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

*Reserved on: 3<sup>rd</sup> August, 2016*  
*Pronounced on: 24<sup>th</sup> August, 2016*

+ **Criminal Appeal No.453/2016**

ROHIT @ MONA

..... Appellant

Through: Mr. Anwesh Madhukar, Adv.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Varun Goswami, APP for State.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K. GAUBA, J:**

1. The appellant stands convicted, as charged, by judgment dated 21<sup>st</sup> March, 2016 of Court of Sessions for offences punishable under Sections 302 and 324 of Indian Penal Code, 1860 (IPC) upholding the prosecution case that at about 6:15 p.m. on 20<sup>th</sup> August, 2011 on the terrace above Flat No.C-27/28, Kingsway Camp, Delhi within the jurisdiction of Police Station Mukherjee Nagar, he committed the murder of Rajvinder Kaur (the deceased) by intentionally inflicting multiple stab wounds and also having voluntarily caused hurt to Nisha (PW-2) by stabbing her with a sharp cutting instrument (knife). By order on sentence passed by the learned trial judge on 31<sup>st</sup> March, 2016, sentence of imprisonment for life with fine of

₹1,00,000/- was awarded for offence under Section 302 IPC besides rigorous imprisonment for six months with fine of ₹15,000/- for offence under Section 324 IPC. By the appeal at hand, the appellant (convict) seeks to assail both the judgment and the order on sentence.

2. Certain basic facts in the background of the incident which is subject matter of the case and those leading to the conviction, proved at the trial by evidence which is incontrovertible or beyond dispute, may be taken note of at the outset.

3. Rajvinder Kaur (the deceased) was 21 years old unmarried daughter of Shakuntla (PW-6), she being one of the five children born from her wedlock with late Shri Sadhu Singh. PW-6 worked for gain as a midwife in a private hospital and would treat the father of Kuldeep (PW-17) as a foster brother. She statedly lived as a tenant in Flat No.C-10, I.D. Hospital, Kingsway Camp, Delhi, sharing accommodation with PW-17 and rest of his family. Though questions were raised during trial as to the terms on which she was living in the said household, lack of clarity in this regard is not of any consequence in as much as the fact that she was living in Flat No.C-10, I.D. Hospital, Kingsway Camp, Delhi stands proved beyond all doubts. Suraj is another member of the family of PW-17 and lived in Flat No.C-27, I.D. Hospital, Kingsway Camp, Delhi in the same block with his wife Nisha (PW-2). Thus, PW-2 would describe Rajvinder Kaur as her *Nanad* (sister of the husband) and Shakuntala (PW-6) as *Bua* (sister of the father).

4. As is indicated by the site plans – rough plan (Ex.PW-4/C) prepared by Sub Inspector Ranbir Singh (PW-4) on the date of the incident and scaled site plan (Ex.PW-5/A) prepared by SI Mahesh Kumar (PW-5) in due course

- and other evidence on record, the building where the scene of crime is located is one of the properties within the gated compound of Mahrishi Balmiki Hospital, Kingsway Camp, New Delhi, a facility that falls within the area of beat No.9, Malikpur village of police station Mukherjee Nagar (the police station). These flats are actually staff quarters of ID Hospital. Noticeably, the appellant was a resident, at the relevant point of time, of flat No. D-26, which would be adjoining building within the same complex. As would be further seen from the narration that follows, it is undisputed that the appellant was acquainted with the deceased and also her close relatives and they, in turn, were also familiar with him by name and face. For the present, this conclusion may be rested primarily on the fact that both sides were almost neighbours living in the same staff quarter complex.

5. The testimony of Nisha (PW-2), Shakuntla (PW-6) and Kuldeep (PW-17) revealed that marriage of Rajvinder Kaur had been settled about 10 days prior to the incident. According to PW-6 and PW-17, the appellant had been stalking the deceased for quite some time, presumably so because he was besotted by her. This, according to the prosecution case was one-sided infatuation as the deceased girl was not interested. These witnesses have testified about this having become a cause for concern leading even to complaint with the police and with the mother of the appellant. That there is some substance to the theory is inherent in one of the defences taken by the appellant during trial wherein he would claim that he and the deceased were in love and wanted to marry each other to which her family was opposed.

6. Rajvinder Kaur (deceased) and Nisha (PW-2) suffered stab injuries sometime around 6.15 p.m. on 20<sup>th</sup> August, 2011 on the top terrace floor of

the block of staff quarters (which includes Flat No. C-27/28), the former (Rajvinder Kaur) succumbing to the said injuries on the same night. These facts have been proved by evidence which is beyond reproach and may be summarized hereinafter.

7. At 7.00 p.m., a telephonic information was received in the police station through police control room (PCR) about the stabbing of the two girls by a young person which was reduced into writing vide DD No. 30/A (Ex.PW-9/A). Rajvinder Kaur was brought to the casualty of nearby Hindu Rao Hospital (Hospital) by her mother Shakuntla (PW-6) at 7.10 p.m. on 20<sup>th</sup> August, 2011 whereupon she was examined by Dr. Pankaj Kumar Aggarwal (PW-13) as per Medico Legal Certificate (MLC) , duly proved by him in Court (vide Ex.PW-13/A). The MLC reveals the history of the injuries was given as assault with knife about 30 minutes prior to arrival in the hospital. There were a number of stab wounds. The general condition of the victim was very poor, she being in a state of shock, conscious but drowsy and certified to be unfit for statement. This event was reported to the police station by Head Constable Raj Kumar (PW-8) who was on duty in the hospital and was recorded in DD Entry No. 31/A (Ex.PW-9/B) by Head Constable Arvind Kumar (PW-9), the duty officer. The death summary (Ex.PW-20/J) prepared in the hospital in due course reveals the condition of Rajvinder Kaur deteriorated and she was declared dead at 10.40 p.m. on 20<sup>th</sup> August, 2011. This was conveyed to the police station at 11.18 p.m. and was recorded by Constable Pushpender (PW-7), the DD writer vide DD No. 63/B (Ex.PW-7/B). The death report (Ex.PW-20/B) prepared by the investigating officer further affirms this fact.

8. Nisha (PW-2) had been brought to the hospital almost on the close heels of Rajvinder Kaur and was examined against MLC (Ex.PW-2/A) by Dr. Latika. The author of the MLC having left the services of the hospital and her presence not being immediately obtainable, the document was proved, with no contest from the defence, by Dr. Arijit Debnath (PW-14) who is acquainted with the writing and signatures of the concerned medical officer. According to this record, Nisha was accompanied by her father-in-law Ram Singh and she having reached hospital casualty at 7.25 p.m. on 20<sup>th</sup> August, 2011 reported through her father-in-law, the history of her injuries as assault. The examining medical officer found incised wound on the right forearm (4 x 1 cm) besides multiple cuts over the fingers of the left hand with active bleeding. The MLC denotes that sharp edged weapon had been used to inflict injuries suffered by Nisha (PW-2).

9. The prosecution adduced sufficient evidence on record to prove that Rajvinder Kaur had suffered a homicidal death. Keeping aside the ocular testimony for the present, reference needs to be made here only to the post mortem examination report (Ex.PW-11/A) which had been prepared by Dr. M.K. Panigrahi (PW-11) on the basis of autopsy conducted by him on the dead body on 21<sup>st</sup> August, 2011. The autopsy doctor had found the following external injuries on the dead body:-

*“1. Surgically stitched stab wound, transversely placed on the anterior chest wall, across the sternum and 2 cm below and medial to both the nipples. On removing the stitches the wound measures 12 cm into 3 cm into chest cavity deep (right side) and is placed in the fourth intercostal space on the right side extending upto 4<sup>th</sup> intercostals space on the left side across the sternum, the wound was situated on the anterior chest wall*

*14 cm below the sternal notch and 125 cm above the right heel. Right end of the wound is obtuse and the left end is acute with tailing. The margins of the wound are clean cut.*

*2. Surgically stitched stab wound of size 3.8 cm into chest cavity deep (left side) obliquely placed over the 5<sup>th</sup> left intercostals space of the anterior chest wall, just above the left costal margin and is placed 115 cm above the left heel, and 4.5 cm away from the midline and 23 cm below the left midclavicular line. Margins of the wound are clean cut. The lower end of the wound was acute and upper end was rounded.*

*3. Surgically stabled wound of size 3 cm into 1 cm into muscle deep present on the anterior abdominal wall, obliquely placed about 95 cm above the left heel and 5.5 cm below the umbilicus in the midline. Margins of the wound was clean cut. Lower end acute and upper end was rounded. The peritoneum underneath was intact. The wound track measures about 3.5 cm long. The direction of the wound was before backwards and from lateral to medial (left to right).*

*4. Stitched incised wound of size 3 cm into 1 cm, obliquely placed on the medical aspect of ventral part of the left forearm, placed 3.5 cm proximal to the wrist joint (Left) and 21 cm below the medial epicondyle of elbow joint. The margins of wound were clean cut and the wound was superficial in nature.*

*5. Incised wound of size 1 cm X 1 cm , superficially placed over the left shoulder about 4 cm medial to the tip of the shoulder joint, 18 cm above the left nipple and 145 cm above the left heel.*

*6. Midline stitched laprotomy would of size 11 cm long present over the anterior abdominal wall and is placed about 16 cm below the xyphisternum, 16 cm above the public symphysis across the umbilicus. The peritoneum underneath was found intact and the wound was not entered into the peritoneal cavity.*

*7. Stitched intra costal drainage wound of size 2 cm X 1 cm X chest cavity deep present on the right lateral chest wall over*

*the 5<sup>th</sup> inter costal space in mid axillary line, 12 cm away from right nipple and 13 cm below the axilla.*

8. *Stitched intra costal drainage wound of size 2 cm x 1 cm x chest cavity deep present on the left lateral chest wall in the 5<sup>th</sup> inter costal space along the mid axillary line 12 cm away from the left nipple.”*

10. The internal examination of the dead body of Rajvinder Kaur had revealed the following:-

*“ Right pleural cavity contents about 1.5 ltrs blood with clots. The left pleural cavity contents about 1.2 ltrs blood with clots. Right lung was collapsed. A penetrating injury of size 3 cm x 1 cm present over the anterior aspect of the lower part of the right upper lobe of the lungs and on the upper part of the right lower lobe where it ends. A penetrating injury of size 3 cm x 1 cm present on the anterior aspect of the lower part of the left lower lobe of the left lung.*

***Track of the external injury no.1:-***

*After piercing the subcutaneous tissues it cut across the intercostal muscles and vessels in the 4<sup>th</sup> right inter costal space which measures about 7 cm x 0.5 cm, communicates with the right pleural cavity and extends from the right end of the wound upto right margins of the sternum along lower border of the right 4<sup>th</sup> rib. Then it passes through the anterior aspect of the lower part of the right upper lobe of the right lung leaving behind a wound of size 3 cm x 1 cm and then passes through the upper part of the lower lobe of the right lung ends in the lung parenchyma. The track of the wound measures about 12 cm long. Directions of the track was from before backwards and from lateral to medial. The vessels, lung tissues and bronchioles along the track of the wound were also cut. The pleural right cavity contains about 1.5 ltrs blood.*

***Track of external injury no.2:-***

*After piercing the subcutaneous tissues it cut across the inter costal muscles, vessels and nerves in the 5<sup>th</sup> left inter costal space and enters into the left pleural cavity. Then it passes through the lung parenchyma of the left lung on its anterior aspect of the lower part of the lower lobe. The vessels, lung tissues and bronchioles along the track of the wound were cut. Left pleural cavity contains about 1.2 ltrs of blood. The track of the wound measures about 8 cm long. The directions of the track was backwards and from medial to lateral.”*

11. The autopsy doctor gave the final opinion as under:-

*“The cause of death of the deceased is due to hemorrhage and shock consequent to the injuries. All the injuries were antemortem in nature. External injury no. 1 to 3 could have been caused by forceful thrust of a sharp pointed weapon/object. External injury no.4 and 5 could have been caused by sharp edge of a weapon/object. External injury no.6 to 8 have been surgically performed as a therapeutic measures. External injury no.1 and 2 individually and combinedly are sufficient cause in ordinary course of nature. Time since death at the time of Post-mortem examination is about 14 hours as per hospital record.”*

12. During the course of arguments, a feeble attempt was made to submit that the death of Rajvinder Kaur could be suicidal. This argument must be mentioned and rejected here itself. The injuries noted in the autopsy report could by no stretch of imagination be self-inflicted. No such case was even attempted to be built during the course of trial, particularly during the evidence of the doctor who had conducted the post mortem examination.

13. It was the prosecution case that the advances of appellant having been repelled, particularly by deceased Rajvinder Kaur, her marriage having been settled elsewhere, the appellant was deeply disturbed and had come to the top terrace floor of the building where Rajvinder Kaur was living with the

family on 20<sup>th</sup> August, 2011 at or about 06:15 p.m. and assaulted her with knife (Ex.P-2) in the presence of her mother Shakuntla (PW-6).

14. The first information report (FIR) was registered (vide Ex. PW9/C) at 10.05 p.m. on 20.08.2011 on the basis of *rukka* (Ex. PW4/B) sent by SI Ranbir Singh (PW-4) from the scene of crime at 9.57 p.m. of which the statement (Ex. PW6/A) of Shakuntla (PW-6) forms a part. It may be added that SI Ranbir Singh (PW-4), the first investigating officer (IO) of the case, had reached the place upon being entrusted with the task of inquiry into DD No.30A (Ex. PW9/A) referred to earlier. According to the version of Shakuntla (PW-6) in the FIR, the appellant had extended threats to Rajvinder Kaur about 10 days prior to the incident to the effect that if she were not to be his life partner, he would not let her get married with any person and upon this information being conveyed by Rajvinder Kaur to her mother (Shakuntla), the mother of the appellant (Maya Devi) had been called and informed about the conduct. It was stated in the FIR that both the mother and brother of the appellant, who had also come avising, had tendered an apology and had given assurances that the appellant would not pursue Rajvinder Kaur any further. Shakuntla (PW-6) informed the police in the FIR that on the fateful evening, she along with Rajvinder Kaur had gone to the top terrace of the building to check on the overhead water tank at which stage the appellant had come there and attacked Rajvinder Kaur with a knife uttering words to the effect that he would not spare her and further that if she could not be his, she would not be of anyone. Shakuntla (PW-6) reported that she had raised an alarm upon hearing which Nisha (PW-2) had rushed upstairs and tried to intervene but the appellant attacked her as well

with knife causing injuries on the person of Nisha who resultantly fell in the staircase.

15. Both Shakuntla (PW-6) and Nisha (PW-2) deposed at the trial affirming the abovementioned sequence of events leading to the stab injuries suffered by Rajvinder Kaur (due to which she died) and Nisha (PW-2) herself. The depositions of the two witnesses substantially corroborate each other's word. The learned counsel for the appellant, however, has argued that given the manner in which Shakuntla (PW-6) has narrated the sequence in the court, Nisha (PW-2) could not have been a witness to the fatal assault on the person of Rajvinder Kaur. Before the arguments urged in this context are taken up, it is proper to take note of other evidence adduced by the prosecution including, crucially, what has come up as *res gestae*.

16. Vijay Kumar (PW-1) another resident of the adjoining block (flat no.D-4) was strolling outside his house when he heard the noise coming from the side of C Block and saw a boy running away after inflicting knife blows to two girls. He is the person who gave the information to PCR by making a call on phone no. 100 which, evidently, resulted in DD No.30A being recorded in the police station. It is, however, clear from his testimony that he was not a witness to the sequence and his information would be based on what he may have gathered from the people who had collected.

17. Phool Singh (PW-16) is a resident of flat no.C-28 located in the same block where the house of the victim and the scene of crime are located. According to the prosecution case, he and Prince Chauhan (PW-18), resident of flat no.D-6, in the adjoining building within the same compound, were near the large park located in front of the said building. At the relevant

point of time, Constable Neeraj (PW-3) was posted in the local police station and was on patrolling duty in the local beat covering the complex housing the staff quarters of I.D. Hospital in the evening hours of 20.08.2011. The duty assigned to him was logged at 5.50 p.m. vide DD No.48B (Ex. PW7/A) by constable Pushpender (PW-7), the daily diary writer. According to the evidence of PW-3, he was entering the gate of the compound where the staff quarters are located in the course of his patrolling duty at about 6.30 p.m. Both Phool Singh (PW-16) and Prince Chauhan (PW-18) testified that they had heard noise raised by some ladies, per PW-18 it being in the nature of alarm to seek help (*bachao bachao*). Both of them deposed that they had seen a young person coming down the staircase of that block in fast speed with an open knife in hand running away. Phool Singh (PW-16) identified the appellant as the person who had been seen by him running away with knife in hand and being apprehended by a police official at the gate of the I.D. hospital. Constable Neeraj (PW-3) clarified during cross-examination that he was approaching the scene from the opposite direction and affirmed that he had caught hold of the appellant after some chase and snatched the knife from his hands.

18. Prince Chauhan (PW-18) after having testified about having noticed the person running out of the 'C' Block staircase with an open knife stopped short of saying more. He would not corroborate the word of Phool Singh (PW-16), or Constable Neeraj (PW-3), about the identity or as to the role of the police official in apprehending or relieving the person of the knife. It may, however, be noted at this stage that when SI Ranbir Singh (PW-4) had reached the place of occurrence immediately after being entrusted with

inquiry into DD no.30A, he was first met by Constable Neeraj (PW-3) who had presented the appellant in custody informing him about the sequence of events leading to he being apprehended with blood stained knife. This fact was mentioned by SI Ranbir Singh (PW-4) in the *rukka* which he sent for registration of FIR at 9.57 p.m. after first paying a visit to the hospital to collect the copies of the MLCs and ascertaining the status of the two victims and recording the statement of Shakuntla (PW-6) to set the law into motion.

19. During the course of investigation that followed, after the registration of the FIR, among other steps, the knife (Ex. P-1) was formally seized as per seizure memo (Ex. PW3/B) to which Constable Neeraj (PW-3) and Kuldeep (PW-17), brother of the deceased, who had by that time arrived, are attesting witnesses. The knife was seized after its sketch (Ex. PW3/A) had been prepared and it had been put in a parcel duly sealed. Since some arguments have been raised in this regard, it may be noted that the sealed parcel containing the knife (Ex. P1) was duly deposited in the *Malkhana* of the police station on the same date as per entry in the store room register (ex. PW23/A) proved by the *Malkhana* official.

20. The learned trial court has found the evidence of Constable Neeraj (PW-3) and Phool Singh (PW-16) trustworthy to uphold the prosecution case that the appellant had been seen rushing downstairs from out of the 'C' block after the occurrence carrying the blood stained knife (Ex. P1) in his hand and thus being apprehended on the spot. The testimony of PW-16 about his attention being drawn towards the appellant rushing downstairs on hearing the cries of a woman for help has also been accepted as credible.

21. According to the evidence, which is not contested, the appellant was arrested at 10.50 p.m. on 20.08.2011 vide arrest memo (Ex. PW3/C) after personal search (vide Ex. PW3/D) after registration of the FIR. Immediately after the arrest, he was taken to Babu Jagjivan Ram Memorial Hospital, Delhi where he was medically examined as per MLC (Ex. PW25/A) by Dr. Shailesh. Since Dr. Shailesh was a junior resident, then working under the supervision of Dr. Gopal Krishna (PW-25) and since he had left the services of the hospital and his presence could not be immediately secured, Dr. Gopal Krishna (PW-25) who is acquainted with his writing and signatures proved the MLC of the appellant. The deposition of Dr. Gopal Krishna (PW-25), read alongside the said MLC (Ex. PW25/A) shows that after the medical examination (which revealed number of scars of old wounds though no fresh injury), his clothes were sealed and handed over to the investigating officer. The MLC mentions the wearing apparel as “cloth” . SI Ranbir Singh (PW-4) and Constable K. Radha Krishan (PW-22) who was accompanying the former has proved the seizure memo (Ex. PW4/D) reflecting that the said clothing article was in fact one blood stained shirt.

22. The fact that knife (Ex. P1) was the weapon of offence used in inflicting stab injuries on the person of Rajvinder Kaur and Nisha (PW-2) has been held proved beyond all manners of doubts by the trial Court not only on the conjoint reading of the testimonies of Nisha (PW-2) and Shakuntla (PW-6) both presented as eye witnesses but also on the deposition of Constable Neeraj (PW-3) and Phool Singh (PW-16) who saw the accused running with it in the course of same transaction besides on the reports (Ex.

PW20/F and PW20/G) of Forensic Science Laboratory (FSL) which confirmed that the blood stains on the knife (ex. P1) were of human origin.

23. The said FSL reports further show that the shirt taken off the person of the appellant at the time of his medical examination mentioned above was also found bearing blood stains of human origin of Group 'B', same blood group as that of the deceased as ascertained by FSL upon examination of her wearing apparel (T-shirt and brassiere) which had been separately preserved and passed on by the medical authorities and taken over by the investigating officer vide formal seizure memo (Ex. PW4/A).

24. For completion of narration of the prosecution case, it may be noted further that the knife (Ex. P1) was taken by the investigating officer to the autopsy doctor, Dr. Pankaj Kumar Agarwal (PW-11), for further opinion on 27.08.2011. The autopsy doctor, after preparing a sketch (Ex. PW11/C), gave the further opinion (Ex. PW11/B) affirming that first five external injuries noted in the autopsy report could possibly have been inflicted with the said knife.

25. It was argued by the learned counsel for the appellant that Nisha (PW-2) and Shakuntla (PW-6) are not reliable witnesses. The main thrust of his submissions in this context was on two aspects, one emerging from the testimony of Nisha (PW-2) and the other in the deposition of Shakuntla (PW-6). He pointed out that, as per the prosecution case, the incident had begun when Nisha (PW-2) was not around. Only the deceased Rajvinder Kaur and her mother Shakuntla (PW-6) were on the top terrace to check out the overhead tanks. Shakuntla (PW-6) deposed that the appellant had inflicted one injury on the chest of Rajvinder Kaur and two more on other

parts of her body, the “last” being in the lower portion of the stomach. The argument raised was that this ocular account of witness who was present throughout the assault is not in *sync* with the opinion of the autopsy doctor who had found five external injuries (the other three wounds being on account of surgical intervention). The learned counsel referred to the testimony of PW-2 to highlight that upon hearing the cries for help when she had gone upstairs, she saw the appellant holding on to the upper garment of Rajvinder Kaur and inflicting knife blows on her chest at which stage Shakuntla (PW-6) “was lying unconscious”. The argument developed by the defence is that if Shakuntla (PW-6) had become unconscious, she could not have witnessed the entire sequence of events, leave alone being in a position to notice what other injuries had been suffered by her daughter or hear her pleas for immediate medical help or to even escort her to hospital. It is further argued that if Shakuntla (PW-6) had not become unconscious, but only “perplexed” as stated by her (PW-6), Nisha (PW-2) is not a truthful witness and she having added colour to the story by bringing in such fact has demonstrated that her version may not be on account of she having witnessed the occurrence but more on speculation / imagination.

26. We have considered the above arguments acutely but find the same meritless. The incident occurred in a moment of few minutes. Several things happened in quick succession. The mother and daughter (PW-6 and the deceased) had gone upstairs to the knowledge of the daughter-in-law of the house (PW-4) in the flat below. When the appellant started assaulting the deceased with knife, Shakuntla (PW-6) raised an alarm. This noise, as noted above, was not only heard by those in the neighbourhood below but

also by Nisha (PW-2) who, in normal course, would have rushed upstairs. Since it was also very natural for Nisha (PW-2) to intervene, the attention of the appellant being diverted towards her (PW-2), there was hardly any time or opportunity for the latter (PW-2) to capture or comprehend the scene fully or in entirety. If the mother of the victim had seen the vicious attack on her daughter and had become “perplexed”, PW-2 having noticed her in a state of uncertainty or momentary immobility may have assumed that she had become unconscious. A wrong assumption made by Nisha (PW-2) in this regard cannot lead to Shakuntla (PW-6) being rendered unbelievable or testimony of Nisha (PW-2) herself being challenged as incredible. It has to be borne in mind that the presence of Nisha (PW-2) at the scene of incident, midway the attack, is duly corroborated by the injuries suffered by herself at the hands of the appellant in the same transaction. The testimony of an injured witness in these circumstances carries great value and cannot be wished away. [see *Jodhan Vs. State of Madhya Pradesh*, (2015) 11 SCC 52; *Abdul Sayeed vs. State of M.P.*, (2010) 10 SCC 259; *Ramlagan Singh Vs. State of Bihar*, (1973) 3 SCC 881; *Malkhan Singh Vs. State of UP.*, (1975) 3 SCC 311; *Vishnu vs. State of Rajasthan*, (2009) 10 SCC 477; *Balraje vs. State of Maharashtra*, (2010) 6 SCC 673 and *Jarnail Singh vs. State of Punjab*, (2009) 9 SCC 719].

27. The autopsy report shows that only three injuries on the person of Rajvinder Kaur were definitely caused by the forcible thrust of a sharp pointed weapon. It is clear that three injuries mentioned by Shakuntla (PW-6) are these very injuries. The next two injuries (fourth and fifth) in the opinion of the autopsy doctor could have been caused by sharp edge of a

weapon / object. These may be in the nature of slashes with the knife rather than actual stabbing. The learned counsel for the defence seems to have misconstrued the sentence “*when the accused inflicted the last injury below portion of her stomach*” to assume that the witness was indicating that the assault on Rajvinder Kaur had ended with the three injuries described by her earlier. The learned trial judge has noted the above quoted sentence in the deposition of Shakuntla (PW-6) with remarks that the witness was demonstrating by hand as to on which part of the body the last blow with knife had landed. The word “last” definitely was not meant to say that the third injury was the last injury.

28. It was argued that Vijay Kumar (PW-1) and Prince Chauhan (PW-18) do not identify the appellant as the assailant and, therefore, the prosecution case is rendered doubtful. Reference in this context is made to the fact that Vijay Kumar (PW-1) is the person who had called the PCR and further that Prince Chauhan (PW-18) had been projected as a neighbour who had seen the entire sequence from the moment the appellant emerged from the staircase of C Block till he was apprehended with the blood stained knife at the gate of the hospital staff quarters compound by Constable Neeraj (PW-3), the court testimony of PW-18 belying any such knowledge on his part. These arguments do not carry the defence anywhere. Vijay Kumar (PW-1) was around the scene and has corroborated the prosecution case broadly about noise emanating from the side of C Block having drawn his attention, and he having learnt that a boy had run away after inflicting knife blows to two girls whereupon he called the PCR number. Prince Chauhan (PW-18) evidently did not support the prosecution case, and went back from his

statement (mark X1) given under Section 161 of the Code of Criminal Procedure, 1973 (Cr. PC), as to the identity of the appellant. Nonetheless, his testimony about cries for help raised by some ladies followed by the sight of a young person rushing out fast from the staircase of C Block with an open knife in hand provides sufficient corroboration to the statements of Constable Neeraj (PW-3) and Phool Singh (PW-16) who affirm the complicity of the appellant in the transaction. There is no reason why the testimony of PW-3 and PW-16 in this regard should be disbelieved. Both are neutral persons, the latter a neighbor with whom there is no theory of any past enmity and the former a public servant on official duty in the area with no personal axe to grind.

29. It may be added here that in directing criticism at the evidence of Constable Neeraj (PW-3), the learned counsel for the appellant submitted that this official did not himself log any departure entry in the police station before he had set out for the patrolling duty. We do not accept this criticism in view of DD Entry 48B (Ex. PW7/A) which was logged by DD writer (PW-7) in due course of the official business of the police station at 5.50 p.m. on 20.08.2011 respecting deployment of Constable Neeraj (PW-3) for patrolling in the area in question, at a stage when the possibility of such incident happening could not have been anticipated. In the practices followed in the police department, personnel of the subordinate rank (as that of a constable) are not required to log their own individual departure or arrival entries. If a group of personnel are sent out for patrolling duty at a certain hour, a common DD entry is generally made by an official of superior rank. Therefore, DD Entry 48B (Ex. PW7/A) is sufficient to

confirm the presence of Constable Neeraj (PW-3) in the area at the time of the incident.

30. The learned counsel for the appellant submitted that the value of knife (Ex.P1) as a piece of evidence stands eroded in view of the statement of Inspector Satender Singh (PW-20) showing that he had carried the same to the hospital at the time of post-mortem examination on the dead body of Rajvinder Kaur on 21.08.2011. He argued that this submission of Inspector Satender Singh (PW-20), who had taken over the investigation from SI Ranbir Singh (PW-4) on 21.08.2011 shows that the material exhibit had been improperly opened and handled. This, in his submission, renders the FSL reports (Ex. PW20/F and PW20/G) and further opinion of the autopsy doctor (Ex. PW11/B) meaningless.

31. The above argument is based on reading of the testimony of Inspector Satender Singh (PW-20) in isolation, ignoring the other evidence on record. The entries in the *Malkhana* register (Ex. PW23/A), particularly those respecting the deposit of the sealed parcel containing knife deposited by SI Ranbir Singh (PW-4) immediately after seizure do show that Inspector Satender Singh (PW-20) had collected the same from the *Malkhana* Incharge on 21.08.2011 expressly for obtaining “opinion” from HRH Hospital. But then, the entry to this effect is followed by another entry of the same date (21.08.2011) confirming that the sealed parcel containing the knife had been re-deposited by Inspector Satender Singh (PW-20), it bearing the “same seal” on the same day. From these entries, it clearly emerges that Inspector Satender Singh (PW-20) out of his over-zealousness had taken along the sealed parcel containing the weapon of offence to the hospital,

assumably in the hope that the autopsy doctor would give his opinion in such regard at the same time he was preparing the post-mortem examination report. Clearly, since the autopsy report took time to be prepared and made available, the question of opinion about the weapon of offence earlier seized stood deferred. The fact remains that the sealed parcel containing the knife having been taken out from the *Malkhana* on 21.08.2011 had been returned to the *Malkhana* intact i.e. without being opened. Thus, when it was resent to the autopsy doctor on 26.08.2011 and later to FSL on 01.09.2011, it remained a material exhibit which had been duly preserved against tampering.

32. It was submitted that there is a discrepancy in the evidence with regard to the seizure of the clothes (T-shirt and brassiere) of the deceased which were eventually sent to FSL alongwith other exhibits for opinion. Reference was made to the statement of Dr. Pankaj Kumar Agarwal (PW-13) who had examined the victim against MLC (Ex. PW-13/A) indicating that he had put the said wearing apparel in a *pullanda* with the seal of the hospital and handed over the sealed parcel to Duty Constable. This is what is mentioned by way of a marginal endorsement on the MLC (Ex. PW-13/A) as well. In contrast, SI Ranbir Singh (PW-4), the then I.O. has testified that the examining medical officer had handed over the said sealed parcel to him directly. This is also the sum and substance of the seizure memo (Ex. PW4/A) prepared in this regard. Head Constable Raj Kumar (PW-8) was not questioned by either side as to whether he had any such role to play as was indicated by the medical officer. The lack of clarity on the above score cannot be given undue weightage, for the reason the sealed parcel bearing

the seal of the hospital, formally taken over by the IO (vide Ex. PW4/A), is confirmed to have been deposited with seal intact in the *Malkhana* as per *Malkhana* register (Ex. PW23/A).

33. From the above, it clearly emerges that there are no reasons why the evidence of the prosecution in general and the testimonies of Nisha (PW-2) and Shakuntla (PW-6), in particular, should be disbelieved. The defence theory of the injuries suffered by Rajvinder Kaur being self-inflicted in an attempt to commit suicide because she was being married elsewhere though she was involved in a love affair with the appellant, as suggested during cross-examination of Nisha (PW-2) and Shakuntla (PW-6), are unfounded. Noticeably, while giving these suggestions to Nisha (PW-2), the appellant also came up with the theory that he had reached the terrace where Rajvinder Kaur and Nisha (PW-2) had suffered injuries upon seeing the former (Rajvinder Kaur) showing a knife giving threats to him that she would commit suicide. The suggestion given on behalf of the appellant to the witness carries virtually an admission about his presence at the crucial time and place, thereby providing the additional assurance to the credibility of the version of the two eye-witnesses.

34. Small embellishments or variations in the statements of material witnesses, not of any significant import, cannot be allowed to be used to question the credibility of their version which is otherwise consistent and corroborative of each other and carrying a ring of truth. Some exaggerations or embroidery in the description of the sequence of events witnessed by them, particularly when they are called upon to depose in the court at some distance of time from the date of the incident, are quite natural. After all,

they depend on human memory which is generally susceptible to become fainter with each passing day and definitely cannot be photographic, nor synchronizable with a universal watch giving the ability to each individual to peg a particular event to a particular stroke of the hour with exactitude.

35. The material witnesses examined by the prosecution in this case – Nisha (PW-2), Shakuntla (PW-6), Phool Singh (PW-16), Kuldeep (PW-17) and Prince Chauhan (PW-18) – come from lower middle class background with not much education. Their evidence inspires confidence. They were present at or near the scene of incident in natural course. There is no reason why PW-2 and PW-6 should falsely rope in the appellant. The other witnesses of the scene including Constable Neeraj (PW-3) are absolutely neutral persons. Small variations in their statements are natural owing to difference in cognitive faculties or normal wear and tear of human memory.

36. Accepting the ocular account of PW-2 (Nisha) and Shakuntla (PW-6), we join our voice in that of the learned trial court in holding that the prosecution has been able to prove beyond the pale of any doubt that the appellant had accosted Rajvinder Kaur on the terrace of the building in a flat of which she was living, in the presence of her mother Shakuntla (PW-6) and inflicted three knife blows on her person which proved fatal. Having regard to the nature of the said stab injuries - deep set and cutting her insides beyond repair, in vital parts of the body - there can be no doubt as to the fact that by causing the said injuries, the appellant intended to bring about Rajvinder Kaur's death which is what was conveyed by him through contemporaneous utterances indicative of his love for the girl having been repelled. The prosecution has also proved through the above mentioned

evidence that when Nisha (PW-2) tried to intervene and come to the rescue of Rajvinder Kaur, she was also attacked by the appellant with knife resulting in she sustaining injuries. There is no doubt further to the effect that these injuries with sharp edged weapon had been voluntarily caused by the appellant.

37. For the above reasons, we uphold the conclusion of the learned trial court to the effect that the appellant had committed the murder of Rajvinder Kaur constituting an offence punishable under Section 302 IPC and had also voluntarily caused hurt to Nisha (PW-2) with a sharp cutting instrument (knife) thereby committing an offence punishable under Section 324 IPC. Thus, the appeal against the conviction is found devoid of substance. There being no ground for any interference even with the order on sentence, the appeal fails and is hereby dismissed.

38. The appellant who is in custody undergoing the sentence shall be informed by the Registry about the result of the appeal by serving a copy of this judgment on him through Superintendent of Central Jail, Tihar.

**(R.K. GAUBA)**  
**JUDGE**

**(GITA MITTAL)**  
**JUDGE**

**AUGUST 24, 2016**  
vk/nk/yg