and collectively the cause of death was the result of these injuries; the Apex Court gone ahead to note that even though these injuries were not on any vital part of the body of the victim but being so many in number they had led to the death of the victim.

83 The observation of the Apex Court in this regard who had explained the comparative scope of distinction between Section 299 and Section 300 of the IPC was answered in the following words:

“.....The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous. Only Lathis were used. It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of Section 300. At the same time, it is obvious that his hands and legs were smashed and numerous bruises and lacerated wounds were caused. The number of injuries shows that every one joined in beating him. It is also clear that the assailants aimed at breaking his arms and legs. Looking at the injuries caused to Behrun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause death in the ordinary course of nature, even if it cannot be said that his death was intended. This is sufficient to bring the case within 3rdly of Section 300.

39. The ratio of Anda v. State of Rajasthan (supra) applied in full force to the facts of the present case. Here, a direct casual connection between the act of the accused and the death was established. The injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc., supervened. There was no doubt whatever that the beating was premeditated and calculated. Just as in Anda's case, here also, the aim of the assailants was to smash the arms and legs of the deceased, and they succeeded in that design, causing no less than 19

injuries, including fractures of most of the bones of the legs and the arms.”

84 The conviction of Inder Singh Rana and Satish Kumar Kadian under Sections 304/34 of the IPC is thus maintained. Section 304 of the IPC is worded in two parts. The offence of the appellants clearly falls in the first part. The fact that they are guilty of wrongful restraint is also established. Their conviction under Sections 342/34 of the IPC is also maintained. They deserve no leniency even in the sentence which is already on the lenient side. It also calls for no interference.

85 Appeals are disposed of in the above terms.

INDERMEET KAUR, J

DECEMBER 22, 2015/ndn