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

+ CRL.A. 1335/2014

% *Judgment reserved on 13th March, 2015*
Judgment pronounced on 24th March, 2015

STATE Appellant
Through : Mr.Feroz Khan Ghazi, APP for State.

versus

BALBIR SINGH Respondent
Through : Mr.Rajesh Dua, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J

1. Present appeal has been filed by the appellant/State against the judgment dated 19.10.2013 passed by learned Additional Sessions Judge-03 (Central), Delhi, whereby the respondent has been acquitted by the learned trial court for the charge under Section 302 of the Indian Penal Code.
2. Before the rival submissions of counsel for the parties can be considered, we deem it appropriate to notice the case of the prosecution, as noticed by the learned trial court in the judgment dated 19.10.2013. Relevant portion of the trial court judgment reads as under:

“1. Vide DD No.2-A dated 26.7.2010, the police was informed by Dr. Kundan of Jeewan Mala Hospital about admitting of Narender @ Rinku S/o Satya Narain R/o B-1448, Shastri Nagar, Delhi aged 25-26 years. having multiple punctured wound on the chest, abdomen and head and he was declared brought dead. The above said information was assigned to SI Deepak for

reconnoitring. SI Deepak Kumar alongwith Ct. Ram Karan reached to Jeewan Mala Hospital and collected MLC bearing No.157/10 of Narender. Doctor had mentioned in the MLC of the injured that he has received punctured wound over the chest, upper limb and declared dead. On inspection of the dead body, blood was oozing out of the punctured wounds. The brother of the deceased Anil was found there and his statement was recorded. In his statement Anil has stated that he was living on the first floor of the house bearing no. B-1448, Shastri Nagar, Delhi. At the ground floor of the said house his younger brother Narender was living. Narender was handicapped and was running a tea shop there. He has stated to the police that some fifteen days ago, his brother Narender told him that about 11.00 p.m. when he was coming out for urine outside of his shop, he has seen Balbir Singh @ Kalu who had come to leave the niece of Gopal residing in the neighbourhood in his black colour Santo Car. When Balbir Singh had seen him, he stated that 'sale what are you seeing here, if anything disclosed to any one, he will kill him'. He further narrated the fact that yesterday a day before the incident i.e. on 25.7.2010, he was sitting outside of his house along with Narender at about 10.00 p.m. Thereafter, he went on the first floor of his house. His brother had called him to close the Kundi, he had closed the Kundi and went to his house. At about 11.00 p.m. he had heard the cry of Narender and he had seen from the first floor that Balbir had been beating his brother at the gate of his shop. He raised alarm immediately. Balbir Singh @ Kalu had run away from there. His cousin brother Surjeet had also arrived there after hearing the cry of his brother Narender. He has also

seen kalu running from there. Surjeet had also tried to apprehend Balbir @ Kalu but he was succeeded in running in his Santro Car. He and his cousin brother had taken Narender to Jeewan Mala Hospital where the doctor had declared him brought dead. His brother was murdered by the said Kalu by giving Sua blow on his chest. The above said statement was got endorsed by the SI Deepak for registration of the case. Station house officer had reached to the spot. Crime team was called. Crime Team inspected the scene of crime and taken photographs. Station house officer found the blood at the distance of two yards outside the gate of the deceased. One wooden bench was lying inside the house. There was a Chatai lying there having blood stained. Silver utensils lying inside the house were also having blood stain from inside and outside. One Hawai chappal was found inside the house and other hawai chappal was found outside the house at a distance of two yards. During the course of investigation, IO collected the evidence. Recorded the statement of the witness and arrested the accused in the present case.”

3. In order to substantiate the charge against the respondent herein, the prosecution has examined 25 witnesses. The defence examined four witnesses besides statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure.
4. Learned counsel for the State submits that the learned trial court has failed to appreciate that both the eye-witnesses [PW-1 and PW-2] have supported the case of the prosecution and their version unequivocally proved the guilt of the respondent in the commission of the crime. Counsel further submits that the inconsistencies are minor in nature and

they do not go into the core of the issue. It has further been submitted that on the pointing out of the respondent the weapon of offence i.e. sua (ice pick) was recovered and this would be admissible under Section 27 of the Evidence Act. Counsel further contends that the blood was found in the Santro car in which the respondent had fled from the spot of the incident. The FSL report shows that the blood was human blood. It is, thus, contended that besides the ocular evidence even the scientific evidence establishes the guilt of the respondent beyond any shadow of doubt. Counsel also contends that the medical evidence is also in absolute consonance with the oral and ocular evidence. The post-mortem report would show that vital injuries were caused by a sharp edged weapon, which will prove a link between the injuries and the weapon of offence recovered on the pointing of the respondent herein.

5. Counsel further contends that both PW-1, Anil, who is the brother of the deceased, and PW-2, Surjit, who is the cousin of the deceased, had given graphic and clear details of the events, which took place on the fateful night when the deceased was killed by the respondent. It is also submitted that the learned trial court has erred in giving undue importance to the difference of time as stated by PW-1 and PW-2 in their depositions. It is next submitted that as per PW-1 the incident took place at 11.00 p.m., while as per PW-2 the incident took place at 10.45 p.m. The difference is not a major difference which can result in acquittal of the respondent. Counsel also contends that there was no occasion for PW-1 and PW-2 to give a description of the respondent as the respondent was known to them and both the witnesses had named the respondent.
6. Counsel contends that the learned trial court has incorrectly reached a conclusion that PW-1 and PW-2 are planted witnesses. The trial court

has also erred and ignored the deposition of PW-6, Basant Singhal, uncle of Swati, who also categorically admitted that Swati was friendly with the sister of the respondent Balbir and Balbir used to visit the house of Swati now and then. Similar has been the testimony of PW-9, Harjit Singh, father of the respondent, who has testified that his son had friendly relation with Swati.

7. Counsel further submits that the blood found in the Santro car would also link the respondent to the commission of offence. It is also submitted that the learned trial court has given undue importance to the fact that neither in the statement recorded under Section 161 of the Code of Criminal Procedure of PW-1 nor is it the case of the prosecution that after the offence was committed the victim was first removed to Munjal Clinic and thereafter to Aggarwal Nursing Home and since both Munjal Clinic and Aggarwal Nursing Home failed to provide medical treatment, the victim was removed to Jeevan Mala Hospital, where he was brought dead at 11.20 p.m.
8. *Per contra*, learned counsel for the respondent submits that the testimonies of PW-1 and PW-2 would show that they were not the eye-witnesses as it was humanly impossible for them to have witnessed the alleged crime as the case of the prosecution is that the brother of PW-1 was stabbed to death by a Sua (ice pick) on the ground floor of the property bearing no.B-1448, Shastri Nagar, Delhi. Counsel further submits that the testimonies of PW-1 and PW-2 would further establish that both these witnesses have testified that they had heard the shouts of Narender, the deceased, and thereafter PW-1 ran down and PW-2 reached the spot of the incident to rescue him. Counsel contends that there is nothing on record to show that either PW-1 or PW-2 made any effort to save Narender or chase the assailant. While relying on the

photographs, which have been placed on record, learned counsel for the respondent submits that photographs, Exhibits PW-21/1 to Ex.PW-21/8, would show that there was a cloth sheet above the window of the house of PW-1 and thus it was not possible for PW-1 to have looked out from the window and see the commission of the crime. Even otherwise as per the testimony of PW-1 his brother was stabbed in the house itself. Counsel further contends that both PW-1 and PW-2 have made material improvements in their testimonies. PW-1 was confronted during cross-examination with his statement, Exhibit PW-1/A. During his testimony in Court, he had testified that he had heard his younger brother, Narender, screaming “*Kalu Chaku Maar Raha Hai Kalu Chaku Mar Raha Hai*”, whereas in the statement recorded under Section 161 of the Code of Criminal Procedure, the same was not recorded. This witness was also confronted with Exhibit PW-1/A where he testified in Court that he had stated to the Police that he saw the respondent, Balbir @ Kalu, stabbing his brother with a Sua outside his shop as this was not stated by him in Exhibit PW-1/A.

9. It is next contended by learned counsel for the respondent that both PW-1 and PW-2 have made material improvements in their testimonies. Reliance is also placed by counsel for the respondent on the testimony of DW-3, Ms.Rita Singhal, and DW-4, Mr.Talvinder Singh. Counsel contends that as per the testimony of DW-4 on the fateful day he was taking a walk after his meal and he had seen Narender lying injured with blood oozing from his face and lying on a car unconscious. This witness has further testified that he raised an alarm. Thereafter the crowd gathered and the injured was taken to hospital.
10. Learned counsel for the respondent submits that it is a settled law that the evidence of a defence witness is to be given equal weightage as the

evidence of a witness for the prosecution and DW-3 and DW-4 were independent witnesses, whose testimonies would show that after Narender was stabbed none was present much less PW-1 and PW-2 and, thus, they are planted witnesses. Counsel further contends that the time gap between 10.45 p.m. and 11.00 p.m. is extremely material for the reason that as per the testimonies of PW-1 and PW-2 in Court the injured was taken first to Munjal Clinic on foot being supported by PW-1 and PW-2 and thereafter to Aggarwal Nursing Home on a two wheeler scooter and thereafter to Jeevan Mala Nursing Home where he was brought dead at 11.20 p.m. as per the MLC, Exhibit 4/A. Counsel contends that the evidence on record would show that the distance between the spot of the incident and Munjal Clinic was 200 ft. and Aggarwal Nursing Home was half a kilometre and, thus, the victim could not have been taken to two nursing homes and thereafter brought dead by 11.20 p.m. at Jeevan Mala Hospital.

11. It is also the case of the respondent that in case both PW-1 and PW-2 were present at the spot of the incident and they had supported the victim and walked with him to the Munjal Clinic, Aggarwal Nursing Home and Jeevan Mala Hospital, their clothes would have been stained with blood keeping in view the eleven stab wounds on his body. It is also contended that the blood stained clothes of PW-1 and PW-2 have not been sent to the FSL and, thus, their presence at the spot of the incident is doubtful.
12. Counsel contends that the presence of the blood on the seat of Santro Car which is being linked to the deceased cannot be of any benefit to the prosecution as although FSL report shows that the car seat contained human blood yet there is nothing to link this blood with the deceased as there is nothing on record to show that the blood group found in the car was that of deceased. Counsel contends that no benefit can accrue to the

prosecution as the alleged recovery of Sua was from an open place and the appellant cannot derive any benefit of Section 27 of the Evidence Act.

13. We have heard learned counsel for the parties and considered their rival submissions. PW-1 and PW-2 are stated to be the eye-witnesses. As per the testimony of PW-1, Anil, he was residing at B-1448, Shastri Nagar, Delhi. His younger brother, Narender @ Rinku, was running a tea shop on the ground floor portion of the house. 10-15 days prior to the incident, the respondent Balbir Singh @ Kalu, whom he identified in Court, had come in the gali in a Santro car, to drop Ms.Swati, niece of Gopal. At that time his deceased brother, Narender, was present in the gali, he was urinating and had seen both Balbir and Swati. Swati was residing in a house opposite their house and was having an affair with Kalu. On finding that his deceased brother had seen them, Kalu had abused Narender and threatened him that he would not be spared in case he would reveal to anyone that he had dropped, Swati, late at night. This incident was narrated to PW-1 by his brother. It has further been testified by PW-1 that on 25th July, 2010 at about 10.00 p.m. PW-1 was present at the tea shop of his brother, Narender, who had told him to go upstairs and lock the house from inside as it was getting late. PW-1 remained there for another 10-15 minutes and then went to the first floor portion in the same house and bolted the door from inside at the ground floor. At about 11 p.m. when PW-1 was lying down on the bed he heard his younger brother screaming “Kalu chaku maar raha hai, kalu chaku maar raha hai”. He immediately got up and looked outside through the window down in the gali and saw Kalu running away. PW-1 again stated that he had seen Kalu stabbing his brother with Sua, he then pushed him aside and ran away in his black coloured Santro car bearing no.4219. He

immediately came down. His cousin brother, Surjit, who was residing nearby and who had heard the alarm raised by Narender, also immediately came there. His brother was covered with blood. He was taken by him and Surjit to nearby Munjal Nursing Home. There was none to give medical aid to Narender and, thus, he was taken to Aggarwal Nursing Home where also no medical attention was provided and thereafter PW-1 brought his Vikram TSR and took his injured brother to Jeevan Mala Hospital where he was pronounced dead. His statement, Exhibit PW-1/A bearing his signatures at point A, was recorded by the Police. During cross-examination, PW-1 testified that there was a girl, Swati, who was niece of one Gopal, residing in a house opposite and was having an affair with Kalu and he was informed about the threat given by Kalu to him the same night when Narender had seen Kalu dropping Swati. He also testified that during cross-examination he had heard his younger brother screaming “kalu chaaku maar raha hai”. He had also stated to the Police that he saw Kalu stabbing his brother and thereafter he went in his Santro car. He also testified that his brother was taken to Munjal Nursing Home and thereafter to Aggarwal Nursing Home. The witness was confronted with Exhibit PW-1/A with respect to the above statements, which did not find mention in exhibit PW-1/A.

14. During cross-examination, he further testified that his cousin reached the spot within a minute or two of the incident. He also testified that Munjal Hospital was just a gali behind their house and Aggarwal Nursing Home was half kilometres away from his house. He has also testified that when he reached his brother, he was conscious and talking to him. They had taken Narender to Munjal Nursing home on foot by supporting him from each side, which was 200 steps away from the scene of occurrence and thereafter to Aggarwal Nursing Home when a Sub Inspector on

motorcycle patrolling in the area had arrived and accompanied them to Aggarwal Nursing Home. The injured was taken to Aggarwal Nursing Home on a two wheeler. He was made to sit in the middle while this witness sat on the back side.

15. During cross-examination, he has also testified that the width of the road in front of their house is 30 feet and their house was located in a residential area, which was somewhat thickly populated. No one from the neighbourhood had gathered at the scene of occurrence after hearing the alarm raised by his brother and the commotion.
16. PW-2, Surjeet, has testified that House No.B-1448, Shastri Nagar, has six parts. At about 10.30 p.m., he came back to his house after attending Sai Sandhya. His house is located adjacent to the house of Narender. At about 10.45 p.m. he had heard his cousin brother, Narender, saying that he was being killed by one Kalu. He further testified that he had heard that “Kalu Maar Raha Hai, Kaalu Maar Raha Hai”. PW-2 came down and saw Balbir Singh @ Kalu, whom he identified in Court, stabbing his cousin brother, Narender, with an ice pack (Sua). He rushed to the spot and in the meanwhile Anil also arrived. Balbir Started running towards his black Santro car. He chased him and tried to stop him, but he sat inside the Santro car and drove off. It was also testified that he along with Anil took the injured, Narender, who was covered in blood, to nearby Munjal Nursing Home on foot where no Doctor was available. A person on a two wheeler scooter offered help and the injured was taken to Aggarwal Nursing Home, which is at a distance of half a kilometre where also no medical help was provided and in the meanwhile his brother, Anil, brought his Vikram, TSR, and the injured was removed to Jeevan Mala Hospital where on medical examination he was declared dead.

17. This witness was also confronted with the statement made by him under Section 161 of the Code of Criminal Procedure (Exhibit PW-2/DA) that he had heard his cousin brother saying that he was being killed by one Kalu and had heard “Kaaluu maar raha hai, kaalu maar raha hai” and also with regard to taking the injured to Munjal Nursing Home on foot and also with regard to meeting a person on a two wheeler who offered help and injured was taken to Aggarwal Nursing Home. He has also testified that he had blood on his clothes while taking injured, Narender, to the nursing home and later Jeevan Maala Nursing Home. But his blood stained clothes were not seized by the Police.
18. The post-mortem report was proved by PW-3, Dr.S. Lal, Specialist Forensic Medicine. He described the injuries on the body of the deceased and as per his opinion the injuries caused were possible by pointed blunt object. Injuries no.1 to 3 were sufficient to cause death in the ordinary course of nature individually and collectively. The ice pick (sua) was produced before this witness, who after examination opined that injuries mentioned in the post-mortem report was 1-6 could be possible by the aforesaid sua.
19. The MLC was proved by PW-4, Dr.Kundan from Jeevan Mala Hospital, who has testified that patient (Narender) was brought dead at 11.20 p.m. PW-4 has testified that he prepared the MLC, Exhibit PW-4/A.
20. PW-5, Ms.Swati, has testified that she knew the respondent, Balbir, for quite sometime as his sister is her friend. PW-5 has not supported the case of the prosecution and denied that she was having an extra-marital affair with Balbir Singh or that she used to go out with Balbir Singh at odd hours. This witness was declared hostile.
21. PW-6, Basant Singhal, uncle of Swati, has also not supported the case of the prosecution.

22. PW-8, Ct.Ram Karan, has testified that on the night intervening 25/26.7.2010 he was on emergency duty in the Police Station along with Ct. Kiran Pal. At around 12.15 a.m. on receipt of DD No.2A from Jeevan Mala Hospital, he along with SI Deepak Kumar and Ct.Kiran Pal reached the hospital where SI Deepak obtained MLC of deceased, Narender. He along with SI Deepak reached the house of the brother of the deceased, namely, Anil and in front of their house no.P-1448, Shastri Nagar, Delhi, he saw some blood on the road in front of the tea shop in the same house and on the ground floor of that house. He has also testified that room was opening on the road itself. Ruka was prepared by SI Deepak and handed over the same to him at about 2.45 a.m. and sent him to Police Station Sarai Rohilla for getting a formal FIR registered.
23. The father of the respondent was also examined as PW-9, Harjit Singh. He did not support the case of the prosecution. He has also testified that although Swati was a friend of his daughter and also friendly towards his son but Swati and Balbir did not have an affair. This witness was also declared hostile and cross-examined by the public prosecutor.
24. As per the testimony of PW-10, HC Pushpender Kumar, respondent was apprehended upon secret information. The respondent was wearing black kurta and black jeans. The kurta and right pocket of the jeans of the respondent had blood marks. His clothes were seized. Disclosure statement was recorded. Based on the disclosure statement he led the Police party near Udham Singh School, WZ Nimri Colony, Shastri Nagar, where near the wall of the school one Santro Car bearing No.DL-76J-4219 of gray colour was parked, which was pointed out by him as the car used during the commission of offence. At a distance of 50-60 ft away from the car, one Sua (Ice poker) was also recovered at his instance. On inspection of the car, blood stains were noticed on the side

of the driver seat. The blood stained piece from inside the car was cut and kept.

25. We also deem it appropriate to notice the evidence of the defence witnesses i.e. DW-1, Dr.Subhash Chander Gupta, Owner of Aggarwal Multi Speciality Hospital, who has testified that his nursing home has a 24 hour emergency facility, Doctors are available day and night, and records of the patients are maintained. He has further testified that on 25.7.2010 no patient with the name Narender was brought either in the injured condition or dead. He was available during the whole night and nobody had approached him to examine the patient. He brought the record of the patients of 25.7.2010 (Exhibit DW-1/1).
26. Similar statement has been made by DW-2, Dr.Harbhajan Singh, Owner of Dr.Munjhal Clinic and Maternity Centre. He had also brought the record with respect to the patients of OPD and the patients admitted on 25.7.2010 (Exhibit DW-2/1 and DW-2/2 respectively).
27. As per DW-3, Ms.Rita Singhal, on 25.7.2010 she was present in her house at about 10.30-10.45 p.m. She was standing at her balcony. She saw Narender, who used to sell tea, standing near their vehicle. She thought that he was urinating as he used to take liquor. At that time Narender was alone. After some time there was a huge noise. She came out and learnt that someone had murdered tea vendor, Narender. She denied the suggestion that she was deposing falsely.
28. Another defence witness is DW-4, Talvinder Singh, who has testified that on 25.7.2014 at about 10.30 or 10.45 p.m. he was walking after his meals. He had seen Narender with injury on his body chest and head. Blood was oozing from his face and he was lying in the car unconscious. He raised an alarm. Thereafter crowd gathered and injured was taken to the hospital.

29. We may notice that the trial court had acquitted the respondent herein. The leave to appeal petition filed by the State was allowed. It is the case of the state that the learned trial court has erred in discarding the testimonies of two witnesses i.e. PW-1, real brother of the deceased Narender, and PW-2 cousin brother of the deceased. We have examined the testimonies of both PW-1 and PW-2 in detail.
30. As per PW-1 at 11.00 p.m. when he was lying down in the bed, he heard his younger brother screaming that “Kalu Chaku Maar Raha Hai, Kalu Chaku Maar Raha Hai”. He has further testified that he immediately got up and looked outside through the window down in the gali and he saw the respondent, Kalu, running away. He again stated that he saw Kalu stabbing his brother with a sua, who then pushed him aside and ran away. This witness was confronted with the statement recorded under Section 161 of the Code of Criminal Procedure where these facts were not recorded. In fact, he had also not stated in the statement made under Section 161 of the Code of Criminal Procedure that he saw respondent, Kalu, stabbing his brother with a sua outside his shop. He also did not state in the statement recorded under Section 161 of the Code of Criminal Procedure that thereafter the accused went in his black Santro, which was parked nearby. It has also not been stated in the said statement that his brother was covered with blood, he was taken to Munjal Clinic and thereafter Aggarwal Nursing Home.
31. As per PW-1, at the time of the incident his brother was on the ground floor, whereas he was on the first floor. From the ground floor he could have heard his brother “*Kalu Chaku Maar Raha Hai Kalu Chaku Mar Raha Hai*”, but he could not have seen Kalu stabbing his brother. Moreover PW-1 has deposed in court that he heard his brother screaming “*Kalu Chaku Maar Raha Hai Kalu Chaku Mar Raha Hai*”, which is a

material improvement as he had not stated so in his statement recorded under Section 161 Cr.P.C. Another material improvement is that this witness testified in court that he saw *Kalu* stabbing his brother with *Sua* outside his shop and pushed him aside, which was not stated in the statement under Section 161 Cr.P.C. Two other improvements are that this witness testified that *Kalu* went back in his black Santro car bearing No.4212 and also that his brother was covered with blood and was taken to Munjal Nursing Home and thereafter to Aggarwal Nursing home. The above three improvements in our view make the presence of PW-1 doubtful at the spot of the incident.

32. In case, he had not heard the cries of his brother then did he actually witness the stabbing? He has also testified that he immediately got up and looked outside through the window and saw *Kalu* running away and thereafter said he saw *Kalu* stabbing his brother.
33. The testimony of PW-8, Ct. Ram Karan, would show that blood was found in the room on the ground floor of the house and some blood on the road in front of the tea shop in the same house. The blood in the room would show that in fact Narender was stabbed in the house and in case he was stabbed in the house PW-1 could not have witnessed the stabbing, as he was not present on the ground floor as per his own showing because, as according to him, he had seen *Kalu* running away from the window.
34. Even otherwise PW-23 has admitted in his cross-examination that at point 'B', which is inside the shop cannot be seen from points 'F' and 'G', as shown in the site plan.
35. We also find it unusual as testified by PW-1 and PW-2 in Court that they took the injured to two nursing homes before they took him to Jeevan Mala Hospital. This fact does not find mention by either of them in their

statements recorded under Section 161 of the Code of Criminal Procedure. Although as per PW-1 the incident took place at 11.00 p.m. whereas as per the statement of PW-2 the incident took place at 10.45 p.m., which cannot be termed as a material contradiction, but the time factor gains importance having regard to the fact that the deceased was declared brought dead as per the MLC prepared by Dr.Kundan of Jeevan Mala Hospital at 11:20 p.m.. In case the deceased was taken first to Munjal Nursing Home on foot, a hospital which was approximately 200 steps away from the scene of occurrence, and then Aggarwal Nursing Home on a two wheeler and then to Jeevan Mala Nursing Home in a TSR surely it would have taken more than 20 minutes or half an hour. Thus making the testimonies of PW-1 and PW-2 unreliable.

36. Although PW-1 and PW-2 have testified that the deceased was taken to Munjal Nursing Home on foot and thereafter to Aggarwal Nursing Home on a two wheeler, however the clothes of PW-1 and PW-2 were not seized, which would surely have blood stains.
37. It may also be noticed that the testimonies of PW-1 and PW-2 with regard to taking of the deceased to Munjal Clinic and Aggarwal Nursing Home are not supported by the DW-1, owner of Munjal Clinic and by DW-2, owner of Aggarwal Nursing Home. DW-1 owner of Aggarwal Nursing Home has testified that he maintains record of all patients, who are brought to the hospital and on 25.7.2010 no patient with the name of Narender was brought either in injured condition or dead. He also testified that he was available during the whole night on 25.7.2010 and record of the patient of the said date was also produced, Ex.DW-1/1. DW-2 (Dr.Harbhajan Singh) also testified on the same lines and also produced the record Ex.DW-2/1 and Ex.DW-2/2.
38. As per the prosecution, the incident took place on the ground floor of the

house bearing No.B-1448, Shastri Nagar, Delhi. PW-23, Inspr.Jai Bhagwan, has testified that he reached the spot on 26.7.2010 and Exhibit PW-21/B, C, D, E, F and G viz. seizure memo of blood stained cotton, seizure memo of blood stained earth outside house, seizure memo of blood stained earth control outside house, seizure memo of blood stained earth inside house, seizure memo of blood stained control inside house and seizure memo of blood stained items, respectively, were prepared by HC Narayan in his own handwriting on his dictation. In each of these documents, as observed by the trial court, PW-23 has shown the scene of the crime as a small room constructed on the ground floor. Even in the site plan, PW-23/C, the scene of the crime has been depicted as the room, house no.B-1448. The documents and the photographs placed on record before the trial court leaves no room for doubt that it was not possible for PW-1 to have witnessed the crime committed in a room on the ground floor, while he was admittedly on the first floor of the house.

39. We have no reason to disbelieve the testimonies of DW-3 and DW-4, who are independent witnesses. According to DW-3 between 10.30 and 10.45 p.m. she had seen the deceased standing near her vehicle and also saw deceased urinating. At that time he was alone. It is only subsequently that she heard a noise and learnt that somebody had murdered Narendra.
40. According to DW-4 between 10.30 and 10.45 p.m. while he was taking a walk he had seen deceased Narendra with injuries on his body and lying on the car, and thereafter the crowd gathered, which would show that when the deceased was murdered both PW-1 and PW-2 were not present at the spot. Although clothes of the respondent were seized vide seizure memo, PW-10/C and PW-10/P3 yet there is no evidence on record to show that the clothes of the respondent, which were seized vide seizure

memo Ex.PW-10/C and Ex.PW-10/P3, were worn by the appellant at the time of the incident or the blood on the clothes matched with the blood of the deceased. The testimonies on record would show that the respondent knew Swati, PW-5, being his sister's friend but does not prove on record that he was having an extra-marital affair with him.

41. It is a settled principle of law that the Court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. In **Sarwan Singh Rattan Singh v. State of Punjab**, reported at AIR 1957 SC 637, the Apex Court has held as under:

“In criminal cases mere suspicion however strong cannot take the place of proof. The court must be satisfied that the case of the prosecution is not only substantially proved, but the guilt of the accused has also been established beyond reasonable doubt.”

[Also see ***State of Punjab Vs. Bhajan Singh*** reported at 1975 CrL.L.J. 282]

42. For the reasons aforestated and on careful examination of the evidence on record, we find that there is no infirmity in the judgment of the trial court. Resultantly the appeal filed by the State is dismissed. Bail bonds stand cancelled and surety stands discharged.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 24th 2015
msr/ssn