

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

+ **CRIMINAL APPEAL NO. 225/2000**

% **Reserved on:** 11th December, 2015
Date of Decision: 31st March, 2016

DEVENDER & ORSAppellant
Through Mr. M.L. Yadav, Advocate.

Versus

STATE OF DELHI ...Respondent
Through Mr. Varun Goswami, APP with Inspector
Jogendra Pal, Additional SHO, PS-Seema Puri.

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

SANJIV KHANNA, J.

The impugned judgment dated 10th March, 2000, convicts Devender, his mother Sardari Devi and his brother Anil @ Pappu under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for murder of Suman, sister-in-law of Devender. In addition, they have also been convicted for the offences under Sections 452 and 506 read with Section 34 IPC. Devender is also convicted under Section 27 of the Arms Act, 1959.

2. By order on sentence dated 16th March, the three appellants have been sentenced to undergo imprisonment for life, fine of Rs.5,000/- and in default of payment of fine, undergo rigorous imprisonment of one year for the offence under Section 302 IPC; rigorous imprisonment of

five years, fine of Rs.2,000/- and in default, undergo rigorous imprisonment of six months for the offence under Section 452 IPC and rigorous imprisonment of two years, fine of Rs.1,000/- and in default of payment of fine, undergo rigorous imprisonment of three months for the offence under Section 506 IPC. Devender has been sentenced to rigorous imprisonment of three years, fine of Rs.2,000/- and in default of payment of fine, undergo rigorous imprisonment of six months for the offence under Section 27 of the Arms Act. The sentences are to run concurrently and benefit of Section 428 of the Code of Criminal Procedure, 1973, it stands directed, would be given.

3. We begin by noticing undisputed facts recorded by the trial court and not challenged before us. Devender had married Krishna, sister of deceased Suman in the year 1986-87 and they had three children, Anshu, Chanchal and Ashwani. Suman had suffered a fire arm wound on 14th May, 1997 at her residence at Q-525, Janta Flats, Dilshad Garden, Delhi.
4. Krishna, sister of deceased, has deposed as PW-1. Krishna (PW-1) is the first informant, and also the purported eye witness. In her examination-in-chief recorded on 17th July, 1998, she had testified:-

“.....On 14.5.1997 which was the date in the women cell, all the three accused persons came to my house and when they knocked the door of the house at about 12.00 noon, my daughter Chanchal opened the door, at which my mother-in-law Sardari Devi entered into my house and at that time I alongwith my sister was standing in the kitchen. On

this, my mother-in-law said to accused Pappu and Devender come inside both the 'CHUDELS' are present in the house 'AAJ INKI RAR KAAT DO'. Thereafter, my mother-in-law Sardari Devi and Pappu pulled my sister outside. After that Pappu and Sardari Devi held tightly my sister with the wall (MERI BEHAN KO DEEWAR KE BEECH MAIN BHEECH DIYA) and accused Devender present in the court fired a shot at my sister which hit left on side just below the heart. When I tried to run inside the house, Pappu and Sardari caught hold of me and started pulling me out. I tried to bolt the door from inside and in this process my hand (left) came in between the door. I received injuries on my both hands. Accused Devender was striking Katta on the earth. I do not know exactly but it seem that cartridge was stuck up inside the Katta (SHAYAD USME GOL KA KHOKA FAS GAYA THA). Thereafter, I raised a noise by saying 'BACHAO BACHAO MERI BEHAN KO GOL MARDI'. Then the accused persons went away after threatening me by saying that 'TERI BHI RAR KAATENG CHHORENG NAHIN'. After sometime, police came there and got the door opened. Police made inquiries from me about what has happened and I lodged the report with the police which is Ex.PW1/A, and also bears my signature at point A. When I had opened the door, my both the children were missing since then and I suspect that the accused persons might have taken away my children. ”

5. Examination-in-chief of Krishna (PW-1) continued on 11th September, 1998 and then on 12th January, 1999, when she was also cross-examined. Cross-examination continued and ended on 5th April, 1999. The appellants rely upon the following portion of PW-1's cross-examination on 5th April, 1999, which reads:-

“.....It is correct to suggest that to obtain papers there has been quarrel “Zadga” between them i.e. Yashovardhan, husband of deceased & deceased Suman. Today, those ownership papers of the said property are in possession of Yashovardhan. I was told before the incidence that Yashovardhan was required to deposit about Rs.50, 000/- in

the court of maintenance within 10/15 days before the actual incidence. It may be possible that to obtain ownership papers of property of my father & to avoid deposit of Rs.50, 000/- in the Court of maintenance within 15 days, it is possible that Yashovardhan might have got killed her. On 14/5/97 some persons had come to meet Suman between 9/10.00 A.M. but I didn't see them. I had heard exchange of hot words between Suman and those persons before the actual incident. On the day when my statement was recorded on the first day in this court, same persons were standing outside this court. I was told by those persons that whatever statement the police has recorded in this case, the same were to be given/repeated. IO Sh. J.K. Sharma had come later on. They had left the court and when I went after giving statement in this Court, those persons had met me in the park of the premises of this Court. After the incident, I have been receiving threatening from those persons. There was one person who was having beard & Mustaches (Dadi aur Moochon Wala). In my presence there has been no quarrel between the accused persons & Suman. I cannot tell what benefit would have been to the accused person by killing Suman. I have signed all the documents in the P.S. On 14.5/97 I & Suman were required to attend Women Cell at about 1.00 noon. It is correct that at that time of incident, we were ready to go to Women Cell. We had taken tea and Paranthas in our breakfast before starting for Women Cell. We had changed our dresses. At that time, I had stated of my own. There was no pressure at that time. However I was upset. I had signed all the papers without reading the same. I don't remember whether those papers were read over to me or not. At Tahirpur T point I have accompanied about 10/12 police officials in a big vehicle. There were passengers standing at Bus Stop. Nobody was asked to join as a witness at the time of arrested to accused persons. Personal search of accused Devender was taken in P.S. No arm or offending article was recovered. The three shishies were shown to me at my flat for the first time by the police. I didn't know what was in those shishies. However I was told about the same by the police. I remember now that in one shishi earth sample, in another shishi stones & in one small bottle blood was kept. I had gone to meet accused Devender once in the jail."

6. The disconnect and variation in the version given by Krishna (PW-1) in the two quoted portions is perceptible and obvious. In the examination-in-chief recorded on 17th July, 1998, Krishna (PW-1) was forthright and categorical in naming and nailing the three appellants as the perpetrators, who had trespassed and fired on Suman on 14th May, 1997 and threatened her. At about 12 noon, PW-1 asserts, the appellants had come to their house and Chanchal, her daughter, had opened the door. Her mother-in-law Sardari Devi had entered the house and confronted Suman. Sardari Devi vociferously had asked Devender and Pappu to come inside and finish them. Sardari Devi and Pappu had pulled Suman outside and held her tightly. Devender had then fired a shot, which had struck Suman on the left side chest just below her heart. Petrified, Krishna (PW-1) had scrambled to go inside the house. Sardari Devi and Pappu caught hold of PW-1, and had pulled her out as she (Krishna) had tried to bolt the door from inside. PW-1's left hand came in between the door and she had suffered injuries on her hand. Krishna (PW-1) had seen Devender, her husband, striking the *Katta* (country made firearm) on the ground as it appeared that the cartridge had got stuck inside. Krishna had shouted for help and had loudly voiced that her sister had been shot. The three appellants ran away from the spot. They had given threats. Chanchal (PW-12), aged about 9-10 years and Anshu,

aged about 4-5 years, who used to reside with her, were missing since then.

7. We shall now examine whether this testimony of Krishna (PW-1) is the truth, or the truthfulness of this version is negated and erased by the aforequoted portion of Krishna (PW-1)'s cross-examination on 5th April, 1999. On the said date, Krishna (PW-1) has referred to quarrels and disputes between Suman and her husband Yashovardhan and that papers of some property at Krishna Nagar, in the name of Suman, were in possession of Yashovardhan. Krishna (PW-1) had accepted that about 10-15 days before the occurrence, Yashovardhan was required to deposit Rs.50,000/- in the Court as maintenance. She had also accepted that it was possible that Yashovardhan might have killed Suman. Earlier, on 14th May, 1997 at about 10 A.M., some persons had come and met Suman, but Krishna (PW-1) had not seen them. Suman and the said persons had heated arguments. The same persons were present in the Court on 17th July, 1998, when Krishna, (PW-1)'s testimony was first recorded. PW-1 professes that these persons had asked Krishna (PW-1) to testify on the line of her statement given to the police. The Investigating Officer of the case, J.K. Sharma, had come later on. These persons had left once PW-1's testimony was recorded. Krishna (PW-1) had been receiving threats from the said persons. She claimed that there was no quarrel or

conflict between the appellants and Suman, and on 14th May, 1997, she and Suman had got ready to go to the Women Cell. She had signed police papers without reading them and that personal search memo of the appellant Devender, after his arrest, was prepared at the police station and no arm or offending article was recovered. She had seen a small bottle of blood. Lastly and pertinently, PW-1 accepted that she had gone to meet her husband Devender in jail.

8. We reject and disbelieve the aforesaid version of the facts as they transpired on 14th May, 1997 as an untidy and septic retract made by Krishna (PW-1) in her cross-examination on 5th April, 1999. The narration given above is *per se* and *ex facie* invented and make belief, except for the last portion wherein Krishna (PW-1) has accepted that she had gone to meet Devender in jail, which reflects why Krishna (PW-1) had changed and revamped her version to help the appellants. The so-called unidentified persons, who had firstly come to their house on 14th May, 1997 and thereafter to the Court on 17th July, 1998 are mere ghosts, who do not exist. This attrition is an invention and concoction to rescue and favour the appellants, inspite of PW-1's clear and affirmative earlier implication on involvement of the three appellants. Had the said persons existed or extended any threats or pressurized Krishna (PW-1), she would have so stated when her testimony was recorded on 17th July, 1998, or on 11th September,

1998. On the date of occurrence itself i.e. 14th May, 1997, Krishna (PW-1) had lodged the report marked Ex.PW-1/A with the police, and had indicated and named the three appellants as the persons who had committed the crime. She had also stated that her two children were missing since the occurrence. Krishna (PW-1) never disputed and asserted that her first version/statement, in Ex. PW 1/A, was fabricated. The aforesaid version by Krishna (PW-1) in her cross-examination on 5th April, 1999 is an afterthought and cover-up. Once we repel and disbelieve the “unidentified persons” version as gibberish, the second version has to be rejected and ignored.

9. Krishna (PW-1) in her examination-in-chief recorded on 17th July, 1998, had referred to the fact that her elder sister Suman had disputes with her husband, which were pending in Court and that Suman was getting maintenance. She and Suman were residing together in Q-525, Janta Flats, Dilshad Garden, Delhi. Her two children Chanchal and Ashwani resided and lived with them, while her daughter Anshu resided with Devender in the village. PW-1's relationship with Devender, with whom she had got married 12-13 years back, was troubled. After their marriage, they had remained in the village for about one or two years and there would be frequent quarrels between Sardari Devi and Pappu on the one side and Krishna (PW-1) on the other. PW-1's father had to come and thereafter Devender and

Krishna (PW-1) had started residing in a tenanted house in Brij Puri, Delhi. Devender would quarrel with PW-1, there as well. Krishna's father had subsequently given her a house at Babar Pur, where Krishna had started dairy business. Her husband Devender had initially left her, but after a compromise had started living with her. He would take the entire earning and would also beat her. She had made a complaint against Devender in the police station, but once again the matter was compromised between Devender and her father. PW-1 had on one occasion gone to meet Suman, which was objected to by Devender and when she had returned, Devender had beaten her. PW-1 had then made a complaint at No.100 and the police had come and had remained at their residence till night, but Devender did not return. As a result of frequent quarrels, Krishna (PW-1) had sold the house at Babar Pur for Rs.3, 00,000/-. Devender had taken Rs.1, 00,000/- from her as his share and committee of Rs.15, 000/-. Krishna (PW-1) had then resided with her sister Suman in a tenanted premise. Subsequently, Krishna (PW-1) purchased the flat in Dilshad Garden, and she along with her two children and Suman started residing there. Devender, Sardari Devi and Pappu disliked Suman and that Krishna (PW-1) and Suman were residing together. Appellants had on 6th May, 1997 at about 10-11 A.M., beaten Krishna and had deprecated and objected to Krishna staying with Suman.

10. There is evidence and material to show that Krishna (PW-1) had a troubled relationship with Devender and her complaint against Devender was pending in the Women Cell. Lady Constable Santosh (PW-6) has testified that she was working in the 'Crimes Against Women' Cell, Seelam Pur and the complaint of Krishna (PW-1) had been marked to her for inquiry. On 9th May, 1997, she had recorded the statement of Krishna and had fixed the next date as 15th May, 1997, for appearance of the other side. She had produced the original complaint in the Court, photocopy of which was marked Ex.PW-6/A. The fact that Krishna (PW-1) had suffered injuries on her hand at the time of occurrence stands proved by her MLC, Ex.PW-21/A. Dr. A.K. Chaterjee (PW-21) has stated that on 14th May, 1997 at about 5.15 P.M., Krishna, aged about 28 years, wife of Devender Singh was brought to the GTB Hospital by ASI Ashok Kumar, police station Seema Puri. Krishna had abrasion on her right index finger and swelling and tenderness in the right hand. PW-21 had given her first aid and recommended X-Ray and examination by a Senior Resident, Orthopedics. The MLC marked Ex.PW-21/A records that the patient had disclosed an alleged history of assault without any history of unconsciousness. It is correct that the MLC does not record the name of the person who had assaulted Krishna (PW-1), but this would not show that Krishna did not know the persons who had assaulted her.

Dr. A.K. Chaterjee (PW-21) in his cross-examination, had stated that he could not say whether he had asked Krishna to give names of the persons who had assaulted her, though the said witness voluntarily added that they would normally inquire the same from all patients. PW-21 was clear that the injuries were not self-inflicted. No doubt, Krishna (PW-1) in her deposition has referred to injuries on her left hand, and the doctor PW-21 and MLC Exhibit PW-21/A state and record that Krishna had suffered injuries on her right hand, but this is a minor and insignificant contradiction, attributable to loss of memory on the part of Krishna (PW-1). The medical evidence confirms that Krishna (PW-1) did suffer injuries in the same occurrence and her presence at the place of occurrence is corroborated.

11. There is ample evidence to show that Suman had died as a result of a gunshot wound, as testified by Dr. A.K. Tyagi (PW-2), who had conducted the post mortem examination on 15th May, 1997 and authored the report Ex.PW-2/A, which was in his handwriting. In his deposition, PW-2 has mentioned that as per the purported history given to him, Suman had been shot at her residence on 14th May, 1997 at 12 noon and on external examination, he had seen rifled firearm entry wound present obliquely over middle outer back of left side chest. The missile had entered the chest through the intercostal space in the upper part of the lower lobe of the left lung and had further

passed through the aorta, vertebral column and the right lung. The missile was recovered from the muscle of the chest. The death in the case was due to shock as a result of haemorrhage caused by the injuries to the internal structure. The fired bullet recovered from the body was handed over to the police. The witness had also signed a carbon copy of the FIR.

12. Thus, the version given by Krishna (PW-1) as to the cause of the death gets affirmation from the post mortem report, Ex.PW-2/A and the testimony of Dr. A.K. Tyagi (PW-2).
13. The fact that the occurrence had taken place at property number Q-525, Janta Flats, Dilshad Garden and Krishna (PW-1) was present at that time, gets confirmation from other facts also, including 'lifting' of blood stained earth from the spot in question, which was taken into possession vide memo Ex.PW-1/B. The said exhibit has the signature of Krishna (PW-1) at point A. On the said aspect, we have the testimony of Constable Vijender Singh (PW-7), who along with SHO and I.O. J.K. Sharma had visited the aforesaid flat on 14th May, 1997 and had seen the dead body of Suman. He had taken the *Tehrir* for registration of FIR on the statement of Krishna (PW-1) and had subsequently returned to the spot with the copy of the FIR and *Asal Tehrir*. In his cross-examination, PW-7 testified that this information was received at the police station at about 3 P.M. and thereafter, he

along with other police officials, had left for the spot. He had taken the *Rukka* to the police station at 3.15 P.M. and had gone to the police station by bus. The visit of the police officers to the place of occurrence on 14th May, 1997 is also testified by Constable Rajender Singh (PW-8), who has stated that photographs of the dead body were taken and that Inspector J.K. Sharma was also present at the spot.

14. Constable Ashok Kumar (PW-9) has testified having taken five black and white photographs from the spot on 14th May, 1997, which were marked Ex.PW-9/A to Ex.PW-9/E. He has also proved the negatives marked Ex.PW-9/F to Ex.PW-9/J. Blood could be seen on the boundary wall and he had taken one photograph of the said wall.
15. Deposition of Head Constable Santosh (PW-10) is identical. On 14th May, 1997, he was working as the Duty Officer in the police station Seema Puri from 8.00 A.M. to 4.00 P.M. and on receipt of *Rukka* had recorded the FIR marked Ex.PW-10/A. Earlier at about 12.25 noon, he had received information from the wireless operator that Lady Constable Anju from PCR had forwarded a wireless message regarding a quarrel at House No.525, Pocket-Q, Dilshad Garden. He had produced the original DD register wherein DD No.13A, Ex.PW-10/B, was recorded on receipt of the aforesaid information. Kayami DD, Ex.PW-16/A, was also proved by him. SI Prabha Shankar (PW-13) had proceeded to the spot with IO Inspector J.K. Sharma and had

collected blood stained soil and earth control from the place of occurrence. Three pieces of brick, one big and two small, having stains, were also sealed and seized vide seizure memo Ex.PW-1/B and Ex.PW-1/E, signed by PW-13 at point B.

16. Constable Satender Kumar (PW-17) has stated that on 14th May, 2007, on the direction of the Duty Officer, he had taken a copy of the special report of the FIR No.346/1997 to the concerned Metropolitan Magistrate, Additional Commissioner of Police and Deputy Commissioner of Police on the government motorcycle and had completed the exercise at about 5 P.M. In the cross-examination, PW-17 clarified that as the Court had closed, he had delivered a copy of the FIR to the residence of the Metropolitan Magistrate. At this stage, we would take on record the statement of Lady Constable Anju (PW-4), who was posted as a Telephone Receiver in the Police Control Room. She has testified that at about 12.14 P.M. on 14th May, 1997, a call regarding a quarrel at Pocket-Q, 525, Dilshad Garden was received and this message was forwarded on wireless. The caller who had given this information had not revealed his name or telephone number. In the cross-examination, PW-17 had clarified that the telephone number did not appear on the computer screen. PW-17 had recorded the said message in the form, Ex.PW-4/A, and conveyed the same through wireless.

17. We would now refer to the testimony of the Investigating Officer, Inspector J.K. Sharma (PW-25). He has testified that a wireless message was received through wireless operator at about 12.14 pm, regarding murder at Q-525, Dilshad Garden, of a lady who had been shot by Devender. Her body was lying at the spot. He along with Additional Commissioner of Police and other police officers had proceeded to the said premises and had seen the dead body of a lady called Suman. PW-25 had recorded statement of Krishna, sister of Suman, who was present there, marked Ex.PW-1/A, made endorsement marked Ex.PW-25/A and these documents/papers were sent to the police station through Constable Vijender (PW-7) for registration of FIR. A photographer was called to the spot. PW-25 had got the post mortem conducted after recording the brief facts of the case, vide Ex.PW-2/D. Blood could be seen on the wall and floor at the spot, and PW-25 had lifted blood stained floor slab after breaking the same. These articles including blood stained bricks lying near the dead body were taken into possession vide seizure memo Exs.PW-1/B, Ex.PW-1/E and Ex.PW-1/F. PW-25 has testified that Krishna, who had sustained injuries, was sent to the GTB Hospital for medical examination through ASI Ashok Kumar.
18. Adverting to the arrest of the appellants and steps taken, PW-25 has testified that three police teams were sent in different directions in

search of the named persons, but the said teams returned at about 9 P.M. without the persons being arrested or traced. After consulting senior officers, a team headed by SI Prabha Shankar was sent to the village of the accused persons and on the next day, i.e. 15th May, 1997, at about 12.30 P.M., SI Prabha Shankar returned to the police station after arresting Sardari Devi and Pappu. Baby Chanchal was also with them. Baby Chanchal was thereafter taken to the GTB Hospital, where she had identified the dead body of her aunt Suman vide memo Ex.PW-25/D. *Kurta* of white colour worn by Sardari Devi, which had blood stains, after preparing *pullanda*, was seized vide seizure memo Ex.PW-25/A. Personal search of Pappu was conducted vide memo Ex.PW-25/E. Pappu was interrogated on 16th May, 1997 and a disclosure statement was recorded, but nothing could be recovered. The *Kurta* worn by Sardari Devi was identified by PW-25 as Ex.P-1. Similarly bricks and floor pieces etc. taken into possession from the place of occurrence were identified as Ex.P-2, P-3, P-4, P-10, P-11 and P-12.

19. The arrest of Sardari Devi and Pappu is also testified by Krishna (PW-1), who has stated that on the date of occurrence itself, she had gone with the police to the village of the accused and at that time Pappu was present there. Devender and Sardari Devi were not present there. She had then taken the police team to village Khekra, where Sardari

Devi was present and apprehended. Devender, husband of Krishna and the person who had fired the shot could not be found. Devender was arrested after about three weeks on 10th June, 1997. The factum that Krishna (PW-1) had gone with the police and had identified and ensured arrest of Pappu and Sardari Devi would show and reflect that her deposition in her cross-examination on 5th April, 1999, is not the true and correct version. If her husband, mother-in-law and brother-in-law were innocent, then there was no need or reason for her to have gone with the police and ensured their arrest in the intervening night between 14th and 15th May, 1997. As noticed below, Krishna (PW-1) was instrumental in the arrest of her husband Devender on 10th June, 1999.

20. Krishna (PW-1) in her examination-in-chief recorded on 17th July, 1997, has stated that on 9th June, 1997, she had seen Devender near her flat at about 8.45/9.00 P.M. She was then suffering from fever and had gone out to fetch milk, but could not buy milk as shops were closed. On seeing Devender, she had covered her face with her *Dupatta*. Thereupon, she had proceeded to the local telephone booth and had informed the police. After some time, police came and they had searched for the appellant, but he could not be located. At her instance, she and the police went to Tahir Pur T-Point, where Devender was found standing at the bus stop. The police had made

inquiries, which Devender had initially denied. On persistent questioning and on being asked whether Krishna was his wife, Devender kept mum. Krishna (PW-1) was categorical that the said person was Devender, her husband. Devender was then apprehended and taken to the police station, where his personal search was conducted vide memo Ex.PW-1/G. The memo was signed by Krishna (PW-1) at point A. Some papers were recovered from the possession of Devender. He was interrogated and his disclosure statement Ex.PW-1/H was recorded.

21. Arrest of Devender on 10th June, 1997 is also testified by Constable Ram Kishore (PW-11), who has referred to recording of DD No.29A on 9th June, 1997 and that he along with Constable Doodha Ram had reached the residence of Krishna (PW-1), who had informed them that Devender was present in Dilshad Garden. Krishna (PW-1) had then taken them to Tahir Pur T-Point, where she had identified Devender by pointing towards him. Devender was arrested and brought to the police station by PW-11 and Doodha Ram and his disclosure statement, Ex.PW-1/H was recorded. PW-11 had signed the same at point B.
22. Constable Doodha Ram, who has deposed as PW-14, has testified regarding their visit to the residence of Krishna (PW-1) after DD No.29A was received between 9-10 P.M. on 9th June, 1997. They had

searched for Devender, who had killed Suman, sister of Krishna and had reached bus stop, Tahir Pur, T-Point, where Devender was identified by Krishna. Devender was arrested and brought to the police station. PW-14 identified the personal search memo Ex.PW-1/G, signed by him at point C and also the disclosure statement of Devender Ex.PW-1/H, which was signed by him at point C.

23. Ravinder Kumar (PW-16), SI Ashok Kumar (PW-18), Head Constable Devi Ram Sharma (PW-20) have testified that after the arrest of appellant Devender, they had gone to village Patauli along with Devender in the government vehicle and from the second floor of the house identified by Devender, they had seized one *desi katta* (country made pistol) from the pitcher kept there. The said *katta* was measured and sketch Ex.PW-16/A was drawn. The *katta* was seized vide seizure memo Ex.PW-16/B. The pistol was identified in the Court and marked Ex.P-10.

24. We would now examine and refer to the forensic evidence. Dr. A.K. Srivastava (PW-26), Senior Scientific Officer, FSL Malviya Nagar, Delhi has testified that he had examined six parcels in the present case and had prepared biological and serological reports marked Ex.PW-26/A and Ex.PW-26/B, respectively. As per the said reports, human blood of group A was detected on the brick, two stone pieces, blood stained earth and blood stained gauze. Human blood of the same

group was detected on the *Kurta* (marked Ex. P-1), which was worn by Sardari Devi and had been seized at the time of her arrest.

25. Asha Dhir (PW-23), Assistant Director, Ballistic Division, Central Forensic Science Laboratory, Chandigarh, had examined the country made pistol and had opined that the firing pin of the country made pistol was found to be bent downward at the rear end and therefore test firing of the pistol could not be conducted. The witness in the absence of test fire could not state whether the .315 bullet, i.e. the bullet recovered from the body of the deceased, had been fired from the recovered and examined pistol. PW-25 proved her report marked Ex.PW-23/A. She has stated that along with the pistol, she had received one fired .315 bullet as well as three .315 cartridges.
26. The aforesaid deposition of Asha Dhir (PW-23), in fact, confirms and corroborates the testimony of Krishna (PW-1) that after the first shot that had struck Suman, Devender was unable to fire again as the firearm had malfunctioned. Devender had struck the firearm on the ground.
27. It is correct that Chanchal (PW-12) did not support the prosecution case. Pertinently, she was about 12 years of age when her statement was recorded in the Court on 23rd February, 1999. At that time, she was staying with the family of Devender. She affirmed that she was staying with her Baba i.e. grandfather for the last one or two years,

though earlier she used to reside in Dilshad Garden with her mother, younger brother and aunt Suman. She has also accepted that there were disputes between her mother Krishna and father Devender. Her father was staying in the village. After the death of her aunt Suman, she had started residing with her grandfather. She had been residing there from the date her *Mausi* (aunt) Suman had died. She had seen her aunt Suman lying dead at day time on the road near their house. Two persons had come to their residence on a motorcycle with a gun and had fired at her aunt. She had opened the main entrance door, when the said two persons had knocked. Thereafter, the two persons had fought with her aunt and she (PW-12) being afraid, had left the place. Subsequently, she heard the sound of gun fire. When she came out, she noticed that her aunt had died. At that time, her mother Krishna was also at home. Police had subsequently come to their house and had questioned her. Next day, she had identified the dead body of her aunt Suman. Her *Baba* i.e. grandfather had brought her to the village and she did not know anything else about the case. In her cross-examination by the Additional Public Prosecutor, PW-12 has accepted that her statement was recorded on 15th May, 1997 and not earlier. She has also accepted that her *Baba* i.e. grandfather had brought her to the Court on the said date. She has accepted that she was aware that her father was facing prosecution in the murder case.

28. Testimony of Chanchal (PW-12) is certainly at variance with and contradicts the testimony of her mother Krishna (PW-1). We would discard and reject testimony of Chanchal (PW-12), a young child who was residing with her grand-father i.e. father of Devender since the date of occurrence on 14th May, 1997 till her testimony was recorded in court on 23rd February, 1999. Chanchal (PW-12) had gone missing immediately after the occurrence, when Suman was shot dead. It is obvious that the persons involved in the said incident i.e. the appellants had taken Chanchal (PW-12) with them and this can be the only reason as to why she was missing. Chanchal (PW-12) accepts that she had identified the dead body of her aunt on the next day i.e. on 15th May, 1997. Reference would be to her visit to Delhi as has been deposed to by Inspector J.K. Sharma (PW-25). Chanchal (PW-12)'s according to us, was clearly under the influence and dictates of family members of Devender. Chanchal's (PW-12) averment that two persons came on a motor-cycle with a gun and had fired and killed Suman after she had opened the main entrance door is not the true and correct version. Pertinently, Chanchal (PW-12) had accepted that her mother Krishna (PW-1) was at home when the occurrence had taken place.
29. We, thus, accept the prosecution version that the appellants had trespassed into the house where deceased Suman and Krishna (PW-1)

were residing, having made preparation for causing hurt or assaulting persons. They have committed an offence under Section 452 IPC. They had wrongfully restrained Krishna (PW-1) and had put her in fear of hurt or assault. They are also guilty of criminal intimidation and threats to cause death or grievous hurt, punishable under Section 506 IPC.

30. We would, at this stage, like to refer to the statement of the three appellants under Section 313 Cr.P.C. Sardari Devi has claimed that prosecution witnesses were inimical or interested witnesses and that Krishna (PW-1) wanted to get rid of Devender by all means. She has accepted that there were frequent quarrels between Devender and Krishna. After their separation, Krishna had not visited them. Krishna wanted to get a divorce from Devender while she (Sardari Devi) was supporting her son and wanted to save her son's family from disintegration. She accepts that the house at Babar Pur was sold, but claimed that she had never visited the place where Krishna had started residing thereafter. She claimed that she did not know about Dilshad Garden nor had she visited the said place.
31. Pappu in his statement, has accepted the troubled relationship between Krishna and his brother Devender, but claimed that he was not on visiting terms with them. Krishna wanted to get rid of Devender at any cost and was insisting on divorce. He did not know the place

called Dilshad Garden and had not visited the place where Krishna was residing. He did not know Suman personally. He used to support Devender in the matter of divorce as he cared for the future of the minor children. Pappu claimed that he was implicated falsely and had nothing to do with the case. Sardari Devi and Pappu have denied that they were arrested on the same night, but did not state as to when they were arrested.

32. Devender on the question of arrest on 10th June, 1997, had simply stated that it was incorrect. He accepts that after the sale of house at Babar Pur, he and Krishna had separated. He professes that after separation he had never visited the place where Krishna was residing. Devender has also professed that Krishna wanted divorce, but he was not agreeing because of the three children. He did not know any colony called Dilshad Garden in Delhi or the place where the occurrence had taken place. He had been falsely implicated with the active connivance of the local police.
33. The statements under Section 313 of the Code do not in any way negate the prosecution evidence. They do not state facts or create a doubt as to the facts proved.
34. In view of the aforesaid discussion, we do not find any merit in the present appeal and uphold the order of conviction of Devender, Sardari Devi and Anil @ Pappu for having committed murder of

Suman. We also uphold their conviction under Sections 452 and 506 read with Section 34 IPC and conviction of Devender under Section 27 of the Arms Act. We do not see any reason to interfere with the order on sentence. The appeal is accordingly dismissed. The appellants-Devender, Sardari Devi and Anil @ Pappu, who are on bail, will surrender within four weeks from today to undergo the remaining sentence. In case the appellants or any one of them do not surrender, the police and trial court will take steps in accordance with law. A copy of this judgment will be sent to the trial court.

(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

MARCH 31st, 2016
NA/ssn/VKR