

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

+ **Crl. Appeal No.661/2014**

Judgment reserved on : 8th November, 2016

Date of decision : 15th November, 2016

PRAVEEN

..... Appellant

Through: Mr. K. Singhal, Adv.

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, Addl.P.P. for the State

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This judgment shall dispose of an appeal instituted on 27.05.2014 by the appellant/convict Praveen whereby he has assailed the impugned judgment dated 25.04.2014 of the then learned ASJ-04 North District, Rohini Courts, whereby the appellant was convicted for the commission of an offence punishable under Section 302 of the Indian Penal Code (hereinafter referred to as "IPC"), 1860, in relation to the allegations levelled against him as averred in FIR No. 114/12, Police Station (P.S.) Alipur. Vide the consequential order on sentence dated 29.04.2014, also assailed hereby, the appellant was sentenced to life imprisonment along with fine of Rs. 2000/- for the commission of the offence punishable under Section 302 IPC and in default of payment of that fine to undergo simple

imprisonment for two months with directions that the benefit of Section 428 of the Cr.P.C. 1973 would be given to the appellant. The proceedings of the date 29.04.2014 before the learned trial Court indicate that the fine of Rs. 2000/- has been deposited.

2. Notice of the appeal was issued to the State. The trial court record was requisitioned and has been received and perused. Arguments were addressed by Mr.K.Singhal, learned counsel for the appellant and by the learned Additional Public Prosecutor Ms. Aashaa Tiwari for the State.

CONTENTION OF THE APPELLANT

3. On behalf of the appellant it was contended that the charge of allegations framed against the appellant on 18.10.2012 to the effect that on 08.04.2012 at about 3:25 p.m.at the Soni Fruit Juice Corner at Village Palla, Delhi-110056 within the jurisdiction of P.S. Alipur he had committed the murder of Saleem (since deceased) by inflicting injuries on his head with a Pharsa and had committed an offence punishable under Section 302 IPC, had not even been remotely established through the entire evidence led by the State. It was further contended on behalf of the appellant that the testimonies of the alleged eye-witnesses **PW-1, PW-2** and **PW-4** were concocted and that they could not be believed in as much as the presence of **PW-1, PW-2** and **PW-4** at the spot was not established. Inter alia, it was contended on behalf of the appellant that though it had been alleged by the State that the recovery of the weapon of offence i.e. Pharsa **Ex.P-1**, which was blood stained was effected from the appellant from his house pursuant to the disclosure statement **Ex.PW-1/K** made by the appellant, the testimonies of **PW-13** and **PW-14** and the complainant do not establish the

same. It was further submitted on behalf of the appellant that even if it be remotely accepted that the accused i.e. the appellant/convict had inflicted the Pharsa blows on the person of the deceased, he did so on provocation and that the act committed by the accused/(i.e. the appellant herein)convict/appellant was not a pre-meditated assault on Saleem and that the ingredients of the alleged commission of the offence punishable under Section 302 IPC, 1860 cannot be held to have been substantiated.

4. It was thus submitted on behalf of the appellant/convict that the allegations levelled against the accused/i.e. the appellant of having murdered the deceased Saleem with intent or knowledge that his act of inflicting the Pharsa blows on the person of Saleem was so imminently dangerous that it would in all probability have caused his death or would have caused such bodily injuries as were likely to cause death and for commission of which he had no excuse for incurring the risk of causing death or such injuries had not been established.

CONTENTIONS OF THE STATE

5. On behalf of the State, reliance was placed on the prosecution version set forth charge-sheet under Section 173 of the Cr.P.C., 1973 that on receipt of DD No. 26A on 08.04.2012 lodged at 3:30 PM at P.S. Alipur to the effect that at the Palla Gaon bus stand, a man had been cut with a Pharsa and on the registration of the said DD entry with the PCR, ASI Rishi Pal was telephonically informed about the same who went to the spot alongwith Ct. Yadram No. 2994 OD whereafter on receipt of this information, Inspector Sunil Kumar Sharma, the Investigating Officer (IO) of the case reached the Soni Fruit Juice Corner main bus stand Village Palla alongwith HC. Ajay No. 372 OD and Ct. Dalraj No. 2634/ OD in a govt. vehicle bearing No. DL-IC-J-5663 and reached the spot at about 3:30 PM

where they met ASI Rishi Pal and Ct. Yadram and that at the Soni Fruit Juice Corner main bus stand there was lot of blood scattered and the injured Saleem S/o Shaheed was learnt to have already gone to SRHC hospital and thus Inspector Sunil Kumar Sharma left Ct. Yadram at spot for the protection of the same and the IO along with his accompanying staff reached the SRHC hospital where the injured was undergoing a minor operation and at about 5:30 PM the injured expired during the course of treatment as indicated in the MLC 579/2012 of Saleem S/o Shaheed r/o village Palla, Alipur, Delhi which was obtained from the doctor.

6. As per the prosecution version set forth in the chargesheet Shamshad @ Soni met the IO and gave his statement to the effect that he along with his family members used to reside at Akbarpur Mazra colony, Village Palla, Delhi-110056 and that he was running a juice shop with his elder brother Saleem and that the appellant/convict Praveen S/o of Ishwar aged 28 years used to live with his family members in front of their shop and that the appellant did not do any work and used to show his '*dadagiri*' and that he often came to their shop to drink juice but did not make the payment and whenever the complainant and deceased asked for their money, he used to threaten them with dire consequences and would often throw stones from his house towards the shop and that they had tried to persuade the accused to resist from the same several times but he did not agree.

7. As per the averments made in the statement **Ex.PW-1/A** of the brother of the deceased Sh. Shamshad @ Soni which forms the part of the FIR on that day i.e. 08.04.2012 at about 3:15 PM the appellant Praveen came to the shop and drank juice and the complainant's brother Saleem asked him for the money and then he left stating that if they asked for money, he would teach them a lesson and then Praveen (i.e. the appellant

herein) went to his house and brought out an iron Pharsa in his hand and assaulted the brother of the complainant named Saleem on his head and on his face several times and stated that he would teach him a lesson for demanding money and that Saleem the brother of the complainant was bleeding profusely and fell down there itself and after that the appellant fled with his Pharsa towards his house and the complainant along with Vinay, the brother of the accused i.e. the appellant herein, took Saleem to the Raja Harishchandra Hospital where during treatment his brother expired due to the injuries inflicted by the appellant/accused with his Pharsa.

8. It has further been contended through the charge-sheet that on the basis of the statement made by the brother of the injured i.e. **Ex. PW-1/A**, the IO made his endorsement on **Ex. PW-13/A** and sent the same to the P.S. Alipur for registration of the FIR whereupon FIR No. 114/2012 under Section 302 IPC was registered and thereafter the IO prepared the site plan and collected the wall plaster and blood stained earth control and also continued to trace the accused and thereafter it was learnt by the IO that the accused Praveen Kumar S/o Ishwar Singh had been arrested at the Delhi Haryana Border at '**0**' point and that his personal search had been conducted and his disclosure statement was recorded and during the course of investigation the clothes worn by the accused were also seized.

9. As per the prosecution version , at the pointing out of the accused, the recovery of the weapon of offence was effected from the house of the accused from the iron almirah in the West corner of the room of the house situated in the Eastern direction which was also seized by the IO and that during the course of investigation the statements of the complainant and other witnesses were recorded.

10. It was further contended by the State that the death of the deceased was caused due to Coma shock consequent upon multiple chop wounds and that all the injuries were ante-mortem and fresh in duration and had been caused by a heavy sharp edged weapon and that the injuries were sufficient to cause death in the ordinary course of nature.

11. It has further been submitted on behalf of the State that during the course of the post-mortem examination conducted that the blood gauge was lifted and the clothes of the deceased were also handed over to the IO. Though the charge-sheet submitted initially it had been submitted that the exhibits were sent to FSL, Rohini for examination and the subsequent charge-sheet would be filed on the receipt of the FSL result. The FSL result is indicated to have been submitted on 04.10.2012 before the learned trial court as **Ex.PW-13/H**, through which result of analysis it is indicated that blood was detected on **Ex.PW-1, 2, 3,4, 6, 8a, 8b, 9, 10a and 10b**. The said FSL report dated 13.08.2012 which is admissible *per se* under Section 293 of the Cr.P.C. 1973 indicates that blood was detected on the clothes sealed with the seal of 'SKS' and on the T-shirt and Jeans and on the cloth piece described as blood gauge and on the shirt and on the lower and the report of the biology division dated 13.08.2012 of the FSL, Rohini further indicates that the T-shirt, the blood-stained gauge cloth piece, the shirt and the lower, all were found to bear 'B' group blood stains on them as per the examination conducted through serological techniques. On behalf of the State it was thus submitted that the averments made through the charge-sheet and the FSL result submitted, brought forth the commission of the offence in question by the appellant/convict beyond a reasonable doubt through the testimonies of prosecution witnesses examined.

12. We have examined the material facts borne out through the Trial Court record, which all bring forth as under:-

PREVIOUS CONDUCT

13. **PW-1** examined by the State Sh.Shamshad @ Soni brother of the deceased has categorically testified to the effect that the appellant who was unemployed used to reside in front of their juice shop named Sony Fruit Juice Corner situated at the main bus stand at Village Palla Delhi-1100036 and used to threaten the respondents by '*dadagiri*.' It is also brought forth through the evidence that the appellant sometimes used to throw stones and used to drink juice at their shop and whenever the complainant and his brother demanded money the accused/(i.e. the appellant herein) used to threaten them with their life. The testimony of this witness establishes the version of the prosecution set forth in the FIR and charge-sheet that on 08.04.2012 the accused came to their shop for taking juice and after drinking juice when his brother Saleem demanded money the accused i.e. appellant herein has stated that he would teach his brother Saleem a lesson and demanded money from him.

PRESENCE OF DECEASED AT SPOT

14. The unchallenged testimony of **PW-3 Deepak Chauhan @ Sonu**, produced by the State, establishing that he had given his shop at the Main Bus Stand, Village Palla, on rent to Saleem and Shamshad @ Soni who were running a Juice shop there and also testified to the fact that Saleem had been murdered in the year prior to his testimony recorded on 22.04.2013 and that now his brother Shamshad @ Soni was running the said shop.

EYEWITNESS ACCOUNT OF THE INCIDENT

15. Shamshad @ Soni **PW-1** has testified that the accused/appellant after threatening his brother had gone to his house and brought a Pharsa and inflicted three to four injuries on the head and face of his brother and then ran to his house and from his house he ran away and that his brother was bleeding profusely and he, PW-1 and Vinay the elder brother of the accused removed the injured to the Raja Harish Chander Hospital and that his brother Saleem expired at about 5:30 PM. **PW-1** further identified his signatures on **Ex.PW-1/A**, the statement recorded by the police and testified to the effect that from the hospital alongwith the police he came to the village Palla where the police prepared the site plan, collected the wall plaster vide seizure memo **Ex.PW-1/B**, control wall plaster vide seizure memo **Ex.PW-1/C**, seized hair vide seizure memo **Ex.PW-1/D**, earth control vide **Ex.PW-1/E** and blood was lifted with the help of cotton vide **Ex.PW-1/F** and so was the blood stained floor piece vide **Ex.PW-1/G** all of which seizure memos bore his signatures at point A thereon and testified to the effect that all these exhibits at that time were sealed with the seal of 'SKS'.

16. Inter alia, the complainant Sh. Shamshad @ Soni brother of the deceased identified the accused/ i.e. the appellant herein, Praveen, who was apprehended at the Palla zero point and was arrested vide memo **Ex. PW-1/H** and his personal search was conducted vide memo **Ex.PW-1/J** and that the accused/ i.e the appellant herein made a disclosure statement **Ex.PW-1/K** which bore his signatures and that the accused voluntarily led the police party in the presence of PW-1 to his house and got recovered the blood stained iron pharsa from underneath an iron almirah and the sketch of the pharsa was prepared and he further testified to the same having been seized

and having been put into a pullanda and sealed with the seal of 'SKS' and seized vide a seizure memo **Ex.PW-1/M** which bore his signatures. **PW-1** further testified to the site plan of the place of recovery having been made and testified to the clothes of the accused/i.e. the appellant herein Praveen Kumar consisting of blood stained T-shirt and Pant having been taken into possession after putting them in the pullanda vide seizure memo **Ex.PW-1/M1** which bore his signature and stated that the accused/i.e. appellant herein pointed out to the place of the incident i.e. the juice shop vide memo **Ex.PW-1/M2**. Inter alia, PW-1 testified to having joined the proceedings and testified to having identified the dead body of his brother vide identification statement **Ex.PW-1/N** which bore his signature and testified that the dead body was sent for post-mortem was being handed over vide receipt **Ex.PW-1/O** which bore his signatures. This witness during further examination identified the pharsa **Ex.P-1** and also identified the bunch of hair and blood gauze piece, the plastic dibbi containing cemented material i.e brown stains , a plastic container containing cemented material i.e. earth control, a plastic container containing cemented material having brown stains i.e. plaster of wall, a plastic container containing plaster cemented material i.e. control wall plaster, and a parcel sealed with the seal of FSL which was produced and the same was opened and from which one Jeans and a T-shirt were taken out with blood stains which the witness identified as being that the accused/(i.e. the appellant herein) and the Shirt and lower with blood stains as being the clothes of deceased and all those articles were exhibited as **Ex.P2 to Ex.P9** respectively.

17. The defence could not dislodge the testimony of this witness **PW-1** through cross-examination in relation to his presence at the hospital. *Inter alia*, the witness had testified to the effect that though they had not reported

the matter to the police when the accused, i.e., the appellant, used to mete out threats to them or when he used to throw stones at their shop, had explained that they had not done so being the neighbours but had made a complaint to the mother of the accused previously who had given the accused/the appellant herein, 2-3 slaps, but that the complainant and his brother had not complained about the accused/appellant to the police/neighbours regarding drinking of juice by accused/ the appellant, at the shop without making payment of money and stated that they made the complaint to the parents and stated that they had not made any complaint to the police regarding his conduct prior to the incident. This witness also categorically denied that the accused had not made any disclosure statement. The witness also categorically denied that he had testified falsely because the deceased was his brother and denied that he had got the FIR lodged only on a mere suspicion and due to frequent quarrels with the accused/i.e. the appellant herein.

ARREST OF APPELLANT & RECOVERY OF WEAPON OF OFFENCE AND IDENTIFICATION THEREOF

18. The evidence of **PW-1 Shamshad@ Soni** finds corroboration in the testimonies of **PW-2 Sh. Lokesh Kumar** and **PW-4 Sh. Jai Karan**. These two public witnesses have also testified that they had come to the Village Palla near the Sonu/Soni Fruit Juice Corner when the accused, the appellant Praveen, came at about 3/3:30 PM to the juice shop and quarrelled with the shop owner and went to his house and came back with a pharsa and gave several blows to the Soni Juicewala i.e. the brother of **PW-1** and fled away from the spot. Both **PW-2 and PW-4** identified the daav/pharsa in parcel no. 1 i.e. **Ex.P-1** sealed with the court seal as being the same with which the

brother of the complainant has been assaulted and had thereafter succumbed to his injuries.

19. Though the testimonies of **PW-2 Sh. Lokesh Kumar** and **PW-4 Sh. Jai Karan** were assailed on behalf of accused/appellant submitting that they were allegedly chance witnesses who came to the spot on the day of question i.e. 08.04.2012 as they came to attend a *Tehravi ritual*, there is no reason to disbelieve them. The testimony of **Lokesh Kumar/PW-2** is categorical to the effect that the accused/i.e. the appellant herein came to the juice shop and started quarrelling with the shopkeeper and thereafter returned with a pharsa and gave three blows to the juice shopkeeper and further stated that he gave several blows on the right side of his face, second on the upper portion of the neck and third on the lower portion of the neck. The witness **PW-2** had further stated that the accused/the appellant after giving the blows had tried to run away but he had been caught by his parents who started beating him but he managed to run away. **PW-2** further stated that he had seen the entire incident from a distance of 15 meters and by the time he reached there the accused had escaped and that he later learnt that the injured had expired. This witness on further examination identified the pharsa used by the accused and also testified to the photographs **Ex.PW-2/P1 to PW-2/P9** being of the place of the incident.

20. It was further contended on behalf of the State that the testimony of **PW-13 Inspector Sunil Kumar**, the Investigating Officer of the Case, and **PW-14 SI Mukesh Kumar**, who was part of the investigation team, corroborated the prosecution version in relation to investigation conducted in *toto* which brings forth the arrest of the accused at the '**0**' **Point** at the Delhi-Haryana Border within the jurisdiction of Police Station Alipur at the pointing out of the complainant Shamshad on 8.4.2012, the date of the

incident itself, which is also the date of demise of the injured/deceased at about 5:30 p.m. after assault on him at about 3:25 p.m. and whose testimony brings forth the recovery of the weapon of offence, the Pharsa, **Ex.P-1**, from underneath the almirah from his house pursuant to the disclosure statement made by the accused, the appellant herein, **Ex.PW-1/K** and to the seizure of the clothes of the accused, the appellant herein, bearing blood and the weapon of the offence, the Pharsa, being also blood stained and who also testified to the seizure of the blood stained clothes of the deceased removed by the doctor at the time of examination of the deceased vide seizure memo **Ex.PW-13/C**.

21. We find that the testimony of SI Mukesh Kumar corroborates the testimony of the Investigating Officer, who, during cross-examination also categorically denied that the accused/the appellant herein, was made to sign blank papers and denied that the accused/ the appellant herein, had not made any disclosure statement and denied that he had given false evidence against him and that he corroborated the prosecution version set forth in the charge sheet.

22. We also note that the appellant herein, under Section 313 Cr.P.C. , 1973 has nowhere categorically denied the offence alleged against him and rather the statement under Section 313 Cr.P.C., 1973 of the accused, the appellant herein, dated 28.03.2014 merely either states that the accused/i.e. the appellant herein is not aware of the offence alleged or that the same is a matter of record and the accused, the appellant herein, also claims that he has been falsely implicated in the instant case by the brother of the deceased and that the witnesses examined were all interested witnesses. No evidence in defence was sought to be led by the accused, the appellant herein.

23. On being cross-examined on behalf of the accused, the witness reiterated that the accused had given the pharsa blows to the brother of the deceased and he further categorically denied that he made no call to the police or that he was not present at the spot and denied that he had thus he had not gone to the hospital.

24. This witness has also testified during cross-examination that he had called the PCR at about 3: 30 p.m. but the PCR did not reach within five to seven minutes and then he called the local police and that the PCR reached after the local police came to the spot.

25. The witness **PW-4 Jai Karan**, who was also produced as an eye-witness, identified the accused/(i.e. the appellant herein), as being present who had come to the juice shop and quarrelled with the Soni Juice Wala and thereafter had gone to his house and brought a daav/Pharsa and gave several blows to the Soni Juice Wala and fled away from the spot and stated that the injured Soni Juice Wala was shifted to the hospital by his brother and other persons and testified to having learnt thereafter of the demise of the injured. He further stated that he was calling the injured as Sony as he was running a Juice Corner and affirmed in reply to a question put by the State that the name of the deceased was Saleem s/o Shaheed Khan and Shamshad @ Soni was the brother of the deceased Saleem S/o Shaheed Khan. This witness identified the iron Pharsa **Ex.P-1** as being the weapon of offence in question.

26. On being cross-examined by the counsel for the accused (the appellant herein), the witness denied that he was not present at the spot or that he had not accompanied the injured or that he had not informed the police or that he had identified the accused, the appellant herein, falsely.

UNCHALLENGED EVIDENCE OF STEPS IN INVESTIGATION

27. The testimony of **PW5 Ct. Kamlesh Yadav**, who testified to the effect that on 8.4.2012 he was posted at CPCR-Hqrs at channel No.110, and that on receipt of a call in respect of an incident, i.e, ***Ek Aadmi Ko Pharsa Se Kaat Diya***, at Main Bus Stand, Palla Village, he had filled the PCR form and dispatched the form, remained unchallenged on behalf of the accused/ the appellant herein;

- Likewise, the testimony of **PW6 HC Jagpal Singh** who testified to his having registered the FIR on receipt of the rukka brought by ASI Rishipal sent by Inspector Sunil Kumar, SHO, PS Alipur **Ex. PW6/A** and to the certification under Section 65-B of the Indian Evidence Act , 1872 **Ex.PW-6/B** and his endorsement on the rukka;
- the testimony of **PW7 ASI Rishipal** of his having reached the Palla Village Bus Stand on receipt of DD No.26-A **Ex.PW-7/A** along with Ct. Yaad Ram and who testified to having learnt that the injured had been shifted to the hospital and his having accompanied Inspector Sunil Kumar Sharma to the SRHC Hospital and the rukka had been handed over by the Investigating Officer to him and reached the Police Station for registration of the FIR and of his having shifted the dead body of Saleem with Ct. Yaad Ram to the Mortuary;
- the testimony of **PW8 SI Mahesh Kumar**, who testified to his having taken rough notes and measurements at the spot where the Pharsa was recovered and to his having prepared the scaled site plan **Ex.PW-8/A**;

- the testimony of **PW9 HC Desh Pal Singh**, who testified to his having visited at the MHC(M), PS Alipur and deposited the exhibits in the Malkhana sent by the Inspector Sunil Kumar on the said date and to his having made entries in the Register No.19, copies of which were **Ex.PW-9/A** (Colly) and to his having sent the exhibits to FSL, Rohini vide RC no.59/21/12 and to his having recorded DD No.26-A **Ex.PW-7/A**;
- Likewise, the testimony of **PW-11 Ct. Satyender**- who testified to his having collected the exhibits from the MHC(M) vide RC No.59/21/12 and deposited the same at FSL Rohini and having returned the same to the MHC(M) on the date 20.4.2012 and to the effect that the exhibits not having tampered with as long as they remained in his custody,-- have all not been challenged by way of cross-examination.

MEDICAL EVIDENCE OF INJURIES SUSTAINED BY THE DECEASED

28. The unchallenged testimony of **PW12-Dr.Manjul**, the then Medical Officer at SRHC Hospital on 8.4.2012 who testified to her having examined the patient Saleem with alleged history of physical assault at 4 p.m. and testified to having prepared the MLC **Ex.PW-12/A** bearing his signatures at points A,B and C, which MLC **Ex.PW-12/A** indicates the following injuries:-

- “Superficial incised wound on anterior thoracic wall approximately 10x 0.5 cm;*
- CLW approx 15cm x 4cm x 4 cm extending from right facio facio-maxillary region, involving right eye, medial orbital wall up to fronto parietal region with fracture of skull bones, exposing brain and sinuses;*

iii) CLW of approx 12 cm x 4 cm extending from left facio maxillary region, with fracture of skull exposing brain extending upto fronto parietal region and;

iv) CLW of approx 10 cm x 2 cm x 2cm over occipital region transversely exposing brain parenchyma and fracture of skull”,-- on the person of the deceased.

- which report also indicates that the injuries were dangerous caused by a sharp and heavy object.

MEDICAL EVIDENCE

29. The testimony of **PW-10 - Dr. Bhim Singh**, M.D. Forensic Medicine, In-charge Mortuary BJRM Hospital, whose testimony remained unchallenged- who testified to his having conducted the post-mortem on the body of the deceased, aged 32 years, male, sent by Inspector Sunil Kumar with alleged history of assault on 8.4.2012 and expired at 5:35 p.m. and who testified that on the examination conducted, he found the following external injuries:-

- *“Chop wound 19 cm X 1cm x 4 cm extending from right facio-maxillary region, involving right eye, medial orbital wall up to fronto parietal region with fracture of skull bones, exposing brain and sinuses;*
- *Chop wound 18 cm X 2 Cm x 4 cm extending from left facio maxillary region, extending upto fronto parietal region with fracture of skull exposing brain;*
- *Chop wound 18 cm x 2 cm x bone deep, left side of the face extending up to parieto-temporal region*

exposing brain;

- *Chop wound 12 cm x 2 cm into bone deep left occipital region trans-versely placed exposing brain;*
- *Chop wound 11 cm x 2 cm x bone deep sitated 2 cm. Below injury No.4 ;*
- *Incised wound 10cm x 0.5cm x 0.5 cm right side of chest obliquely placed and;*
- *On internal examination HEAD- shows cut below. All the injuries with depressed communicating fractures on skull with cut injuries in the brain matter.*
- *All the other organs were pale. Stomach was empty”,*

and who testified that in his opinion the death was due to coma and shock consequent upon multiple chop wounds; and that all injuries were caused by a heavy sharp edged weapon, and that the injuries were sufficient to cause death and time since death about 18 hours and who testified to his having handed over the dead body along with the blood sample in gauge piece in sealed condition to the police and to the postmortem report **Ex.PW-10/A** bearing his signatures and to his having also given his opinion **Ex.PW-10/B**, on examining the iron Pharsa with blood stains to the effect that the injuries mentioned in post-mortem report No.295/12 **Ex.10/A** being possible by the said examined weapon, identified as being **Ex.P-1**, corroborate and establish the prosecution version brought forth also through the MLC **Ex.PW-12/A** in relation to assault on the deceased by the appellant with the Pharsa **Ex.P1** which resulted into injuries leading to the death of the deceased.

FORENSIC EVIDENCE

30. Ex.PW-13/J (result of biological division), the FSL result which is *per se* admissible in evidence in terms of Section 293 Cr.P.C. 1973 establishes that the exhibits sent to the FSL i.e. '8a' and '8b' i.e. T-Shirt and Jeans Pant respectively worn by the appellant and Shirt i.e. exhibits '10a' and lower '10b' of the deceased, all were found to bear blood of 'B' group and Ex.PW-13/H dated 13.08.2012 also categorically indicate that blood was detected on **PW-1, 2, 3,4, 6, 8a, 8b, 9, 10a and 10b**, and all establish the factum of blood of the same group as of the deceased found on the clothes of the appellant. The testimony of PW-13 Inspector Sunil Kumar, the IO of the case also categorically corroborates the identity of the exhibits collected during investigation and sent to the FSL for examination and the FSL result also corroborates the factum of guilt of the appellant.

CONCLUSION

31. On a consideration of the entire available record and the evidence led by the prosecution, the averments made in the charge sheet, the FSL report on the record and the contentions made on behalf of the either side qua the appeal and taking into account the impugned judgment of the learned Trial Court, it is brought forth that the entire available record establishes the guilt of the accused/ the appellant herein, Parveen in relation to the commission of the murder of the deceased Saleem on the date 8.4.2012 by his having assaulted the said Saleem with a Pharsa three/four times on his face and on his head which resulted into injuries as detailed in the Postmortem report **Ex.PW-10/A** already detailed herein above, with the said weapon of offence **Exp-1**, having known, that the weapon of offence utilized for infliction of the injuries was sufficient in the ordinary course of nature to cause the death

of the deceased detailed in the post-mortem report, coupled with the presence of the same category of 'B' blood grouping on the clothes of the accused/ the appellant herein, and the clothes of the deceased and on the blood stained pharsa, coupled with the factum that despite the submission made on behalf of the accused/the appellant herein, that even if it be believed that injuries caused on the injured since deceased were inflicted by the accused, the same were not premeditated and were unintentional and were on provocation due to quarrel between the parties, there is no explanation whatsoever by the accused/the appellant herein, in relation to the number of dangerous injuries, i.e., six dangerous injuries inflicted on vital parts of the body of the injured/deceased by the accused/ the appellant herein, that is, on the right facio maxillary region, involving right eye, medial orbital wall upto fronto parietal region with fracture of skull bones exposing brain and sinuses; injuries of left facio maxillary region, extending upto fronto parietal region with fracture of skull exposing brain, chop wound, left side of the face extending up to parieto-temporal region exposing brain, chop wound bone deep left occipital region transversely placed exposing brain; chop wound into bone deep situated below injury No.4 , incised wound right side of chest obliquely placed, with injuries on the head with depressed communicating fractures on skull with cut injuries in the brain, which all bring forth that the infliction of the injuries on the vital parts of the face and head and also the chest of the injured by the accused, the appellant herein, were deliberate and intentional with intention to cause such injuries. The appellant also had clear knowledge that infliction of such injury with a daav/Pharsa Ex.P-1, recovered from the house of the accused/(i.e. the appellant herein) pursuant to his disclosure statement, were sufficient in the ordinary course of nature to cause death of

the deceased.

32. Thus, it is apparent that there is no infirmity whatsoever in the impugned judgment dated 25.4.2014 of the learned ASJ-04 (North) in relation to the accused/i.e. the appellant herein having been held guilty qua charge of allegations framed against the accused/ the appellant herein, Parveen Singh, in relation to the allegations qua FIR No.114/2012 registered at Police Station Alipur.

33. In the facts and circumstances of the case, the conviction of the accused, the appellant herein, thus for the commission of the murder of the deceased Saleem vide the impugned judgment dated 25.4.2014 in relation to FIR No.114/2012 has to be upheld and in the facts and circumstances of the case in terms of Section 302 of the Indian Penal Code, 1860, there is no ground for variation of the impugned order on sentence dated 29.4.2014 of the learned ASJ-04 (North) whereby the appellant was sentenced to imprisonment for life along with a fine of Rs.2000/- for the commission of the offence punishable under Section 302 of the Indian Penal Code and in default to undergo simple imprisonment for two months qua which the fine is indicated to have already been deposited, with the benefit of Section 428 CrPC, 1973 being given to the convict, the appellant herein. The impugned order on sentence dated 29.4.2014 is also in the circumstances of the case, thus, sustained.

RESULT

34. The appeal against the judgment dated 25.4.2014 and the impugned order on sentence dated 29.4.2014 in relation to FIR No.114/2012 registered at Police Station Alipur for the commission of the offence punishable under Section 302 IPC is hereby dismissed and the appellant is directed to undergo the sentence imposed vide the order on sentence 29.4.2014 by the learned

ASJ-04 (North) with the period of detention already undergone by the appellant being set off under Section 428 of Cr.P.C, 1973.

35. A copy of this judgment be supplied to the appellant and be also sent to the Jail Superintendent (Tihar) for compliance. The Trial Court Record be returned forthwith.

ANU MALHOTRA, J

GITA MITTAL, J

NOVEMBER 15 , 2016

mr/sv

