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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 12th September, 2017

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CRL.A. 762/2013

DEVENDER @ MONU

..... Appellant

Through: Mr. Anurag Andley, Advocate.

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. It is reflected from the order dated 07.09.2017 passed by this Court that Mr. Jitender Sethi, Advocate for the appellant was only engaged for arguing the bail application and had no instructions to appear in the appeal. In the interest of justice, Mr. Anurag Andley has been appointed as *amicus curiae* in the present matter and the time was given to prepare the case for the final disposal of the appeal.
2. The present appeal has been preferred under Section 374 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') assailing the judgment dated 07.12.2012 passed by the Additional Sessions Judge, Rohini Courts, Delhi in Sessions Case No. 113/09 arising out of FIR No.33/09 at Police Station Bawana, by virtue of which the

appellant Devender @ Monu has been held guilty for the offences punishable under Sections 302/307/323 of the Indian Penal Code (hereinafter referred to as 'IPC'). Challenge is also made to the order on sentence dated 17.12.2012 by which the following sentences have been passed against the appellant which read as under:

Sr.No.	Name of the appellant	Sections under which convicted	Period of Sentence
1.	Devender @ Monu	302 of IPC 307 of IPC 323 of IPC 25 of Arms Act 27 of Arms Act	SI for life with a fine of Rs. 30,000/-, in the default, SI for 6 months under Section 302 of IPC. RI for 10 years with a fine of Rs. 10,000/-, in the default, SI for 4 months under Section 307 of IPC. SI for 1 year with a fine of Rs.1,000/-, in the default, SI for 1 month under Section 323 of IPC. RI for 3 years with a fine of Rs.3,000, in the default, SI for 3 months under Section 25 of Arms Act.

			RI for 7 years with a fine of Rs.10,000/-, in the default, SI for 6 months under Section 27 of Arms Act.
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All the sentences mentioned hereinabove were ordered to run concurrently.

3. The case of the prosecution as noticed by the learned Trial Court reads as under:

“1. On 23.2.2009 ASI Karan Singh received information through DD No.16A that, firing taken place in the village Auchandi, Harijan Mohalla, near Harijan Chaupal, Delhi. Thereafter, ASI Karan Singh alongwith Ct. Ashok, HC Satish, HC Ajay, HC Balwan, Ct. Satish and Ct. Sanjeev reached at the abovesaid spot. ASI Karan Singh did not find any eyewitness and but he came to know that two boys, tailor The deceased and Mahavir had received gunshot injuries and one Sandeep had received simple injuries and said boys have been shifted to the hospital. ASI Karan Singh found six live cartridges and two empty cartridges, scattered at the spot. Thereafter, ASI Karan left HC Balwan and other staff at the spot and he alongwith Ct. Satish and Ct. Sanjeev reached at MB Hospital and collected the MLC of the said injured Mahavir, Sandeep, The deceased and Sandeep. At that time injured The deceased was declared not fit for giving statement and later on doctor had declared him brought dead. Doctor handed over to him cloths of deceased, which he seized. Since on the MLC of injured Mahavir, doctor had mentioned fit for statement and refer him to BSA Hospital, therefore, ASI alongwith Ct. Satish reached at BSA Hospital leaving behind Ct. Sanjeev for guarding the dead body of deceased The deceased, where he met with injured Mahavir and recorded his statement.

In his statement Mahavir had stated that, "he resides at village Auchandi and doing the job of DJ and today i.e. 23.2.2009 he was present at Chaupal of his village. He also stated that about 2-2 ½ years ago Monu was running the shop the said shop, which is now run by The deceased. Monu and The deceased had verbal arguments earlier over the shop and Monu had some grudges against The deceased". For that reason and to take revenge today Monu had reached at the shop of The deceased at about 7.30pm and started abusing The deceased, to which The deceased resisted then Monu became aggressive and fired gunshot upon The deceased and he received gunshot injury in his stomach and when he asked to Monu not to do the said act then Monu fired towards him and the bullet hit him on his right arm pit (Bagal). They were shifted to the MB Hospital and from where he was shifted to BSA Hospital and Monu had tried to kill them by firing gunshot towards them.

Thereafter, ASI Karan Singh alongwith Ct. Satish reached at the spot, there he met with Inspector ATO alongwith staff. He prepared the rukka on the basis of statement of injured Mahavir and handed over to Ct. Satish for registration of FIR. Ct. Satish got registered the FIR of the present case i.e. FIR No.33/09, U/S. 302/307/323 IPC & 25/27 Arms Act, PS Bawana. Further investigations was assigned to SHO/Inspector H.S. Meena and during investigations Inspector H.S. Meena called Crime Team and Photographer and got inspected the spot and photographs were taken by the photographer of crime team. He prepared site plan at the instance of public witness Satpal, who met at the spot. Six live cartridges and two empty cartridges were also found at the spot and same were kept in a pullanda sealed with the seal of HSM and seized by the IO. He recorded statement of eyewitness Satpal, who stated that Devender @ Monu who fired bullet upon his brother The deceased at the instigation of Sanjay @ Mange and Devender @ Monu had also fired bullet upon Mahavir and thereafter they ran away in the Santro Car of the appellant Sanjay @ Mange. IO recorded statement of other witnesses and collected the MLCs. Postmortem examination on the dead body of deceased The deceased got

conducted. On 24.2.2009 the appellant was arrested by him from Auchandi Border on secret information and IO recorded his confessional statement. The appellant got recovered pistol used in crime, which was containing a live cartridges, from the room situated in his agricultural field, which was seized by the IO. IO collected PM Report, opinion of doctors about injury of Mahavir and made efforts to search and arrest the the appellant Sanjay @ Mange, but he could be apprehended. After completion of the investigations, chargesheet u/s. 302/307/323/34 IPC and 25/27 Arms Act was filed against the the appellant.

2. On 25.5.2009 The appellant Sanjay @ Mange was arrested by the Crime Branch, R.K. Puram, New Delhi and thereafter he was formally arrested by the IO in this case. ON 27.7.2009, SI Mahender Pratap seized Santro Car bearing No. DL3CBF1739 used by the appellant persons in running away from the spot. Thereafter, IO filed supplementary chargesheet qua the appellant Sanjay @ Mange. During the pendency of the case IO had collected the FSL Report and filed before the court.”

4. On 05.11.2009, charge under Sections 302/307/34 of IPC was framed against the appellant Devender and co-accused Sanjay @ Mange. Additionally, a separate charge under Sections 25/27 of the Arms Act was framed against the appellant Devender. The appellant and the co-accused Sanjay pleaded not guilty and claimed to be tried.
5. At the outset, it would be necessary to mention that co-accused Sanjay was acquitted from all charges by the learned Trial Court as all the witnesses relied upon by the prosecution turned hostile and there was no evidence found against him.
6. To establish the guilt of the appellant, the prosecution examined as many as 34 witnesses. The statement of the appellant was recorded under Section 313 of Cr.P.C. The appellant stated that Mahavir (PW6)

was having enmity with him prior to the present incident and thus, he falsely named him in the instant case. The appellant pleaded innocence and claimed to be falsely implicated in the present case. The appellant denied all the incriminating material against him. One witness was examined by the appellant in his defence.

7. Mr. Anurag Andley, *amicus curiae* for the appellant submits that the impugned judgment and order on sentence of the Trial Court are based on surmises and conjectures and learned Trial Court has erred in reaching a conclusion of guilt against the appellant and failed to appreciate the evidence brought on record in the correct perspective. Counsel further submits that the case of the prosecution is solely based on the evidence of PW6 Mahavir and PW9 Sandeep, however, the reading of the same would show that there are material inconsistencies and improvements in their testimonies which render the entire case of the prosecution unreliable. The testimony of PW8 Satpal, being the brother of the deceased cannot be relied upon and was rightly discarded by the learned Trial Court as his presence at the spot could not be established from the testimony of PW6 and PW9.
8. The counsel for the appellant has fervently urged that the motive imputed upon the appellant has not been proved. As per the case of the prosecution, there was a dispute between the appellant and the deceased regarding a shop which was previously run by the appellant as a PCO shop. The said shop was vacated from the possession of the appellant, which was the reason of enmity between the appellant and the deceased. In this background, the counsel submitted that had there been any enmity between the parties, then it would have been between

the previous owner of the shop namely Raj Kumar (PW13) and the appellant and not between the deceased and the appellant.

9. It is contended by the counsel for the appellant that the prosecution has failed to prove its case beyond reasonable doubt and as such the Trial Court should have given the benefit of doubt to the appellant.
10. *Per contra*, Mr. Katyal learned counsel for the State submits that the State has been able to prove its case beyond any shadow of doubt. There is no infirmity in the order of conviction as also the order on sentence. The case of the prosecution is premised on the eye witness account of PW6 Mahavir whose injuries shows his presence at the spot. Counsel further submits that the testimony of PW6 Mahavir cannot be brushed aside who had given a vivid description with regard to the incident. The appellant was named in the first opportunity of time i.e. *rukka* as well as in the FIR which was registered on 24.02.2009, at 1.35 AM.
11. The counsel for the State further submits that the motive in the present case has been established. It is the case of the prosecution that there was a dispute between the deceased and the appellant regarding the shop which was previously run by the appellant as a PCO shop. The said shop was vacated from the possession of the appellant by PW14 Raj Kumar which was subsequently let out to the deceased. To substantiate his argument, learned counsel for the State has drawn the attention of this Court to the statement made by the appellant under Section 313 of Cr.P.C., more particularly; answer to question No. 3 to show that the appellant was a tenant in the shop of PW13 Raj Kumar till August, 2008 and the said shop was got vacated from him. The question reads as under:

“Q.3. It is in evidence against you that PW-13 Raj Kumar had purchased a shop near chaupal of Harijan Mohalla in village Auchandi in February 2004 and he had given the same shop to you on rent where you was [sic: were] running a STD/PCO shop and in August, 2008 PW-13 Raj Kumar got vacated the said shop from you. What you have to say?”

Ans. It is correct.”

12. Counsel for the State has also contended that the presence of the appellant at the spot and the incident of shooting by him stand proved by the evidence of PW6 which leaves no room for doubt that it was none other than the appellant who had committed the offence. Besides PW6 had no motive to falsely implicate the appellant and to let the real culprits go scot free. It was further contended that the account of the incident as narrated by the two eye witnesses coupled with the medical evidence shows the injuries sustained by them and the recovery of the weapon of offence at the instance of the appellant clearly shows the complicity of the appellant. Keeping in view all the incriminating material against the appellant, it was prayed that the learned Trial Court has rightly convicted the appellant under Sections 302/307/323 of IPC alongwith Section 25/27 of the Arms Act.
13. We have heard learned counsel for the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court.
14. In order to deal with the contentions of both the parties, it would be appropriate to analyse the testimonies of the material witnesses. The case of the prosecution hinges upon the eye witness account of PW6 Mahavir whose presence has been established by the injuries sustained

by him. At the outset, we deem it appropriate to analyse his testimony in detail.

15. PW6 Mahavir testified in his examination-in-chief that on 23.02.2009 at about 7.30 PM, when he was present near the *chaupal* of the village, he saw a quarrel between the deceased and the appellant Devender @ Monu whereupon the appellant took out a pistol and fired at the deceased. The appellant also came towards him and fired bullets which hit his stomach as a result of which he fell down. Thereafter, the appellant fled away from the spot. The family members of PW6 took him to the village hospital, where first aid was given to him and subsequently, he was taken to the BSA Hospital by the PCR van where he was medically examined. The statement of PW6 was recorded by the Police which was proved by him as Ex.PW6/A. PW6 further deposed that there was a dispute between the deceased and the appellant regarding the shop which was initially run by the appellant as a PCO shop. Due to his intervention in the quarrel, the appellant had fired at him. With regard to the co-accused Sanjay @ Mange, PW6 was declared hostile by the learned APP for the State at the Trial Court. In his cross-examination by the learned APP, it was admitted by PW6 that the appellant was abusing the deceased. It was also admitted by PW6 that he was receiving threats to his life from the younger brother of the appellant and that he was so terrified that he was not even going for work.
16. In his cross-examination, PW6 stated that he did not know the reason of the quarrel between the deceased and the appellant but it was admitted by PW6 that there was previous enmity between them for about 1 ½ to 2 years. PW6 was present near the shop of the deceased

when the quarrel took place between the appellant and the deceased. The said quarrel was going on outside the shop of the deceased which was run by him for about 1 ½ years prior to the incident. PW6 denied the suggestion that the appellant had not fired at him or the deceased. The appellant had fired at him from a distance of about 4-5 feet. It was informed by PW6 to the doctor that the appellant had caused injuries to him. It was categorically denied by PW6 that he was deposing falsely against the appellant due to previous enmity. PW6 also denied the suggestion that family members of the appellant were not threatening him.

17. The next witness examined by the prosecution was PW9 Sandeep who sustained minor injuries during the incident. PW9 testified in his examination-in-chief that on 23.02.2009, at about 7.00 PM, he was present at the shop of the deceased who was running a tailoring shop situated at *Harijan Chowk*, village Auchandi. At about 7.30 PM, the appellant came to the shop and started abusing the deceased. PW9 objected to the said behaviour and in return the appellant gave him a leg blow on his right thigh and also took out his pistol and hit it upon his head. Thereafter, PW9 went away from the spot. On the way, Satpal (PW8/brother of the deceased) met him and gave Rs.50/- for the treatment. PW9 further deposed that he was not aware of anything regarding the present case. He was not aware about the relation of the appellant with the deceased. Till he left the spot, nothing had happened with the deceased as he was sitting at his shop and doing his work. PW9 was declared hostile by the learned APP for the State in the Trial Court and was cross-examined by him. During cross-examination, it was admitted that on 24.02.2009, Police had recorded

his statement (Ex.PW5/A). In the remaining part of his evidence, PW9 did not support the case of the prosecution and deposed that he was discharged the same day from the M.B. Hospital.

18. In his cross-examination, it was stated by PW9 Sandeep that on the day of the deposition in the Trial Court, he came alongwith Satpal (brother of the deceased) and denied the suggestion that Satpal had tutored him before his deposition in the Court. PW9 further stated that he was taken to the hospital by his brother Vijender on a motor bike. At the time of the incident, he alongwith the deceased were present at the shop and fled away on receiving the injuries.
19. PW8 Satpal (brother of the deceased) deposed in his examination-in-chief that on 23.02.2009 at about 7.30 PM, he was sitting at his brother's shop which was taken by him on rent about 1-1½ months prior to the incident. The appellant Devender came there and started firing. Subsequently, the appellant quarrelled with one Sandeep (PW9) who was present there and hit the butt of the pistol on his head. Sandeep ran away as he had sustained injuries on his head. Sandeep again return to the spot, but PW8 sent him to the hospital after giving him Rs.50/-. The appellant started quarrelling with his brother and shot at him, which hit his stomach and due to which his brother fell on the ground. When he tried to lift his brother, the appellant came and put the pistol on his back. However, all the bullets fell down on the ground. Thereafter, when the appellant was fleeing away, Mahavir (PW6) who was standing at some distance came to intervene; the appellant fired a shot at Mahavir as well after reloading the same with the bullets which were kept in his pocket. Thereafter, the appellant ran

away from there. In the meanwhile, Police came at the spot and took his brother to the hospital where he succumbed to the injuries.

20. In his cross-examination, PW8 Satpal admitted that on earlier occasions the appellant quarrelled with his brother and a complaint was lodged by calling the Police, but he did not remember the date of said quarrel and later the matter was pacified. It was further stated by PW8 that the police did not record the statement on that day but took his uncle who received injuries to the hospital.
21. The investigation was set into motion when a call was made at 100 number by a caller from mobile number 9811532157 on 23.02.2009 at 07.46 PM whereby it was informed 'AUCHANDI GAON CHAMARO KA MOHALLA NEAR HARIJAN CHOPAL GOLIA CHAL RAHI HAI & INJURED'. The said information was recorded by PW1 W/Const. Reena and noted the same in form No. CRDD No. 23 Feb, 091130925 and conveyed the said information to the District Operator and also to the Command Room. The said form was proved by her as Ex.PW1/A. Subsequently, another call was received by PW31 Narender from number 01120418669 on 23.02.2009 at 07.47 PM whereby it was stated 'AUCHANDI VILLAGE ME GOLIA CHAL RAHI HAI'. The said information was recorded by filling up the PCR form by PW7 W/Const. Sandhya who handed over the same to the runner for further necessary action. The said PCR form was proved by her as Ex.PW7/A.
22. PW15 Suresh Kumar who was posted as Incharge Alpha 28 at M.B. Hospital deposed in his examination-in-chief that on 23.02.2009, after receipt of a call from CATS control room, he reached at *Harijan Chopal, Auchandi* Village from where injured Mahavir (PW6) was

taken to M. B. Hospital, Pooth Khurd in the CAT Ambulance. In his cross examination, it was stated by PW15 that the said call was received at about 2.00/2.30 PM and reached the spot within 15 minutes. It was further stated that one PCR Van was already found present at the spot and they left the spot alongwith the injured within 2/3 minutes i.e. 2.45 PM.

23. PW19 ASI Karan Singh who was posted at PS Bawana, Delhi on the day of incident. PW19 deposed in his examination-in-chief that on 23.02.2009 after receiving DD No.16, he alongwith HC Balwan, Const. Sanjeev and Const. Satish reached the spot where he came to know that the injured Mahavir alongwith the deceased who had sustained bullet injuries and injured Sandeep were taken to M. B hospital. At the spot, PW19 found six live cartridges and two fired cartridges. PW19 alongwith Const. Satish and Const. Sanjeev reached at the hospital where he collected the MLC of the deceased and injured Mahavir. Injured Mahavir was referred to BSA Hospital whereas the deceased had succumbed due to his injuries in the M. B. hospital. The statement of injured Mahavir was recorded by PW19 at BSA Hospital which was proved by PW6 as Ex.PW6/A. PW19 prepared *rukka* which was proved by him as Ex.PW19/A and sent for registration of FIR through Const. Satish. Learned APP for the State in the Trial Court asked leading questions to him whereby it was stated that SHO seized the live cartridges and two fired cartridges in his presence, vide seizure memo Ex.PW17/A. In his cross examination, it was stated by PW19 that Const. Satish took *rukka* at 12.50 in the night and came back after 15-20 minutes.

24. PW3 HC Vijay Singh who was working as a duty officer at PS Bawana deposed in his examination-in-chief that on 23.02.2009, at about 1.35 AM, Const. Satish produced one *rukka* before him, on the basis of which an FIR No.33/09 was recorded. The same was proved by him as Ex.PW3/A. He further deposed that he made endorsement on the *rukka* which was proved as Ex.PW3/B.
25. In this backdrop, we deem it appropriate to analyse the other evidence relied upon by the prosecution under separate heads.

Medical Evidence:

26. PW2 Dr. Vipin Sharma deposed that on 23.02.2009, he was working as CMO at M. B. Hospital. At 8.10 PM, PW6 Mahavir was brought by CATS Alfa 2A I/C Suresh with the alleged history of a gun-shot wound. PW6 was found conscious and oriented at that time. On local examination, wound measuring 0.5 x 1cm was found 1 inch above right anterior superior iliac spine. Another wound measuring 0.5 x 1cm found at the back lateral to midline at the level of anterior superior iliac spine. PW6 was referred to BSA Hospital for further treatment. The MLC prepared by PW2 was proved by him as Ex.PW2/A. It is noteworthy to mention that PW20 Dr. Sanjay Sharma, Junior Specialist Surgery, BSA Hospital deposed that on 23.02.2009, one injured namely PW6 Mahavir was brought at BSA Hospital, who was referred from MB Hospital and admitted in Emergency Surgery. The nature of injuries sustained by PW6 was opined as grievous in nature.
27. It was further deposed by PW2 that on the same day, at about 8.12 PM, the deceased Satyawar was also brought by L-73, ASI Satvir

Singh to the hospital with the alleged history of a gun-shot wound. After examination, the deceased was found in shock and declared dead after 30 minutes of CPR. On local examination, there was a puncture wound of 0.5 cm x 1 cm in the midline at ½ inch above line joining anterior superior iliac line to umbilicus. PW2 prepared the MLC of the deceased which was proved by him as Ex.PW2/B.

28. PW2 further deposed that on the same day, at about 8.15 PM, PW9 Sandeep was also brought by L-73, ASI Satvir Singh to the hospital with the alleged history of physical assault. After examination, PW9 was found conscious, oriented and stable. On local examination, minor CLW fresh 1 x 0.5 cm on temporal parietal region was found. PW9 was discharged on the same day and the injuries sustained by him were opined as simple in nature. PW2 prepared the MLC of PW9 which was proved by him as Ex.PW2/C.
29. PW22 Dr. K. Goyal conducted post-mortem examination of the deceased Satyawar on 24.02.2009, at 1.45 PM. His detailed report was proved by him as Ex.PW22/A wherein the following injuries were found mentioned in it:

“External Injuries:

There is lacerated punctured wound of size 0.8 x 0.6 cm more or less oval shaped with inverted margins over right lumbar quadrant about 24 cm below the right nipple and above 10 cm right to umbilicus. No burning, tattooing or blackening seen around the wound. Only abraded collar seen around the wound, more towards right half circle of the wound (entry wound of fire-arm). There was no other external injury seen on the body.

Internal Examination:

On exploration, the external injury pierces the underline tissues, enters the abdominal cavity, small and large intestinal loops are pierced at multiple sites with marked bruising.

On further exploration, a bullet is found embedded in soft tissues of pelvis, posteriorly on the left side with marked tearing and bruising of muscles. The abdominal and pelvic cavities are full of blood and clots. The direction and plain of the firearm is from right to left slightly above downwards and slightly front backwards.”

30. PW22 further opined that the injuries were ante-mortem in nature and were caused by firearm which was rifled. The cause of death was opined as shock and haemorrhage as a result of injuries to intestines and pelvis. The firearm injury was opined as sufficient to cause death in the ordinary course of nature. Time since death was about 17-18 hours.

FSL Results:

31. PW33 Puneet Puri, Senior Scientific Officer (Ballistic), FSL Rohini, Delhi deposed in his examination-in-chief that on 06.04.2009, seven parcels were marked to him for examination. On a careful analysis, it was found by PW33 that the improvised pistol which was marked as Ex.F1 was in working order. The cartridge marked as Ex.A7 was already misfired. The cartridge cases marked as Ex.EC1 and EC2 were fired empty cartridges and had been fired through the improvised pistol as the individual characteristics of firing pin marks and breech face marks present on Ex.EC1, EC2 and on test fired cartridge cases marked TC1 and TC2 were found identical. The bullet marked Ex.EB1 corresponds to the bullet of 9 mm cartridge and had been

discharged through the improvised pistol and matches with the rifling mark on the test fired bullets TB1 and TB2 were found identical. His detailed report (ballistics) was proved by him as Ex.PW33/A.

32. The moot question which arises for our consideration is as to whether the learned Trial Court after consideration of the all the evidence available on record rightly convicted and sentenced the appellant under Section 302/307/323 of IPC alongwith Section 25/27 of the Arms Act.
33. Before dealing with the arguments of the counsels for the parties, we deem it appropriate to re-visit the law regarding the injured witness.
34. We may note that a coordinate bench of this Court, of which one of us, (G.S. Sistani, J.) was a member, in the case of ***Harender Singh vs. State of Delhi*** reported at ***2016 SCC Online Delhi 1368*** while discussing the evidentiary value of the injured witness held that the testimony of an injured witness is a highly corroborative piece of evidence.
35. In the case of ***Jarnail Singh and Ors. v. State of Punjab***, reported at ***(2009) 9 SCC 719***, the Apex Court while relying upon its earlier judgments reiterated that special evidentiary status should be accorded to an injured witness. Relevant part of the judgment is reproduced as under:

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the

reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand*, (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

(Emphasis Supplied)

36. A similar view was taken by the Hon'ble Supreme Court in the case of *Abdul Sayeed v. State of Madhya Pradesh*, reported at (2010)10 SCC 259, whereby the Apex Court discussed the evidentiary value of the testimony of an injured witness in the following words:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness”.

xxx xxxx xxx

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at

the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

(Emphasis Supplied)

37. It is settled law that the testimony of an injured witness is a highly reliable piece of evidence and there would be no reason for him to shield the real culprits. In the present case, no compelling circumstances to discredit the statements of PW6 Mahavir and PW9 Sandeep have been established by the defence.

Recovery of country made pistol:

38. So far as the recovery of weapon of offence i.e. country made pistol is concerned, the testimonies of PW32 Insp. H. S. Meena assume importance. PW32 deposed in his examination-in-chief that on 25.02.2009 at about 10.00 AM, the appellant was taken out from the lock up and he alongwith HC Balwan, Const. Satish and Const. Ashok Kumar (PW30) departed for the investigation and reached at the fields of Auchandi Village near the canal. At the instance of the appellant, who led them near a small room and pointed out towards polythene which was recovered from under the root of the mulberry tree. The polythene was found to contain one country made pistol and there was one live cartridge inside the magazine of the said pistol. A sketch of the said pistol, magazine and the live cartridge was prepared by him

and was proved by PW17 as Ex.PW17/F. The pointing out and seizure memo was proved by PW17 as Ex.PW17/G.

39. Reading of the pointing and seizure memo (Ex.PW17/G) shows that it bears the signatures of the two Police witnesses i.e. HC Balwan Singh (PW17) and Const. Satish. We are of the view that it is not mandatory, but only a rule of prudence that a public witness should be associated at the time of the recovery [*State v. Vikas @ Bhola & Anr.*, reported at *ILR (2013) 5 Del 4032* (paragraph 13)]. It is only when other cause is shown to suspect the recovery, the same may be discarded. A coordinate bench of this Court in *Titu v. State*, reported at *ILR (2007) 1 Del 990* (paragraph 30) had observed that merely because all the witnesses of recovery were police witnesses and no independent public witness was joined for affecting the recovery would not be fatal [See also *Ramesh Kumar alias Rameshwar v. State*, reported at *2010 CRL.L.J. 85* (paragraph 25) and *Jite v. State*, *MANU/DE/1791/2017* (paragraph 27)]. Accordingly, the absence of a public witness on the pointing and seizure memo cannot impeach the veracity of the testimonies of PW32 Insp. H. S. Meena and PW17 HC Balwan Singh. On a careful reading of the testimony of PW32 Insp. H. S. Meena alongwith the other evidence, it has been established by the prosecution that six live cartridges and two fired cartridges were found at the spot, which were seized vide seizure memo Ex.PW17/A. The testimony of PW32 is duly corroborated by PW17 ASI Balwan Singh, PW21 Insp. Jogender Singh (Crime Team), PW19 ASI Karan Singh and PW5 Const. Ravi Malik (Photographer, Crime Team), who took photographs of the recovered cartridges and fired bullets and were proved by him as Ex.PW5/9 to Ex.PW5/11. In this background, we

are of the view that the learned Trial Court was fully justified in attributing the recovery as well as the use of the country made pistol to the appellant.

Motive:

40. It is settled legal proposition that absence of motive pales into insignificance when direct evidence establishes the crime. Therefore, in cases where there is an eye witness account regarding the commission of an offence, the motive part loses its significance. There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Our view is fortified by the law laid down by the Apex Court in *Sardul Singh v. State of Haryana* reported in *AIR 2002 SC 3462*, wherein the Hon'ble Supreme Court held that the motive which is not always capable of precise proof, if proved, may only lend additional support to strengthen the probability of commission of the offence by the person accused but the absence of proof does not ipso facto warrant an acquittal.
41. In the present case, we are of the view that even if we disbelieve the motive imputed by the prosecution while relying upon the testimony of PW6 Mahavir, we are of the view that there is ample evidence against the appellant which shows that it was none other than the appellant who was the author of the crime.
42. It is evident from the PCR form (Ex.PW7/A) that after receipt of the information it was noted as 'INJURED KO LEKER HOSPITAL JA REHA HA 23/02/2009 20:23:33 MAHAVIR S/O DHARAMBIR AGE 24 YRS R/O H.NO. 196 AUCHANDI KE RIGHT KULHE ME

GOLI LAGI HAI 2. SATYAWAN S/O RAM KR. AGE 22 YRS. R/O AUCHANDI KE R/KULHE ME GOLI LAGI HAI 3. SATYAWAN S/O JAIRAM AGE 20 YRS. R/O AUCHANDI KE HEAD ME BUTT MARI HAI MAHAVIR KO HUM AND REST BOTH KO PVT GADI SE HAMARE SATH M.B. HOSPITAL LE JA RAHE HAIN INKO MONU R/O AUCHANDI AGE JANTE HAI NE GOLI MARI HAI 23/02/2009 20:34:12 3. INJURED KO M.B. HOSP. ME D/CT KE HAWALE KIYA HAI SATYAWAN BEHOSH HAI REST 2 HOSH ME HAI JINKE FAMILY WALE SATH HAI 23/02/2009 20:36:04 SHO WITH STAFF MOKA PAR 23/02/2009 20:36:44 MAHAVIR AND SATYAWAN KO 1-1 GOLI LAGI HAI”

43. A careful reading of the PCR form (Ex.PW7/A) shows that the appellant Devender @ Monu was named at the first opportunity. The FIR in the present case was registered on the basis of the statement of PW6 Mahavir which leaves no room for doubt that the appellant had committed the charged offence. In this background, we reject the argument raised by the counsel for the appellant that the appellant was being falsely implicated in the instant case. Having regard to the testimonies of PW6 and PW9 alongwith the scientific and medical evidence relied upon by the prosecution, we have found that on 23.02.2009, at about 7.30 PM, the appellant reached at the spot and fired at him with the county made pistol. The presence of the appellant at the spot has been duly established by the testimonies of PW6 and PW9. Even otherwise, nothing contrary was stated by the appellant in his statement under Section 313 of Cr.P.C. which clearly shows that that the presence of the appellant at the spot is not disputed. The appellant in his statement under Section 313 of Cr.P.C. denies the case

of the prosecution mechanically and no explanation was rendered by him to show his innocence.

44. It is true that the linkage between the weapon recovered and the bullets extracted from the body of the deceased are conclusions that can be reached on the basis of the evidence and materials available on record. It was opined by PW33 Puneet Puri that the country made pistol (Ex.F1), which was recovered at the instance of the appellant, was used in causing injuries to the deceased as riffling mark on the bullet recovered from the dead body of the deceased (Ex.EB1) matched with the riffling mark on the test fired bullets TB1 and TB2. From the report Ex.PW33/A, it has been further proved that cartridges recovered from the spot were also fired from the country made pistol F1 as fire pin mark and breach face marks found from cartridges recovered from the spot i.e. EC1 & EC2 matched with the firing pin mark and breach face marks of the test fired cartridges TC1 and TC2.
45. On a conjoint reading of FSL report (Ex. PW33/A), the recovery of the weapon of offence at the instance of the appellant coupled with the testimony of PW33, we are of the view that the bullet recovered from the dead body of the deceased matched with the pistol recovered at the instance of the appellant Devender. Thus, the prosecution has established linkage between the bullet recovered from the dead body and the country made pistol recovered at the instance of the appellant.
46. Applying the law laid down in the aforesaid judgments to the facts and circumstances of the present case, we find no infirmity in the judgment of conviction and the order on sentence passed by the learned Trial Court.
47. Accordingly, the appeal stands disposed of.

48. Trial Court record be sent back along with a copy of this judgment.
49. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail record.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 12, 2017

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