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

+ CRL.A. 914/2016 & Crl.M.(Bail) No. 1744/2016

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Date of decision : 4th October, 2016

VICKY @ SUNNY

..... Appellant

Through: Mr. Sumeet Verma and
Mr. Abhijeet Sharma, Advs.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Varun Goswami, APP
for the State

+ CRL.A. 771/2016 & Crl.M.(Bail) No. 1513/2016

SANJAY @ SILENCER @ PARDEEP

..... Appellant

Through: Mr. Suraj Rathi and Mr.
Siddhrth Singh, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Varun Goswami, APP
for the State

+ CRL.A. 803/2016 & Crl.M.(Bail) No. 1562/2016

SANDEEP @ CHELA

..... Appellant

Through: Mr. Dhan Mohan and
Ms. Tanu B. Mishra, Advs.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Varun Goswami, APP
for the State

+ **CRL.A. 857/2016 & Crl.M.(Bail) No. 1622/2016**

SACHIN @ TOTA

..... Appellant

Through: Mr. Harsh Prabhakar and
Mr. Anirudh Tanwar, Advs.

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for
the State

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT (ORAL)

GITA MITTAL, J.

1. The appellants assail the judgment dated 25th May, 2016 passed in SC Case No. 20/14 arising out of FIR No. 181/09

registered by Police Station Saraswati Vihar whereby they stand convicted for commission of the offences under Section 302/365/325/34 of the IPC. Sanjay @ Silencer was also separately convicted for commission of offence under Section 25 of the Arms Act. The appellants also assail the order on sentence dated 31st May, 2016 whereby they were sentenced as follows :-

<i>Vicky @ Sunny</i> (Appellant in Crl. A. 914/2016)	
<i>Offence</i>	<i>Sentence</i>
<i>Section 302/34 IPC</i>	<i>Rigorous Imprisonment for life and a fine of Rs. 25,000 and in default of fine to undergo Simple Imprisonment for six months.</i>
<i>Section 365/34 IPC</i>	<i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>
<i>Section 325/34 IPC</i>	<i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>

<i>Sanjay @ Silencer @ Pardeep</i> (Appellant in Crl. A. 771/2016)	
<i>Offence</i>	<i>Sentence</i>

<i>Section 302/34 IPC</i>	<i>Rigorous Imprisonment for life and a fine of Rs. 25,000 and in default of fine to undergo Simple Imprisonment for six months.</i>
<i>Section 365/34 IPC</i>	<i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>
<i>Section 325/34 IPC</i>	<i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>
<i>Section 25 Arms Act</i>	<i>Rigorous Imprisonment for 02 years and a fine of Rs. 5,000 and in default of fine to undergo Simple Imprisonment for 1 month.</i>

<i>Sandeep @ Chela (Appellant in Crl. A. 803/2016)</i>	
<i>Offence</i>	<i>Sentence</i>
<i>Section 302/34 IPC</i>	<i>Rigorous Imprisonment for life and a fine of Rs. 25,000 and in default of fine to undergo Simple</i>

<i>Section 365/34 IPC</i> <i>Section 325/34 IPC</i>	<i>Imprisonment for six months.</i> <i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i> <i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>
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<i>Sachin @ Tota</i> <i>(Appellant in Crl. A. 857/2016)</i>	
<i>Offence</i>	<i>Sentence</i>
<i>Section 302/34 IPC</i> <i>Section 365/34 IPC</i>	<i>Rigorous Imprisonment for life and a fine of Rs. 25,000 and in default of fine to undergo Simple Imprisonment for six months.</i> <i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>

<i>Section 325/34 IPC</i>	<i>Rigorous Imprisonment for 05 years and a fine of Rs. 10,000 and in default of fine to undergo Simple Imprisonment for 3 months.</i>
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It was also directed in the order on sentence dated 31st May, 2016 that out of the total fine, 50% to be paid to Ms. Kamlesh-wife of deceased Vijay as compensation under Section 357 CrPC. All the above sentences were directed to run concurrently. Benefit of Section 428 of the CrPC was allowed to all the appellants.

2. In as much as the appellants were subjected to a common trial and stand convicted by a common judgment dated 25th May, 2016 and sentenced by a common order dated 31st May, 2016, we have considered the appeals jointly and propose to decide them by this common judgment.

3. The case against the appellants commenced on telephonic information which was received by police post Rani Bagh on 13th April, 2009 at 11.20 p.m. (Exh.PW20/A) from the Police Control Room that two or three boys were badly beating somebody near the APJ School and that appropriate action be effected by the police. This information was logged as DD No. 43. It is also on record that further telephonic information was received at 12.05 a.m. on 14th April, 2009 at Police Station Saraswati Vihar from ASI Ashok Kumar from the Bhagwan Mahavir Hospital to the effect that one unknown person aged 25 years had been brought dead to the

hospital. The deceased was brought to the Bhagwan Mahavir Hospital on 14th April, 2009 at 12.25 p.m. and MLC No. 521 prepared which has been proved on record as Exh.PW-4/A. The MLC notes a clear lacerated wound over the scalp as well as a stab wound on the lower chest.

This information was logged as DD No. 2A (Exh.PW23/A).

4. The prosecution has relied on a statement (Exh.PW-16/A) attributed to Mukesh who testified as PW-7, which was recorded by Inspector Baljit Singh (PW-16) in the morning of 14th April, 2009. This statement formed the *tehreer* recorded by Inspector Baljit Singh (PW-16) on which he endorsed the rukka and sent to PS Saraswati Vihar resulting in registration of FIR No. 181/09 under Sections 302/325/323/365/34 IPC (Ex. PW12/A).

5. It was stated by Mukesh (PW-7) in this statement that he alongwith his friends Manoj, Vicky, Vijay and Amit on 13th April, 2009, at about 10.30 pm, had parked their motorcycle and a two wheeler at Road no. 42, Opposite Keshav Mahavidhyalaya and started consuming liquor. Near the said school, one marriage function was going on. They noticed Sanjay @ Silencer (the accused no.1) along with his 3-4 friends coming out of the venue of marriage. On seeing them, Vijay accused them of pick pocketing there. Sanjay @ Silencer (the accused no. 1) got irritated and stated that that was his area and that only he alongwith his friends would pick pocket there. Vijay challenged that he would see as to how they would pick pockets in his presence. By that time, the

other friends of Mukesh also became agitated. Accused no. 1 left along with his friends shouting that they should stay there for two minutes and he would see as to how they would leave alive. After 2-3 minutes, Sanjay @ Silencer-the accused no.1 alongwith his friends returned to the spot. This time, he was carrying a big knife and his friends were carrying small dandas in their respective hands and attacked them. Manoj, Amit and Vijay sustained injuries in this attack.

6. Sanjay @ Silencer (the accused no.1) also gave a knife blow on Vijay and consequently, he fell down on the ground. At this, the complainant, Mukesh, Manoj and Vicky ran away to save their lives and stopped at a distance. They saw that Vijay was lying on the ground. The accused and his friends were giving fist and leg blows to Amit and forcibly pushed him into their silver colour Santro Car.

7. The complainant, Manoj and Vicky came back to Vijay who was unconscious. By that time, public persons had gathered there and someone had made a call to the police. Vijay was taken to the hospital in a PCR Van where he was declared as having been brought dead.

8. On the request of Inspector Baljit Singh (PW-16), an autopsy was conducted by Dr. K. Goel (PW-6) on the dead body of Vijay at the Babu Jagjivan Ram Hospital on 15th April, 2009 at 12.30 p.m. when the following injuries were recorded by the doctor :-

“External injuries:

1. Laceration 2.5x0.5 cm over lt. occipital region.
2. Incised wound 5x2 cm muscle deep over Rt side back of neck.
3. Incised penetrating wound 3.5x0.5 cm over lt. back of neck on exploration, it runs obliquely medially in s/c tissues and about 4 cm deep.
4. Incised penetrating wound 4.2x2.1x7 cm placed transversely and slightly oblique over lt. side back of chest about 6.5 cm lt. to mid line and 6 cm below int. border of lt. scapula. One of the angles is acute and other one is little broader.
5. Incised penetrating wound 2.5x0.75 cm muscle deep about 4 cm deep over outer middle part of lt. gluteal region.
6. 3x1.5 cm muscle deep about 3.5 cm over medial aspect of lt. gluteal region.
7. IPW 2.5x1.5 cm about 3 cm deep _____ just below injury no.6.
8. IPW 2x1 cm about 2 cm deep over left side perineal region.
9. Rail road pattern bruise 11x3 cm placed obliquely and transversely over back of lt. thigh at upper middle part. Reddish in colour.
10. Abrasions 5x2.5 cm over lt. cheek, 3x1.5 cm over back of Rt. wrist, 1x1 cm over back of Rt. hand.
11. Diffuse reddish bruises scattered at places over lt. forearm at places and both wrist joints outer and back parts.
12. Laceration 4x1.5 cm with abrasions around over upper middle part of forehead and part of frontal region.”

9. The autopsy doctor had also opined that the injuries were ante-mortem in nature. Injury nos. 2 to 8 were caused by sharp cutting penetrating weapon; that the injury nos. 1, 11 and 12 were

caused by blunt force impacts; injury no. 9 was caused by hard blunt cylindrical weapon and that injury no. 10 was caused by friction against rough blunt surface/object. As per the doctor (PW-6), the cause of death was the combined effect of hemorrhagic shock and respiratory distress consequent upon injury to lung and chest as a result of sharp penetrating injury. It was opined that injury no. 4 is sufficient to cause death in ordinary course of nature.

The mode of death was homicidal and the time since death was opined to be about 37-38 hours.

10. It is the case of the prosecution that on secret information, the Special Crime Team on 15th April, 2009 arrested the four appellants in a silver Santro car at the Vishram Chowk, Rohini, Delhi. The personal search of the appellants were conducted and arrest memos Exh.PW-16/E & 23A, 16/F, 23/C, 16/G, 23/E, 16/H, 23/G were prepared.

11. The prosecution has relied on disclosure statements (all dated 16th April, 2009) made by all the appellants which have been brought on record as Exh.PW-16/01 to 4 & Exh. PW-29/D, Exh. PW-16/J-1 and Exh.PW 22/A.

12. The prosecution has submitted that pursuant to the disclosure statements, the following recoveries were effected :

At the instance of	Place of Recovery	Articles	Seizure Detail
Sanjay	H.No. 307, MCD Colony,	- Blood Stained Knife lying underneath the	Exh. PW

	Avantika	<i>Diwan</i> - Blood stained shirt hanging in the window door of the room for dying after washing	16/L Exh. PW 16/M
Vicky	H.No. 307, MCD Colony, Avantika	-One Danda lying underneath the <i>Diwan</i>	Exh. PW 16/N
Sandeep	H.No. 307, MCD Colony, Avantika	-One Danda lying underneath the <i>Diwan</i>	Exh. PW 16/J

13. Learned counsel for the appellants have also drawn our attention to the seizure memos Exh.PW-16/L, M, N & J and pointed out that the persons at whose instance the recovery of knife, shirt and Dandas were made, were allegedly not signed by them.

We find that the disclosure memos also contain an endorsement by Inspector Baljit Singh (PW-16) to the effect that the accused persons making the disclosure statements had refused to sign the same.

14. Even though the prosecution has attributed a disclosure statement to Sachin @ Tota, no recovery is alleged pursuant

thereto. The same is, therefore, clearly inadmissible in evidence.

15. The prosecution has also relied on the medical examination of Amit Kumar (PW-15), an injured eye witness, vide MLC No. 526 (Exh.PW-1/A) dated 14/04/2009 wherein the doctor had noted the following injuries :-

“L/E Swelling over Lt. Ankle.

- *CLW over Shin Lt leg (4 cm x0.5 cm)*
- *CLW over Rt Shin 2 cmx0.5 cm*
- *CLW over Chin 0.54x0.5 cm*
- *Swelling, tend & redness, on the both forearm & hand*
- *Bruise on rt side of upper Lip”*

16. The investigating officer Inspector Baljit Singh also obtained the opinion of Dr. Atul Garg, PW-1 with regard to the nature of injuries allegedly sustained by Amit Kumar, PW-15 vide MLC Exh.PW-1/A who opined that the injuries were grievous and made an endorsement to this effect on the MLC of Amit Kumar.

17. At the BJR Hospital, the doctor who conducted the post mortem had handed over the clothes of the deceased which consisted of one pyjama, a T-shirt, an underwear of the deceased Vijay as well as his blood sample on a piece of gauze in a sealed parcel to Inspector Baljit Singh (PW-16), vide seizure memo Exh.PW-16/D. This parcel was deposited in the *malkhana* of PS Saraswati Vihar by PW-16 which was duly registered at serial no. 3071 in the *malkhana* register, extract whereof has been brought on record as Exh.PW-38/B.

18. Bloodstained earth as well as earth control from the site had

also been kept in a sealed pullandah by Inspector Baljit Singh who had seized the same and deposited in the *malkhana*. Inspector Baljit Singh also seized blood spots on the back side of the car (Exh.PW-16/P).

19. During the course of investigation, Inspector Baljit Singh (PW-16) recorded the statements of the witnesses under Section 161 of the CrPC. Among the statements recorded by the investigating officer, the prosecution claims to have recorded the statement of eye witnesses Mukesh (PW-7), Vicky (PW-8), Manoj (PW-11) and Amit Kumar (PW-15).

20. Inspector Baljit Singh (PW-16) had produced the recovered articles from the *malkhana* before the Chief Medical Officer of the BJR Hospital and vide Exh.PW-6/C sought an opinion as to whether the recovered knife could be the weapon of the offence in a parcel sealed with the seal of BSA.

21. While giving his opinion, Dr. K. Goel (PW-6) has noted that the blade was 17 cm long with the maximum width of 3.5 cms; that one of the edges of the knife was sharp while the other one was blunt; the blade was tapering and that the knife was rusted with reddish blood like material. It was also noted that the knife had a metallic handle which was fixed with pins. The doctor had carefully drawn a sketch of the knife including the markings on the handle and opined that injuries nos. 2 to 8 mentioned in the post-mortem report no. 364 dated 15th April, 2009 on the body of the deceased were possible by this weapon or any similar type of weapon (Exh.PW-6/B).

The weapon was resealed with the seal of KGN and handed over to PW-16 who again lodged the same in the *malkhana* and made entries in the register vide serial no. 3711 (Exh.PW-38/C).

22. It is in evidence that one silver Santro car bearing registration no. DL-3CP 8138 was produced from the office of the Crime Branch and also deposited in the *malkhana* of police station Saraswati Vihar vide entry no. 3724 in the *malkhana* register (Exh.PW-38/D). The Santro car was carefully examined by the Crime Team, however, no fingerprints could be lifted from the car.

23. So far as the forensic examination of the seized articles is concerned, on 6th May, 2009, recovered articles were taken from the *malkhana* and entrusted to Ct. Gajender (PW-30) who took the same and deposited them with the Forensic Science Laboratory, Rohini (Exh.PW-38/F).

24. On 26th May, 2009, HC Madan Lal (PW-34) took two more sealed pullandas containing bloodstained shirt of accused Sanjay @ Silencer in one pullanda and clothes of the deceased in another which were also deposited in the FSL, Rohini.

25. During the course of investigation, the prosecution relies on site plan prepared on the pointing out of PW-7 Mukesh (Exh.PW-16/B).

26. A scaled site plan (Exh.PW-3/A) of the place of incident was prepared by SI Manohar Lal, Draftsman (PW-3).

27. After completion of investigation, a final report under Section 173 CrPC was submitted on 11th July, 2009 before the competent Metropolitan Magistrate. By an order dated 24th July,

2009, the matter was committed for trial to the Court of Sessions, in accordance with law.

28. In the meantime, a report was received from the Forensic Science Laboratory reporting that human blood was found on the two exhibits which were sent to the laboratory but the blood group could not be identified. The doctor identified the blood group of the deceased as Group A which was also found on the shirt recovered at the instance of Sanjay @ Silencer. On the other articles, including the knife, concrete material and the blood samples collected from the Santro car, though human blood was identified, but the group could not be identified. The reports of the Forensic Science Laboratory in this regard have been exhibited on record as Exh.PW-9/A, 9/B, 9/C, 9/D, 9/E & 9/F.

29. In view of the Forensic Science Laboratory report, a supplementary report in terms of Section 173 Cr.PC was also submitted to the court on 19th August, 2010.

30. By an order dated 8th October, 2009, the Sessions Court, framed charges against all the appellants for commission of offences punishable under Section 302/325/365/34 IPC. Additionally, a charge was framed against the appellant Sanjay @ Silencer for commission of an offence punishable under Section 25 of the Arms Act.

31. The appellants pleaded not guilty and claimed trial. The prosecution examined 40 witnesses in support of their case. The evidence against the appellant was put to them and an opportunity given to them to explain the same under Section 313 of the CrPC.

32. After considering the entire material, by the judgment dated 25th May, 2016, the trial court held the appellants guilty of commission of the offences with which they were charged and by the subsequent order of 31st May, 2016 sentenced the appellants as noted above.

33. Learned counsel for the appellants have vehemently challenged the judgment of conviction as well as the order on sentence primarily on the ground that the judgment is premised on no evidence at all and that the appellants ought to have been honourably acquitted from all offences with which they were charged.

34. It has been also vehemently contended by Mr. Sumeet Verma, Mr. Suraj Rathi, Mr. Dhan Mohan and Mr. Harsh Prabhakar, learned counsels appearing for the appellants, that there was no compliance of the requirements of Section 157 of the CrPC and no copy of the FIR was sent to the *Ilaka* Magistrate and that this illegality goes to the root of the matter and is by itself sufficient for acquittal of the appellants.

35. We have carefully scrutinised the record with the assistance of Mr. Varun Goswami and Ms. Aashaa Tiwari, learned APPs for the State and they are unable to point out the compliance with the mandatory requirement of Section 157 of the CrPC.

36. It has further been urged at length, that the main argument of the prosecution case rests on the recoveries made pursuant to the disclosure statements attributed to the appellants as well as eye witness testimony of PW7, 8, 11 and 15. Learned counsels for the

appellants would contend that the prosecution has failed to establish that the appellants have made the disclosures and that even if they were made, they were not voluntary and therefore could not have been admitted in evidence against the appellants in view of the bar prescribed under the provisions of Section 24 to 30 of the Indian Evidence Act. The further submission is that no recoveries on the pointing out of the appellants have been really effected and that the investigating agency has planted the recoveries and attributed them as having been made at the instance of the appellants.

37. It has also been urged that none of the witnesses have supported the prosecution case and that there was not an iota of evidence to bring home the guilt of the appellants in the commission of the alleged offences.

38. *Per contra*, it has been vehemently contended by Mr. Varun Goswami as well as Ms. Aashaa Tiwari, learned APPs that the recoveries were effected by the police on the pointing out of the appellants pursuant to disclosure statements made by them. Learned APPs have staunchly defended the impugned judgment and submitted that the prosecution had established the guilt of the appellants beyond reasonable doubt.

39. Before we examine the contentions on behalf of the appellants with regard to the alleged disclosure statements and recoveries pursuant thereto, we may first and foremost notice the evidence of the witnesses examined by the prosecution in support of the allegations against the appellants.

40. In this regard, the prosecution examined Sh. Amit Kumar as PW-15 as an eye witness who claimed that he was also injured in the same incident in which deceased Vijay suffered fatal injuries to which he succumbed.

41. Amit (PW-15) had appeared in the witness box on 16th December, 2011. His testimony makes extremely interesting reading. In his final statement in chief, he had claimed that he was accompanying his uncle Vijay (deceased) alongwith his friends Mukesh and Vicky on 13th April, 2013, at around 10-12 p.m. While strolling on the night of the incident, 4-5 unknown persons had stabbed his uncle Vijay with a knife. He further submitted that he suffered from convulsions and that after stabbing his uncle, those unknown persons took him (Amit) in their car to a house in Rohini where he was given *danda* blows and was thereafter released by them. Amit Kumar claimed that on the next morning, the police got him admitted in the hospital from his house. He was semi-conscious and that he regained consciousness only after two days.

PW-15 does not even give details of the area where they were strolling i.e. where the incident took place.

42. This witness had initially claimed that he could identify the persons who had stabbed his uncle and also re-taken Amit in the car and gave him *danda* blows. Interestingly, in his initial examination in chief, PW-15 identified the four appellants as having stabbed his uncle as well as having, taken him in the car and beaten him up. This testimony, however, did not meet the

satisfaction of the prosecutor and he was declared hostile. The prosecutor was permitted to cross-examine the witness. In the cross examination by the learned APP, the witness disclosed that alongwith the deceased, he had taken liquor sitting on a scooter near Keshav Mahavidhyalaya where a marriage function was going on. He had ascribed names to the appellants in court and stated that they were known to him from before the incident. He had denied the suggestion by the prosecutor that Sanjay @ Silencer was running a pick-pocket gang and that alongwith his friends Manoj and Vicky, he had worked in this gang.

43. PW-15 was cross examined by counsel for all the appellants on the same date. He testified that at the time of the incident, he had suffered from convulsions; that it was dark when the incident took place; that his uncle Vijay was stabbed by some persons whom he could not see as he was suffering from convulsion. The witness denied that he had told the names and particulars of the appellants to the police while getting his statement recorded. The witness also clearly stated that the police had never gotten the appellants identified from him at any time. The witness turns around at some point in the cross examination and again stated that he had seen the appellants at the time of the assault and that on this basis he had identified them on that day. Thereafter, he has completely turned around and reiterated that due to the darkness and convulsions, he could not see the accused persons at the time of incident. He categorically stated that he had identified the appellants because they were present in court and that they were

not involved in the incident.

44. We may note that PW-15 Amit was re-examined immediately after the cross examination by the counsel for the appellants when he denied the suggestion by the learned prosecutor that he had seen the appellants at the time of the incident or that the appellant had stabbed his uncle, taken him in the car and gave him *danda* blows. The witness also denied changing his examination in cross examination, with regard to the appearance of the appellants, under any pressure.

45. Our attention has been drawn by Mr. Sumeet Verma, learned counsel for the appellant in Crl. Appeal No.914/2016 to the discussion of testimony of this witness by the learned trial judge in para 93 of the impugned judgment wherein the learned judge has noted that PW-15 made an “*unsuccessful attempt to make a shift from his statement as to the identity of the accused at a very belated stage*”. We find this finding is not supported by the record and is completely erroneous and untenable. PW-15 has at the very initial stages of his examination in chief itself completely turned around from identification of the four assailants. We may note that the case is concerned not only with the identification of the persons who inflicted the fatal injury on the body of the deceased, but also with those persons who had forcibly taken him, the injured prosecution witness Amit, in the Santro car to a house in Rohini and inflicted *danda* blows on his own person. He does not affirmatively identify the assailants as being involved in either of these attacks.

46. We also find the prosecution is unable to establish use of any force or pressure by the appellants which may have resulted in fear or apprehension in the mind of Amit (PW-15) from resiling from any statement given by him to the police.

47. It is apparent from a bare perusal of the testimony of this witness that he is completely unreliable and has not supported the prosecution at all so far as the identification of the appellants as being the assailants involved in the commission of the offence.

48. Our attention was thereafter drawn by Mr. Sumeet Verma, Mr. Suraj Rathi, Mr. Dhan Mohan and Mr. Harsh Prabhakar, counsels for the appellants, to the testimonies of Mukesh (PW-7), Vicky (PW-8), Manoj (PW-11) and Amit Kumar (PW-15). We find that the evidence of these witnesses is identical in as much as these witnesses claim to have reached the spot after Vijay had been injured and stated that Vijay was lying on the ground and that blood was oozing from his injuries. They further stated that Vijay was moved to the hospital by the PCR Van and that, they reached the hospital thereafter. They claim to have gathered at the hospital only to ascertain Vijay's state of health. Thus, these witnesses have given no evidence of having witnessed the fatal attack on Vijay or the injuries caused to Amit.

49. According to PW-7 Mukesh, he was taken by the police to the room to see Vijay who was dead by that time. Thereafter, the three witnesses have claimed that they were removed by the police to the police station and inquiries were made by them. Each of the prosecution witnesses claimed that they had asserted ignorance

about the incident. The witnesses have categorically stated that they were kept in the police station for about six days and permitted to leave only thereafter.

50. Mukesh (PW-7) has stated that the police obtained his signatures on blank papers and has unequivocally declared in the witness box that he cannot identify any of the accused persons as he did not witness any incident. Manoj has only identified his signatures at point A at mark -7A, denying contents of the document.

51. Vicky who appeared as PW-8 has corroborated the evidence of PW-15 so far as reaching the spot, following the PCR vehicle, reaching the hospital and being removed and kept at the police station for 6 days is concerned. He has also reiterated that the police has obtained his thumb impression on some papers. He claims that the police had recorded the same statement as what was disclosed to him before the court whereafter he was left free. He also denies having witnessed anybody inflicting the injuries on the person of Vijay.

52. PW-11 Manoj has merely stated that he had seen a quarrel taking place between Vijay and four or five boys. He, however, stated that he was hit by someone with a brick on his head. He ran back to save himself when he was chased by those boys. He claims that when he later on came out, he saw Vijay lying on the ground with injuries which were bleeding. Thus this witness has not witnessed the incident. His statement with regard to the subsequent events is on all fours with the testimony of PW7 and 8.

He did, however state that the boys who had quarrelled and caused injuries to Vijay were in a silver colour Santro car but stated that he did not know the number. The witness was unable to identify the seized Santro car. He also claimed that the police had prepared some papers. No evidence thus could be brought to our notice which would support the case of the prosecution against the appellants in any manner.

53. So far as the disclosures and recoveries relied upon by the prosecution are concerned, we find that the investigating officer has recorded that the appellants had refused to sign the same. This statement coupled with the testimony of PW7, 8, 11 and 15 to the effect that they were detained at the police station for six days and that their signatures were obtained on blank papers would support the suggestion of the appellants that the disclosure statements as well as the recoveries were not voluntary and therefore are unreliable.

54. It has been submitted by Mr. Varun Goswami as well as by Ms. Aashaa Tiwari, learned APP that PW-7, 8, 11 and 15 were independent eye witnesses who have turned hostile purely on account of the threat and pressure and fear of the appellants. There is no material to this effect on the record and therefore we are unable to agree with learned APPs for the State on this submission.

55. It has next been contended on behalf of the State that even the testimony of a hostile witness can be relied upon to the extent that it supports the prosecution. There can be no dispute with this well settled principle of criminal law. However, in the instant case,

there is not an iota of evidence in the testimony of any of the witnesses, even the hostile witnesses which supports the case of the prosecution at all.

For all these reasons, the appeals must succeed. It has to be held that the conviction of the appellants by the judgment dated 25th May, 2016 is completely unsustainable and the same is hereby set aside and quashed. As a result, the orders on sentence dated 31st May, 2016 also cannot stand and are hereby set aside.

In view thereof, it is directed that the appellants shall, if not wanted in any other case, be forthwith set at liberty.

These appeals are allowed in the above terms.

Crl.M.(Bail) No. 1744/2016 in CRL.A. 914/2016

Crl.M.(Bail) No. 1513/2016 in CRL.A. 771/2016

Crl.M.(Bail) No. 1562/2016 in CRL.A. 803/2016

Crl.M.(Bail) No. 1622/2016 in CRL.A. 857/2016

In view of the above appeals being allowed, these applications for suspension of sentence do not survive for adjudication and are disposed of as infructuous.

GITA MITTAL, J

OCTOBER 04, 2016/kr

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