

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

+ **CRL.A. No.1747/2014**

Judgment reserved on : 22nd March, 2017.

Date of decision : 17th April, 2017.

NAVAL KISHORE

..... Appellant

Through: Ms. Inderjit Sidhu, Amicus Curiae for the
appellant.

Versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

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

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This appeal has been instituted by the appellant Naval Kishore son of Shri Bhagwati Prasad assailing the impugned judgment dated 26.07.2014 and impugned order on sentence dated 30.07.2014 of the learned Additional Sessions Judge-05 (North), Rohini Courts, New Delhi in Sessions Case No. 43/2014 in relation to FIR No. 13/11, P.S. S.P. Badli. Vide the impugned judgment dated 26.07.2014, the accused/the appellant herein Naval Kishore was convicted for the commission of the offence punishable under Section 302 of the Indian Penal Code (IPC), 1860 and vide the impugned order on sentence dated 30.07.2014, he was sentenced to imprisonment for life and to pay a fine of

Rs.2,000/- and in default of the payment of fine, to further undergo simple imprisonment for two months. The accused/the appellant herein Naval Kishore was also granted benefit of the period of detention already undergone in terms of Section 428 Cr.P.C, 1973. The impugned order on sentence dated 30.07.2014 indicates that the fine has not been paid.

2. The delay of 82 days in institution of the Criminal Appeal no. 1747/2014 was condoned vide order dated 22.12.2014 whereafter the appeal was admitted and the trial court record has been requisitioned, received and perused.

3. Vide order dated 01.02.2017 in Crl. M. (Bail) No. 1662/2017, the appellant was granted interim suspension of sentence for a period of four weeks. The interim suspension of sentence was further extended vide order dated 06.03.2017 for a further period of three weeks on the same terms and conditions as imposed vide order dated 01.02.2017 and has since surrendered as informed by the learned Amicus Curiae for the appellant.

4. Arguments were addressed on the appeal on behalf of the accused/the appellant herein Naval Kishore by Ms. Inderjeet Sidhu, learned Amicus Curiae for the appellant and on behalf of the State by the learned Additional Public Prosecutor Ms.Aashaa Tiwari.

PROSECUTION VERSION

5. As per the prosecution version set forth in the police report under Section 173 of the Cr.P.C, 1973 on 11.01.2011 at about 9.30 p.m., the accused/the appellant herein Naval Kishore along with the co-accused juvenile Nitin (JCL) visited a grocery shop of one **Somnath Shukla (PW-10)** situated at A-2/19, Rana Park, Siraspur, Delhi for purchasing curd and when the shopkeeper i.e. **Somnath Shukla (PW-10)** asked the accused/the appellant herein Naval Kishore as to what quantity of curd he required, the accused/the appellant herein Naval Kishore asked him to give the entire curd. The shopkeeper i.e. **Somnath**

Shukla (PW-10) is stated to have asked the accused/the appellant herein Naval Kishore as to what he would do with the entire curd to which the accused/the appellant herein Naval Kishore replied “*Nale mai fekunga ya kuch bhi karunga tumse matlab*”. One **Rahul Singh (PW-6)** and his maternal uncle Mukesh (since deceased) were present at the spot at the time of the altercation Mukesh tried to intervene in the matter and asked the accused/the appellant herein Naval Kishore as to why he was harassing the shopkeeper **Somnath Shukla (PW-10)** due to which there was an exchange of hot talks between Mukesh and the accused/the appellant herein Naval Kishore and his associate/the co-accused Nitin Juvenile in Conflict with the law (hereinafter referred to as “JCL”).

6. The prosecution version further indicates that the accused/the appellant herein Naval Kishore and his associate Nitin (JCL) began quarrelling with Mukesh and abused him. Whereas Nitin (JCL) was alleged to have caught hold of Mukesh, the accused/the appellant herein Naval Kishore went inside his house and came with a “*Chheni*” like weapon (which is used to make hole in wood) and attacked Mukesh with the weapon due to which Mukesh fell down on the ground. In the meantime, two police officials i.e. **Ct. Rajiv (PW-17)** and **Ct. Sandeep (PW-20)** reached there and apprehended the accused/the appellant herein Naval Kishore and his associate Nitin (JCL) at the spot along with the said weapon. Information of this incident was recorded at the Police Station S.P. Badli vide DD No. 42A dated 11.01.2011 (**Ex.PW1/D**) whereafter **SI Alok Bajpai (PW-21)** along with **HC Om Prakash (PW-4)** reached at the spot where **Ct. Rajiv (PW-17)** and **Ct. Sandeep (PW-20)** produced the accused persons along with the weapon of offence i.e. “*chenni*” like weapon to **SI Alok Bajpai (PW-21)** and informed that the injured Mukesh had already been shifted to the BSA Hospital by the public persons.

7. At the BSA Hospital, the injured Mukesh was examined by **Dr. Kuldeep Singh (PW-7)** and **Dr. Ashish Rathore**. The MLC is indicated to have been prepared by Dr. Ashish Rathore under the supervision of **Dr. Kuldeep Singh (PW-7)**, CMO BSA Hospital as **Ex.PW7/A**, bearing the signatures of **Dr. Kuldeep Singh (PW-7)** at point-A and of **Dr. Ashish Rathore** at point-B. The MLC (**Ex.PW7/A**). The testimony of **Dr. Kuldeep Singh (PW-7)** observes to the effect that the injured Mukesh son of Sh. Ratan Singh was brought on the date of the incident dated 11.01.2011 at about 11.00 p.m. by his sister **Smt. Narangi (PW-15)** with an alleged history of physical assault/stab injury. The MLC (**Ex.PW7/A**) indicates that the patient Mukesh was brought in a gasping condition with pulse not palpable and BP not recordable and the patient was gasping. On examination the following injuries were found : -

- (1) *Incised wound of size 1x0.5 cms on left side of chest*
- (2) *Incised wound of around 1x0.5 cms over left elbow.*
- (3) *Lacerated wound of size 10x0.5 cms over left shoulder.*
- (4) *Lacerated wound of size 8x0.5 cms over Anterior wall just below left subcostal region.*
- (5) *Lacerated wound of size 0.5x0.5 cms over upper lip.*
- (6) *Lacerated wound of size 1x0.5 cms over lower lip.*

As per the testimony of **Dr. Kuldeep Singh (PW-7)**, he gave the required treatment to the injured Mukesh whereafter he was referred to SR Surgery and SR Anesthesia for further management. **Dr. Kuldeep Singh (PW-7)** further opined on the same day as testified by him that the patient Mukesh was unfit for statement at 11.10 p.m. The black shawl and light blue coloured blanket in which the injured patient Mukesh had been brought to the BSA Hospital were sealed and handed over to the Investigating Officer by **Dr. Kuldeep Singh (PW-7)**.

Dr. Kuldeep Singh (PW-7) in his testimony in cross examination has testified to the effect that “*injury no. 3 & 4 i.e. (3) Lacerated wound of size 10x0.5 cms over left shoulder (4) Lacerated wound of size 8x0.5 cms over Anterior, wall just below left subcostal region*”, are not possible due to fall on concrete road.

8. The prosecution version further indicates that the statement of **Rahul Singh (PW-6)**, nephew of Mukesh and the eye witness was recorded at the hospital as **Ex.PW6/A** on the basis of which the FIR was registered under Section 307/34 of Indian Penal Code (IPC), 1860; the accused/the appellant herein Naval Kishore and his associate Nitin (JCL) were arrested; the weapon of offence “*chenni*” like weapon **Ex.P3** was handed over by **Ct. Rajiv (PW-17)** to **SI Alok Bajpai (PW-21)** at the police station. **Ex.P3** was seized of which **SI Alok Bajpai (PW-21)** prepared a sketch (**Ex.PW-6/J**) and was put into a pullanda and seized vide seizure memo **Ex.PW-6/H**. **Ex.P3** seized vide seizure memo **Ex.PW-6/H** is indicated to have the dimensions of a total length of 24.5 cms.; with a sharp blade with the length of an iron blade of 12.5 cm. the length of the handle being of 12.cms.

9. At 9.37 a.m. on 12.01.2011 DD no. 27B (**Ex.PW21/C**) was registered and the information of death of Mukesh s/o Ratan Singh was given by Ct. Ravinder, No. 2998/OD from the BSA Hospital and the same was registered at Police Station S.P. Badli and thereafter Section 302 IPC, 1860 was added. **Dr. Bhim Singh (PW-16)** conducted the postmortem on the body of Mukesh, the postmortem report being **Ex.PW16/A** and handed over the clothes of Mukesh and blood taken in a gauze piece to the **Investigating Officer Inspector Dharamvir Singh (PW-23)**, which were seized vide seizure memo **Ex.PW21/D**. The **Investigating Officer Inspector Dharamvir Singh (PW-23)** along with **SI Alok Bajpai (PW-21)** returned from the mortuary to the spot

where the **Investigating Officer Inspector Dharamvir Singh (PW-23)** recorded the statements of **Somnath Shukla (PW-10)**, **Mahesh, Surender and Brijesh** and of **SI Alok Bajpai (PW-21)**.

10. As per the postmortem report (**Ex.PW16/A**), the external injuries on the body of Mukesh (since deceased) were as under : -

- (1) *Stitched wound, 2 cms in length over left side of chest in mid clavicular line at the level of 6th rib, situated 6 cm below left nipple, on opening the stitches margins contuse measuring 2 cm x 1 cm x chest cavity deep.*
- (2) *Stitched wound, 2.5 cm in length over left side of chest at Anterior axillary line at 3rd Inter-costal space, eight (8 cm) outer to left nipple, on opening the stitches margins contused 2.5 cm. x 1 cm x chest cavity deep.*
- (3) *Incised wound, 12 cm x 1.5 cm x 0.5 cm back of left shoulder.*
- (4) *Incised wound 1 cm x 0.5 cm x 0.2 cm back of left forearm.*
- (5) *Incised wound, 7 cm x 0.2 cm, present 5 cm below injury no. 4.*
- (6) *Reddish contusion 6 cm x 0.5 cm over upper part of left abdomen.*
- (7) *Incised wound, 2 cm x 0.2 cm x 0.1 cm present left side of face.*
- (8) *Lacerated wound 2 cm x 0.2 cm x 0.5 cm present inner side of lip.*

The internal examination of the body of Mukesh (since deceased) as per **Ex.PW16/A** indicated as follows “*extra vasion of blood in chest wall below*

injury no. 1 and two (2). Injury no. 1 enters the chest cavity by cutting skin, tissues, muscles, sixth rib, cutting pericardium enters into right ventricle heart. Cut is approx. 2 cms in length. Pericardium full of blood about 1 ltr. Injury no. 2 enters into inter-coastal enters into lung from cutting skin, muscles, pleura, approximate length of wound is about 12 cm. Approx. length of wound no. 1 is about 7 cms. Pleural cavity full of blood about 1.5 ltrs. All organs – Pale. Stomach having about 100 ml coffee coloured fluid.”. Dr. Bhim Singh as per Ex.PW16/A opined on the postmortem report that “Death was due to haemorrhagic shock consequent upon visceral injuries via injury no. 1 and 2. Injury no. 1 and 2 caused by sharp pointed weapon and the injuries were sufficient to cause death in ordinary course of nature. All the injuries were antemortem in nature and caused by sharp pointed weapon except injuries no. (6) and (8) which were caused by blunt object. Time since death being (13) hours”. The postmortem was conducted on 12.01.2011 at 2.40 p.m. and as per the postmortem report Ex.PW16/A Mukesh expired on 12.01.2011 at 1.35 a.m.

11. The exhibits received pursuant to the postmortem deposited at the Malkhana were subsequently sent for forensic examination to the FSL, Rohini vide RC No. 21/21/11 (Ex.PW18/B) on 13.02.2011 through HC Om Prakash (PW-4), No. 1672/OD, were deposited at the FSL vide receipt Ex.PW-18/C, which indicates that seven sealed parcels were deposited (five sealed cloth parcels, one sealed cardboard box and one sealed envelope containing the exhibits which were examined). The description of the articles contained in the seven parcels were duly detailed in the FSL report Ex.PW23/C which is as under : -

Parcel ‘1’ : One sealed cloth parcel sealed with the seal of “AB” containing exhibits ‘1a’ and ‘1b’ described as clothes of deceased Mukesh.

Exhibit '1a' : One cut/tear baniyan having brown stains.

Exhibit '1b' : One pants having brown stains.

Parcel '2' : One sealed cloths parcel sealed with the seal of "AB" containing exhibits '2'.

Exhibit '2' : one tool normally used by carpenter.

Parcel '3' : One sealed cloth parcel sealed with the seal of "AB" containing exhibits '3a' and '3b' described as clothes of accused Naval.

Exhibit '3a' : One jeans pants.

Exhibit '3b' : One shirt.

Parcel '4' : One sealed cloth parcel sealed with the seal of "AB" containing exhibits '4a' and '4b' described as clothes of accused Nitin.

Exhibit '4a' : One jeans pants.

Exhibit '4b' : One shirt.

Parcel '5' : One sealed cardboard box parcel sealed with the seal of "SD" containing exhibits '5a' and '5b' described as clothes of deceased Mukesh.

Exhibit '5a' : One sky blue Shawl.

Exhibit '5b' : One dark navy blue shawl.

Parcel '6' : One sealed cloth parcel sealed with the seal of "FMT BJRM HOSPITAL DELHI" containing exhibits '6a' and '6b' described as clothes of deceased Mukesh after P.M.

Exhibit '6a' : One long underwear.

Exhibit '6b' : One lower inner (Pyjama).

Parcel ‘7’ : One sealed paper envelope sealed with the seal of “FMT BJRM HOSPITAL DELHI” containing exhibits ‘7’.

Exhibit ‘7’ : Brownish gauze cloth piece described as ‘Blood sample of deceased Mukesh’.

12. The forensic analysis conducted by the Biology Division of the FSL, Rohini indicates that blood was detected on **Ex.1a, Ex.1b, Ex.2, Ex.3a, Ex.3b, Ex.4b, Ex.5a, Ex.5b, Ex.6a, Ex.6b, and Ex.7**, though no blood was detected on **Ex.4a** and clothes of the co-accused Nitin (JCL). The report FSL Report No. FSL-2011-0570/B BIO No. 119/11 dated 26.07.2011 of the Biology Division of the FSL, Rohini (**Ex.PW23/D**) shows analysis of the blood grouping as under :-

<i>Exhibits</i>	<i>Species of Origin</i>	<i>ABO Grouping/Remarks</i>
<i>‘1a’ Baniyan</i>	<i>Human</i>	<i>‘O’ Group</i>
<i>‘1b’ Pants</i>	<i>Human</i>	<i>‘O’ Group</i>
<i>‘2’ Carpenter’s Tool</i>	<i>Human</i>	<i>No reaction</i>
<i>‘3a’ Jeans pants</i>	<i>Human</i>	<i>‘O’ Group</i>
<i>‘3b’ Shirt</i>	<i>Human</i>	<i>No reaction</i>
<i>‘4b’ Shirt</i>	<i>Human</i>	<i>No reaction</i>
<i>‘5a’ Shawl</i>	<i>Human</i>	<i>No reaction</i>
<i>‘5b’ Shawl</i>	<i>Human</i>	<i>No reaction</i>
<i>‘6a’ Long underwear</i>	<i>Human</i>	<i>‘O’ Group</i>
<i>‘6b’ Pyjama</i>	<i>Human</i>	<i>‘O’ Group</i>

'7' Blood stained gauze	Human	'O' Group
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13. The clothes of Mukesh (since deceased) i.e. **Ex.1a, Ex.1b, Ex.6a, Ex.6b** and Ex.7 the blood gauze i.e. blood sample of Mukesh (since deceased) all indicate his blood group to be of the 'O' group and the jeans pants **Ex.3a** of the accused/the appellant herein Naval Kishore also as per **Ex.PW23/D** bore blood of human group 'O' thereon.

14. Though the record of learned Trial Court indicates that the police report under Section 173 of the Cr.P.C, 1973 was filed with the allegation against both the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) qua alleged commission of the offence punishable under Section 302/34 of the IPC, 1860 in relation to which the charge of allegations was framed against both the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) on 03.06.2011 to which both the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) pleaded not guilty to the charge of allegations and claimed trial, the records of the learned Trial Court indicate that vide order dated 26.06.2013 of the Metropolitan Magistrate (North) in view of the order dated 15.02.2013 of the ASJ-03, Outer Rohini, Delhi directing the conducting of the inquiry into the age of the accused Nitin (JCL), the co-accused Nitin (JCL) was declared a juvenile and proceedings in relation to the co-accused Nitin (JCL) were thus separated.

PROSECUTION EVIDENCE

15. The State examined in the witness box 23 witnesses.

PUBLIC WITNESSES

16. Rahul Singh (PW-6) examined by the State was an eye witness and nephew of Mukesh (since deceased). This witness, aged 17 years, testified to the

effect that on 11.01.2011 at about 9.30 p.m., he along with his maternal uncle Mukesh had gone to parchoon shop (grocery shop/dairy shop) of **Somnath Shukla (PW-10)** for taking curd where the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were already present as they had also come to take curd and when the shopkeeper asked as to what quantity of curd is required, the accused/the appellant herein Naval Kishore had told the shopkeeper to give the entire and the altercations commenced to which Mukesh (since deceased) told them why they were harassing the shopkeeper, on which the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) started quarreling and abusing with Mukesh/the maternal uncle of **Rahul Singh (PW-6)** and that both the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) caught hold of Mukesh and the accused/the appellant herein Naval Kishore went inside his house and came with one “*Chheni*” like weapon (which is used to make hole in wood) and attacked Mukesh with the said weapon, as a consequence of which Mukesh fell down on the ground due to the injuries. **Rahul Singh (PW-6)** testified to the effect that he made a noise and so did other persons and in the meantime, two policemen reached the spot and apprehended the accused/the appellant herein Naval Kishore with the “*Chheni*” like weapon. **Rahul Singh (PW-6)** testified to having made the statement **Ex.PW6/A** bearing the signatures at point-A thereon and testified to **Ex.PW6/B**, the site plan signed by him being prepared by the IO at his instance. This witness also testified to the seizure of the blood stained clothes of his uncle Mukesh which had been removed from his person before he was taken to the hospital as having been seized vide seizure memo **Ex.PW6/C**. The testimony of this witness **Rahul Singh (PW-6)** brings forth that the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were known to **Rahul Singh (PW-6)** from before as they lived in his neighbourhood. **Rahul Singh**

(PW-6) also testified to the arrest of the two accused by the IO vide arrest memos **Ex.PW6/D** and **Ex.PW6/E** and their personal search having been conducted.

17. Somnath Shukla (PW-10) the grocer at whose shop the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) (*whom Somnath Shukla (PW-10) recognized as they lived near his house*) had gone to purchase the curd corroborates the prosecution version. **Somnath Shukla (PW-10)** further stated that a person Mukesh (since deceased) along with a boy **Rahul Singh (PW-6)** were also present at that time of the altercation and Mukesh (since deceased) told the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) that *“Dukaandar Ko Kyo Pareshan Kar Rahe Ho”*. Thereafter, **Somnath Shukla (PW-10)** went inside the shop to bring the curd and when he came from inside the shop after bringing the curd, he heard a noise of commotion, just outside his shop and he immediately rushed there and saw that the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were grappling with Mukesh and when he asked the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) not to quarrel and to go away, the accused persons left the said spot and he came back to his shop. Later on in the morning, he learnt that Mukesh had died but that he did not know as to how Mukesh had died.

18. Smt. Meena (PW-12) the wife of deceased Mukesh testified to the effect that on 11.01.2011 at about 9.30 p.m. she was present at her house at A-16, Rana Park, Siraspur, Delhi and she heard a noise of some quarrel from the gali and came out of the house and saw that her husband was lying in injured condition and two boys were held by the police. She recognized the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) as being present at the spot. **Smt. Meena (PW-12)** also testified to the effect that her siser-in-law

namely Narangi and many other persons were already present and immediately, they took Mukesh (since deceased) to Janta Clinic to the doctor and the doctor asked them to take Mukesh (since deceased) to take to the hospital and thereafter, Mukesh was then taken to BSA Hospital in the vehicle of Chiku i.e. their neighbour.

19. Manjeet Rana @ Chiku (PW-9) put forth in the witness box by the State testified to the effect that he drives a Toyota Qualis bearing registration no. DL-1CH-3701 and in the year 2011, he had returned from Haridwar at about 10.00 p.m. and had just parked his vehicle, then some persons came along with the injured and requested him to take the injured in the hospital whereupon he took the injured to the BSA Hospital in his vehicle along with the sister of the wife of injured and one boy namely Rahul Singh and that he learnt the name of the injured as being Mukesh. **Manjeet Rana @ Chiku (PW-9)** further testified to the effect that the injured Mukesh was bleeding at that time and cloth was wrapped around him. He further stated that it took only 10-12 minutes to reach at the BSA Hospital as he drove his vehicle fast so that the injured Mukesh was admitted to the hospital immediately.

20. Sh. Brijesh (PW-14) examined by the State testified to having given information to the police at 100 number by his telephone no. 9278697612 on 11.01.2011 at about 9.30 p.m. when he had found a gathering of public persons at 4-5 meters from his house.

21. Smt. Narangi (PW-14) wife of Sh. Rattan Singh examined by the State and sister of Mukesh testified to the effect that on 11.01.2011 at about 9.30 p.m. when she was present at her house, a girl child came to her and informed her about the quarrel with her brother Mukesh. She further stated that **Rahul Singh (PW-6)** her son had gone along with Mukesh to purchase curd and she then immediately reached the place where the quarrel was going on at a distance of

20-25 houses away from her house. She further testified to the effect that she had seen the grand mother and grand father of the co-accused Nitin (JCL) beating her brother Mukesh and the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were beating her brother Mukesh. Both of them were identified by the witness **Smt. Narangi (PW-14)** as having given beatings to her brother Mukesh. She further testified to the effect that when she tried to intervene in the matter, then grand mother and grand father of the accused Nitin (JCL) pushed her and the co-accused Nitin (JCL) had caught hold of her brother Mukesh and the accused/the appellant herein Naval Kishore had also brought '**NIHANI**' (tool of carpenter) from the house of co-accused Nitin (JCL) and inflicted blow with the said tool in the chest of Mukesh and various other parts of his body due to which Mukesh fell down on the ground and in the meantime, police officials reached the spot and they apprehended both the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL). She further testified to the effect that she along with other persons took her brother Mukesh to the nearby doctor, who advised them to take him to the hospital and thereafter she shifted her brother Mukesh to DR. BSA Hospital in the vehicle of **Chiku (PW-9)** where her brother Mukesh (since deceased) was admitted. She further stated that due to the injuries, blood oozed from the wounds of her brother Mukesh (since deceased) and his clothes were stained with blood and they had removed his clothes and then they wrapped him in a shawl and blanket. She identified blood stained vest **Ex.P1** having a cut mark/torn mark and **Ex.P2** pant as being torn of belonging to her brother Mukesh (since deceased).

This witness stated in reply to a Court Query that it took three minutes to reach the shop of **Somnath Shukla (PW-10)** from her house by foot. She testified to having stayed at the hospital till 2.30 – 3.00 a.m. and stated that Mukesh had expired in her presence at the hospital.

22. *Inter alia*, **Smt. Narangi (PW-15)** testified to two accused having been apprehended just near the spot and testified that the accused/the appellant herein Naval Kishore had given “*chenni*” blow in the middle of the chest of Mukesh and whereas Mukesh was caught hold by the co-accused Nitin (JCL) and during that time the accused/the appellant herein Naval Kishore had gone to bring “*chenni*”. She further testified that the accused Nitin (JCL) had caught hold of Mukesh (since deceased) from behind by the hand. She further stated that the “*chenni*” had got blood stained but she could not say whether it was soiled with blood or not. *Inter alia*, she stated that the blood had fallen on the earth as well as on her clothes but the police did not seize her clothes. She testified that the “*chenni*” had an edge on one side. She categorically denied that she was a planted witness and denied that the accused Nitin (JCL) had not caught hold of Mukesh (since deceased) and denied that the accused/the appellant herein Naval Kishore had not inflicted “*chenni*” injuries to Mukesh (since deceased).

**ACCOMPANYING CIRCUMSTANCES OF INVESTIGATION
CONDUCTED**

23. The accompanying circumstances of investigation put forth through the testimony of the police personnel examined as prosecution witnesses are as under : -

24. **PW-1 HC Chander Mohan**, No. 122/OD working as Duty Officer on the intervening night of 11/12.01.2011 at PS S.P. Badli and who was on duty from 5.00 p.m. to 1.00 a.m., testified to having registered the FIR No. 13/11 under Section 307/34 of Indian Penal Code (IPC), 1860 on the basis of the rukka endorsed by **SI Alok Bajpai (PW-21)** brought by **HC Om Prakash (PW-4)**. **Ex.PW1/A** was testified by this witness to be the computer generated copy of FIR and further testified as **Ex.PW1/B** the endorsement made on the rukka by him vide **DD No. 2A**, copy of which **DD No. 2A** is **Ex.PW1/C**.

Ex.PW1/D was testified by this witness to be the copy of **DD No. 42A dated 11.01.2011** recorded qua information received at 10.13 p.m. through wireless from **Lady Ct. Urmila (PW-3)**, No. 8192/PCR in relation to a quarrel at H. No. A2, Rana Park, Siraspur, Veer Bazar, Delhi about which the information was given to **SI Alok Bajpai (PW-21)** telephonically for further investigation.

25. PW-2 SI Mahesh Kumar, No. D-460, testified to being posted as a Draughtsman of the Crime Branch, PHQ, New Delhi and stated that on 23.02.2011 on the request of **Inspector Dharamvir Singh (PW-23)**, SHO PS SP Badli, he visited the place of occurrence i.e. in front of Shukla General Store, House No. 2/19, Block A-2, Rana Park, Siraspur, Delhi along with the IO and at the instance of **Ct. Rajiv (PW-17)**, he took rough notes and measurements of the spot and on the basis of those documents, he had prepared the scaled site plan on 17.03.2011 (**Ex.PW2/A**) and stated that rough notes were destroyed after preparation of the scaled site plan.

26. PW-3 examined was W/Ct. Urmila, No. 8192/PCR, who testified to having been posted at the CPCR, PHQ on 11.01.2011 when she was on duty on channel No. 136 and around 22.10 hours, one information was received by her from the informant Rakesh Kumar who was calling from the mobile no. 9278697612 in relation to information that at H. No. A2, Rana Park, Siraspur, Veer Bazar, a quarrel had taken place and she filled up the PCR form, original of which was testified as **Ex.PW3/A**. The witness further stated that after filling up the PCR form, the same was forwarded to the communication cell for information and action.

27. PW-4 examined was HC Om Prakash, No. 1672/OD, who testified to having taken six sealed parcels along with two sample seal from the MHC(M) for depositing the same at the FSL, Rohini, Delhi and vide Road Certificate deposited the same at FSL Rohini, Delhi and thereafter he returned back to the

PS and handed over the receipted copy of the RC along with acknowledgment to the MHC(M). The witness further testified that no tampering was done or was allowed to be done during the time the pullandas remained in his possession and the same remained intact.

28. PW-8 examined was Dr. Nitin Kumar Bansal, Senior Resident (General Surgery), Dr. BSA Hospital, Rohini, Delhi, who testified to the effect that one injured Mukesh was referred to the Surgery Department and he had examined the said injured Mukesh on the same day and the patient Mukesh (since deceased) was brought to the casualty with alleged history of Stab Injury and on examination he found that the patient was gasping and unconscious and his BP and Pulse were not recordable at that time. On examination, **Dr. Nitin Kumar Bansal (PW-8)** found the injured Mukesh (since deceased) having sustained the following injuries : -

- 1. Incised wound of size 1 cm x .5 cms with approximately 5 cm depth on left side of the chest*
- 2. Incised wound of size 1 cm x 5 cms over left elbow.*
- 3. Lacerated wound of size 10 cm x .5 cm over left shoulder.*
- 4. Lacerated wound of size 8 cm x .5 cms over anterior abdominal, wall just below the left subcostal area.*
- 5. Lacerated wound of size .5 cm x .5 cms over upper lip.*

PW-8 Dr. Nitin Kumar Bansal also testified as under : -

On chest examination no bony crepitating was found. Bilateral air entry was equal.

On per-abdominal examination, abdomen was soft. There was no guarding, rigidity or tenderness found.

Thereafter, the patient was shifted to ICU and the detailed report of **Dr. Nitin Kumar Bansal (PW-8)** i.e. **Ex.PW-8/A** is on the back side of the **MLC**

Ex.PW7/A.

This witness on being cross examined denied that he had not treated the injured properly or that the injured died due to excessive internal bleeding or due to medical negligence.

29. PW-11 examined was Ct. Rajesh, No. 767/OD, who produced the DD Register for providing the **DD No. 60B dated 11.01.2011** in relation to the departure entry of certain police officials for evening patrolling and evening picket duty. The witness testified that the said DD was recorded by him **at 6.15 p.m.**, copy of which DD is **Ex.PW11/A**.

30. PW-17 examined was Ct. Rajiv, NO. 2351/OD, who testified to having been posted at PS S.P. Badli on 11.01.2011 and sated that he was on duty in his beat i.e. Rana Park, Village Siraspur, Delhi along with **Ct. Sandeep (PW-20)** and at about 10.00 – 10.15 p.m., he heard a message on the wireless set regarding the quarrel near A-2 Block, Veer Bazar and he along with Ct. Sandeep reached the said spot where they found a huge gathering and heard a noise of **“MAARO MAARO”** from the gathering. He stated that he apprehended one person, whose name was revealed later on as Naval and **“at that time he was having chheni type weapon, which is used to cut the wood and the handle of the same was of plastic and the other part is of iron”**. The witness further stated that the said weapon was smeared with blood. The witness further stated that **Ct. Sandeep (PW-20)** apprehended another accused, whose name was revealed as Nitin (JCL).

Interalia, the witness testified to the effect that the injured Mukesh (since deceased) was also found at the spot and relatives and some other public persons took him first to the private hospital and thereafter he was removed to the government hospital. The witness stated that the injured Mukesh (since deceased) was bleeding profusely at that time. **SI Alok Bajpai (PW-21)**

reached at the spot along with **HC Om Prakash (PW-4)** and thereafter they proceeded for the Ambedkar Hospital, leaving him and **Ct. Sandeep (PW-20)** along with the accused persons at the spot to inquire about the injured at the hospital. He further stated that thereafter the PCR Van reached at the spot and there was a huge crowd and public persons were aggressive towards the accused person. Thus, he along with both the accused persons reached at PS S.P. Badli in a PCR leaving **Ct. Sandeep (PW-20)** at the spot. He further stated that he also took the “*chheni*” type weapon along with him and thereafter, **SI Alok Bajpai (PW-21)** along with **HC Om Prakash (PW-4)** and the eye witness **Rahul Singh (PW-6)** reached at the PS. **Ct. Rajiv (PW-17)** stated that he produced the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) to the IO along with the “*chheni*” type weapon of which the IO prepared the sketch which is **Ex.PW6/J** on which he signed. The witness further testified that the IO also measured the weapon and that the measurement were written on the sketch, thereafter the said weapon was kept in a cloth parcel and sealed with the seal of AB and seized vide seizure memo **Ex.PW6/H**. The witness further stated that the seal was handed over to **HC Om Prakash (PW-4)** after its use and both the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were arrested vide arrest memos **Ex.PW6/D** and **Ex.PW6/E** respectively which both bear his signatures.

Interalia, the witness further testified to the effect that the clothes worn by the accused persons were taken and seized vide seizure memo **Ex.PW6/K** in relation to the accused/the appellant herein Naval Kishore and vide seizure memo **Ex.PW6/L** in relation to the co-accused Nitin (JCL) on both of which he signed and thereafter, both the accused persons were lodged in the lock-up. The witness identified the clothes of the accused persons as **Ex.P4 & Ex.P5** and **Ex.P6 & Ex.P7** and also identified the “*Chheni*” like weapon as **Ex.P3**.

On being cross-examined on behalf of the accused/the appellant herein Naval Kishore, this witness categorically stated that the incident took place near the shop of Shukla Dahi Wala and stated that about 100 persons were present at the spot before they reached at the spot and the persons present there were shouting against each other and were having a lathi and danda in their hands. He further stated that he had apprehended two accused persons who were beating the deceased and that he had apprehended the accused/the appellant herein Naval Kishore and dispersed the public persons present there. He admitted that the crowd was shouting at the pitch and calling “**MAARO MAARO**” and that there was sufficient light to see the people present there.

31. PW-18 examined was HC Ranbir Singh, NO. 1441/OD, who testified to the effect that he was posted at PS S.P. Badli on 12.01.2011 and on that day **SI Alok Bajpai (PW-21)** had deposited four sealed parcels, sealed with the seal of AB along with one sealed parcel having seal of SD. He further stated that **Inspector Dharamvir Singh (PW-23)** had deposited one sealed parcel and one sealed envelop along with sample seal of FMT BJRM Hospital on the same day and also stated to the effect that the personal search effects of the accused/the appellant herein Naval Kishore and co-accused Nitin Kumar (JCL) were also deposited by **SI Alok Bajpai (PW-21)** on the same day and that he made entry in relation to this at serial no. 5568 in register no. 19, copy of which is **Ex.PW18/A**.

The witness also testified to having sent seven exhibits in sealed condition along with two sample seals to the FSL Rohini on 03.02.2011 through **HC Om Prakash (PW-4)** vide RC No. 21/21/11 for depositing the same there vide entry **Ex.PW18/A** and stated that the copy of RC was **Ex.PW18/B**. The witness further stated that after depositing the exhibits, **HC Om Prakash (PW-4)** returned back and handed over the acknowledgement of the same, copy of

which is **Ex.PW18/C**.

32. PW-20 examined was Ct. Sandeep, No. 2356 (OD), who testified to the effect that on 11.01.2011 he was posted as a constable at PS S.P. Badli and on that day at about 10.00 – 10.15 p.m. he along with **Ct. Rajiv (PW-17)** were present in their beat of Rana Park, Siraspur and received an information on the wireless set regarding the quarrel near Veer Bazar and on hearing this information, he along with **Ct. Rajiv (PW-17)** reached the place where public persons were present.

Interalia, **Ct. Sandeep (PW-20)** stated that they saw that two persons were giving beatings to one person and one of the said two persons had a weapon, which is used to pierce wood (*lakdi me chhed karne wala auzar*) and the other person was bare handed. This witness testified that he apprehended the boy who was bare handed and **Ct. Rajiv (PW-17)** apprehended the said boy who was having the above said weapon in his hand and that the name of the person to whom the above said two boys were giving beatings, was revealed as Mukesh (since deceased) whose shirt was smeared with blood from the front side and he was removed to the hospital by some public person on his private vehicle. This witness testified to the effect that **SI Alok Bajpai (PW-21)** and **HC Om Prakash (PW-4)** had come to the spot after 15 minutes and they were apprised of the occurrence and they had gone to the hospital after leaving them and the accused at the spot and after sometime, the PCR Van came there and Ct. Rajeev took both the accused persons in the PCR van to the police station and he remained at the spot. Thereafter, **SI Alok Bajpai (PW-21)** came to the spot and **HC Om Prakash (PW-4)** also came and **SI Alok Bajpai (PW-21)** took into possession the wearing clothes of Mukesh (since deceased) from **Ratan Singh (PW-19)**, father of Mukesh which were sealed after preparing a cloth pullanda with the seal of 'AB'.

Interalia, this witness testified to the effect that **Ct. Rajiv (PW-17)** had produced **Ex.P3** i.e. the “*Chheni*” like weapon which was recovered from the possession of the accused/the appellant herein Naval Kishore to the IO and testified that **Ex.PW6/J** was a sketch of the same, which was kept in a white cloth pullanda by the IO and sealed with the seal of ‘AB’ vide seizure memo **Ex.PW6/H** on which he too signed and the seal after used was handed over to **HC Om Prakash (PW-4)**. This witness identified the clothes of the accused/the appellant herein Naval Kishore as **Ex.P4 and Ex.P5** and that of the co-accused Nitin (JCL) as **Ex.P6 and Ex.P7** and the identified the clothes of Mukesh (since deceased) as **Ex.P1, Ex.P2, Ex.P8, Ex.P9, Ex.P10 and Ex.P11**. This witness also testified that a huge crowd had collected at the spot and he heard the voices of abusing each other amongst accused persons, crowd and Mukesh (since deceased) and that the crowd had lathies and dandas in their hands. The “*chheni*” was testified to have blood on it when it was snatched from the hand of the accused/the appellant herein Naval Kishore and the **Ct. Rajiv (PW-17)** had taken the blood stained “*chheni*” from the hand of the accused/the appellant herein Naval Kishore.

33. PW-21 examined in the witness box was SI Alok Bajpai, No. D-1757 the initial Investigating Officer of the case, who testified to the effect that on 11.01.2011, he was posted at PS S.P. Badli and on that day, he had received **DD No. 42A** on route, copy of which is **Ex.PW1/B** and that **HC Om Prakash (PW-4)** was with him and he along with him reached at the place of incident i.e. Near A-2, Rana Park, Siraspur, Delhi where **Ct. Sandeep (PW-20)** produced the accused/the appellant herein Naval Kishore along with the weapon of offence. This witness further testified that it was informed that the injured was shifted to the Ambedkar Hospital by the neighbours in a private vehicle. He left both the accused in the custody of **Ct. Sandeep (PW-20) and Ct. Rajiv (PW-**

17) at the spot and himself with **HC Om Prakash (PW-4)** went to the hospital where the injured Mukesh (since deceased) was found admitted in the ICU vide MLC No. 227/11 and that as per the opinion of the doctor, the injured Mukesh (since deceased) was unfit for statement. He further stated that he obtained the MLC and also met the eye witness **Rahul Singh (PW-6)** in the hospital and recorded his statement **Ex.PW6/A** which was read over to him and thereafter, the witness **Rahul Singh (PW-6)** signed the same. He made endorsement on the statement of **Rahul Singh (PW-6)** and prepared the rukka which is **Ex.PW21/A** and handed over the same to **HC Om Prakash (PW-4)** for registration of the FIR at police station. He also instructed him to return at the spot after registration of the FIR.

SI Alok Bajpai (PW-21) testified to having recorded the statements of **Smt. Narangi (PW-15)** sister of the injured Mukesh (since deceased), **Smt. Meena (PW-12)** wife of Mukesh (since deceased) and two public witnesses namely **Manjeet Rana @ Chiku (PW-9)** and Jai Bhagwan and stated that the doctor had given him one sealed carton along with the sample seal of SD which he had seized vide seizure memo **Ex.PW21/B** on which he signed at point-X.

This witness further testified to the effect that he along with the eye witness **Rahul Singh (PW-6)** reached at the spot where **Ct. Sandeep (PW-20)** was found present and he informed that **Ct. Rajiv (PW-17)** had taken both the accused/the appellant herein Naval Kishore and the co-accused Nitin to the police station in a PCR Van as the crowd was gathered and they became furious and in the meanwhile, **HC Om Prakash (PW-4)** also reached the spot and handed over the rukka and copy of FIR to him and he prepared the site plan **Ex.PW6/B** on the pointing out of the **Rahul Singh (PW-6)**. This witness further stated that **Ratan Singh (PW-19)** met him at the spot and he produced the blood stained clothes of the injured Mukesh (since deceased) and told that

the said clothes were worn by the injured at the time of the incident and which were removed when the injured was taken to the hospital in the vehicle. The said blood stained clothes i.e. vest & cream coloured pant were kept in a cloth parcel and sealed with the seal of AB and seized vide seizure memo **Ex.PW6/C** on which he is stated to have signed at point-X.

This witness also testified to having recorded the statement of **Ratan Singh (PW-19)** and of **Rahul Singh (PW-6)** and stated that thereafter he along with **HC Om Prakash (PW-4)** returned to the police station

This witness further testified to the effect that at the police station, **Ct. Rajiv (PW-17)** produced the weapon of the offence i.e. Chheni like tool which is used for making holes in the wood and he took the measurement of the weapon of offence and prepared the sketch of the same, **Ex.PW6/J** on which he signed at point X and that the weapon of offence was kept in a cloth parcel and sealed with the seal of AB and seized vide seizure memo **Ex.PW6/H** on which he signed at point X. He further stated that both the accused/the appellant herein Naval Kishore and the co-accused Nitin were arrested vide arrest memo **Ex.PW6/D** and **Ex.PW6/E** respectively.

Inter alia, **PW-21** corroborated the prosecution version set forth under Section 173 of the Cr.P.C, 1973. He also stated that an information was received vide **DD no. 27-B dated 21.01.2011** (copy of which is **Ex.PW21/C**) at about **9.35 – 9.40 a.m.** that the injured Mukesh had expired in the hospital. This witness further testified that the further investigation was taken over by the **SHO Inspector Dharamvir Singh Tomar (PW-23)** and that on 12.01.2011, he joined the investigation with **Inspector Dharamvir Singh (PW-23)** and reached the Babu Jagjiwan Ram Hospital with him and the postmortem on the dead body of Mukesh was conducted and prior to the postmortem, the dead body was identified by **Ratan Singh (PW-19)** and **Bani Singh (PW-5)**

respectively vide identification memos **Ex.PW19/A and Ex.PW5/A**. He further testified to the effect that after the postmortem, the dead body was handed over to the relative of the deceased and after the postmortem the doctor had given the two exhibits along with the sample seal which were seized by the **Investigating Officer Inspector Dharamvir Singh (PW-23)** vide seizure memo **Ex.PW21/D** and from the mortuary, BJRM Hospital, he along with **Inspector Dharamvir Singh (PW-23)** returned to the spot where the IO prepared the statement of **Somnath Shukla (PW-10), Mahesh s/o Suraj Prasad, Surender s/o Jamna Prasad and Brijesh**.

Inter alia, the witness identified the “**Chheni**” like weapon as **Ex.P3** and clothes of the accused/the appellant herein Naval Kishore as **Ex.P4 and Ex.P5** and clothes of the co-accused Nitin as **Ex.P6 and Ex.P7** and testified to the blood stained clothes of Mukesh (since deceased) which were produced by **Ratan Singh (PW-19)** i.e. one vest (having cut mark/torn mark) **Ex.P1** and one cream colour pant **Ex.P2**.

34. PW-22 examined was Dr. Sandeep Seotra, SR (Anaesthesia), Baba Saheb Ambedkar Hospital, who identified the signatures and hand writing of Dr. Vikram Singh, SR (Anaesthesia) in the casualty, who had examined the patient Mukesh vide **MLC Ex.PW7/A**. As per the report, the patient was immediately intubated with 8.0 mm cuffed ETT and advance life support was given by the team and after that patient revived back and thereafter he was shifted to ICU on AMBU bag for further management.

35. PW-23 examined in the witness box was Inspector Dharamvir Singh, the second Investigating Officer of the case, who testified to the effect that on 12.01.2011, he was posted as Inspector at PS S.P. Badli and on receiving the information from BSA Hospital at about 9.37 a.m. regarding the death of Mukesh, which was recorded vide **DD No. 27B Ex.PW21/C** which DD was

marked to him, the dead body was removed to the mortuary of the BJRM hospital where the postmortem of the dead body was conducted. **Inspector Dharamvir Singh (PW-23)** testified to **Ex.PW23/A** being his request to perform the postmortem **vide form no. 25.35(i)(B) Ex.PW23/B**. The witness also testified to having handed over the dead body of the deceased to his relative Sh. Ratan Singh vide his statement **Ex.PW19/A** after the postmortem. **Inspector Dharamvir Singh (PW-23)** also testified to the effect that the exhibits given by the doctor were seized vide memo **Ex.PW21/D** and thereafter the same were deposited with the malkhana and later on all the exhibits were sent to FSL Rohini for examination. **Inspector Dharamvir Singh (PW-23)** also stated that the scaled site plan **Ex.PW2/A** was prepared at the instance of **Ct. Rajiv (PW-17)** and he had collected the CFSL result **Ex.PW23/C** and **Ex.PW23/D**.

***STATEMENT UNDER SECTION 313 CR.P.C., 1973 OF THE
ACCUSED/THE APPELLANT HEREIN NAVAL KISHORE***

36. The accused/the appellant herein Naval Kishore through his statement under Section 313 Cr.P.C. 1973 denied the incriminating evidence against him but stated that he was residing at Jeevan Park, Siraspur. The accused/the appellant herein Naval Kishore denied having visited the shop of **Somnath Shukla (PW-10)** to purchase the curd and rather stated that he was present at some other shop which was situated at a distance from the said shop of the grocery and he heard a noise and found that some people were quarreling with each other and there was no conversation between him and **Somnath Shukla (PW-10)**. The accused further stated that he knew Nitin (co-accused JCL) and further stated that he had been picked up by the police and denied having in his possession any **“Chheni”** like weapon or that he had given beating to Mukesh (since deceased). He further stated that he along with the co-accused Nitin

(JCL) had been taken to the police station and after asking their names and addresses they were allowed to go from there. He further stated that he was called at the police station and the IO had asked him to bring clothes within 10 minutes and he went to his house and brought the afore said clothes and handed over the same to the IO and at that time certain blank papers were got signed from him by the police and that likewise the co-accused Nitin (JCL) was also asked to bring the clothes which were seized by the police.

37. On being confronted with **Ex.PW23/C**, the FSL report of the Biology Division the accused responded ***"I DO NOT KNOW"***. He further stated that it was a false case registered against him and he did not know why he had been implicated in the present case, and that he is innocent and his entire life has been destroyed and that he did not commit any crime. He further stated that the deceased Mukesh was not known to him and that he did not know as to who had committed the murder and the accused/the appellant herein Naval Kishore had nothing to do with the present matter. He further stated that his only mistake was that on hearing the noise, he went to the spot.

CONTENTIONS OF THE ACCUSED/THE APPELLANT HEREIN NAVAL KISHORE

38. Through the appeal and through the submissions made on behalf of the appellant, it was submitted by the learned Amicus Curiae for the accused/the appellant herein Naval Kishore that the prosecution has been unable to establish the allegations levelled against the accused/the appellant herein Naval Kishore of the commission of any offence much less the murder of the deceased Mukesh.

39. It was submitted on behalf of the accused/the appellant herein Naval Kishore that there was no history of any enmity and that as per the prosecution case on 11.01.2011 at about 9.30 p.m. the accused/the appellant herein Naval

Kishore along with the co-accused Nitin (JCL) had visited the grocery shop of one **Somnath Shukla (PW-10)** and that the accused/the appellant herein Naval Kishore and his associate Nitin (JCL) had an altercation with PW-10 on a trivial matter in which the deceased had intervened. It was further stated on behalf of the accused/the appellant herein Naval Kishore that the place of occurrence is a thickly populated residential area and that the place of occurrence had not been established beyond a reasonable doubt and that the first DD entry no. 21A was recorded at about 10.13 p.m and that there was delay of around 45 minutes in reporting the incident to the police and that there was delay in giving medical aid to the deceased Mukesh.

40. It was further submitted on behalf of the the accused/the appellant herein Naval Kishore that the testimony of **Rahul Singh (PW-6)**, nephew of the deceased Mukesh corroborated only the aspect of arguments but there was no corroborative evidence led on the record of any commission of any act by the accused/the appellant herein Naval Kishore (with “*chhenni*” like weapon) nor any corroborative medical evidence and that the place of occurrence had also not been established as per the site plan.

41. *Inter alia*, it was submitted on behalf of the accused/the appellant herein Naval Kishore that the weapon of offence as per the prosecution version allegedly belonged to a carpenter PW-13 and that the said carpenter had stated that the **Ex.P3** did not belong to him and that the same detracts from the veracity of the prosecution version.

42. It was further submitted on behalf of the accused/the appellant herein Naval Kishore that though there was blood found on the “*chheni*” like weapon but there was no reaction as per the serological examination report and thus it cannot be held to have been established that the said weapon of offence Ex.P3 was in fact the weapon with which the deceased Mukesh had been assaulted

allegedly by the accused/the appellant herein Naval Kishore.

43. *Inter alia*, it was submitted on behalf of the accused/the appellant herein Naval Kishore that there was no photograph of the spot and that there was no compliance of Section 157 Cr.P.C. 1973 and that there was no independent witness examined regarding their presence at the spot.

44. It was thus submitted on behalf of the accused/the appellant herein Naval Kishore that the accused/the appellant herein Naval Kishore was not guilty of the commission of any pre meditated murder or much less of any offence whatsoever.

***ALTERNATIVE PLEA ON BEHALF OF THE ACCUSED / THE
APPELLANT HEREIN NAVAL KISHORE***

45. The alternative submission made on behalf of the accused/the appellant herein Naval Kishore was to the effect that the occurrence was a result of a sudden quarrel in the heat of passion and that in which injury was also caused to the accused/the appellant herein Naval Kishore.

46. *Interalia*, it was submitted on behalf of the accused that the “*Chheni*” like weapon Ex.P3 could not be said to be a deadly weapon which could cause murder and that the injuries were not inflicted with pre-meditated intent and knowledge and there was no intention to cause death and that no knowledge could be attributed to the accused/the appellant herein Naval Kishore that he knew that his act was so imminently dangerous that it would in all probability cause the death or such bodily injury as was likely to cause death and that the offence if held to be committed would at the most fall within the ambit of Section 304 Part II of the IPC 1860 and that the accused/the appellant herein Naval Kishore deserved leniency.

47. It was further submitted on behalf of the accused/the appellant herein Naval Kishore that the accused/the appellant herein Naval Kishore belongs to a

humble family and he was eldest of five siblings and was in first year of the ITI (motor mechanic diploma) and the accused/the appellant herein Naval Kishore bears clean antecedents and had no criminal record and had undergone more than 6 years of incarceration.

CONTENTIONS OF THE STATE

48. On behalf of State it was contended by the learned Addl. Public Prosecutor Ms. Aashaa Tiwari that all allegations levelled against the accused/the appellant herein Naval Kishore of the commission of murder stood wholly established in as much as the testimonies of the eye-witness **Rahul Singh (PW-6)**, **Sh. Somnath Shukla (PW-10)** the curd grocer, **Ct. Rajiv (PW-17)** and **Ct. Sandeep (PW-20)** and the accompanying testimonies of **Smt. Meena (PW-12)**, **Smt. Narangi (PW-15)**, **Sh. Ratan Singh (PW-19)** and **Sh. Manjeet Rana @ Chiku (PW-9)** established that the accused/the appellant herein Nawal Kishore had assaulted Mukesh (since deceased) on 11.01.2011 at about 9:30 PM at the shop of **Somnath Shukla (PW-10)** situated at A-2/19, Rana Park, Sirspur, Delhi with a sharp edged *Chenni* (carpenter's instrument utilized for making holes in the wood). It was also contended that the blood smeared weapon of offence **Ex.P3** i.e. *Chenni* in the hand of the accused/the appellant herein Nawal Kishore and the accused/the appellant herein Nawal Kishore and the co-accused Nitin (JCL) were apprehended red handed by **Ct. Rajiv (PW-17)** whilst the co-accused Nitin (JCL) who had held the injured Mukesh (since deceased) at the time of the assault by the accused/the appellant herein Nawal Kishore had been apprehended by **Ct. Sandeep (PW-20)**. It was further submitted on behalf of the State that the circumstances of the commission of the offence were established through the testimonies of **Somnath Shukla (PW-10)** and the eye-witness **Rahul Singh (PW-6)**, the nephew of the injured Mukesh (since deceased).

49. It was also submitted on behalf of the State that the circumstances of **Sh. Brijesh (PW-14)** having telephonically informed the police at No. 100 by his mobile no. 9278697612 about the incident on 11.01.2011 at about 9:30 PM which information was received by **Ct.Urmila (PW-3)** posted at the PCR/PHQ received from an informant named Rakesh Kumar from the same number 9278697612 which was in relation to a quarrel having taken place at H. No. A-2, Rana Park, Delhi for which she filled up the PCR form **Ex.PW-3/A** whereupon **Ct. Rajiv (PW-17)** and **Ct. Sandeep (PW-20)** had reached the spot on having heard the message of the quarrel and had apprehended the accused/the appellant herein Naval Kishore with the *Chenni* type weapon and the co-accused Nitin (JCL) and the factum that the injured was bleeding profusely had been taken to the hospital were unrebuttedly established.

50. It was submitted further on behalf of the State that the testimony of **SI Alok Bajpai (PW-21)**, the first Investigating Officer of the case who had recorded the statement of the **(PW-6) Rahul Singh**, the eye-witness, the testimonies of **PW-7 Dr.Kuldeep Singh, CMO**, who examined the patient along with Dr. Ashwani Rathore, Junior Resident of the Casualty at the BSA Hospital on 11.01.2011 at about 11:00 PM and the testimony of **(PW-8) Dr.Nitin Kumar Bansal**, Senior Resident, General Surgery who examined the injured and gave his detailed report **Ex.PW-8/A** indicated that there was an incised wound on the left side of the chest, incised wound over the left elbow, lacerated wound over the left shoulder, lacerated wound over the anterior abdominal wall just below the left sub-costal region of a size of 8X.5 cm , lacerated wound of the size .5X.5 cm over upper lip, lacerated wound of the size 1X.5 cm over lower lip in relation to which **Dr. Kuldeep Singh (PW-7)** had categorically testified in his testimony that the injuries No. 3 and 4 i.e. lacerated wound of size 10X.5 cm over left shoulder, lacerated wound of size of 8X.5 cm

over anterior abdomen wall just below left sub-costal region **were not possible due to fall on the concrete road**, which injuries as testified by **Dr.Bhim Singh (PW-16), MD, Forensic Medicine Incharge, Mortuary, Babu Jagjivan Memorail Hospital**, who conducted the post-mortem on the body of the deceased Mukesh on 12.01.2011 whereby he made reference to the external injuries detailed in post-mortem report and categorically testified to the effect that death was due to hemorrhagic shock consequent upon visceral via injuries No. 1 and 2 and that injuries No. 1 and 2 were caused by a sharp pointed weapon and were sufficient to cause death in the ordinary course of nature and that all the injuries i.e. injury nos. 6 and 8 were ante-mortem in nature caused by the sharp pointed weapon. Furthermore, Dr.Bhim Singh on seeing **Ex. P-3** has stated that all the injuries except injuries No. 6 and 8 could be caused by the weapon **Ex.P-3** shown to him. The injury No. 6 and 8 are indicated to have been reddish contusion 6 cm x 0.5 cm on upper part of left abdomen, and lacerated wound 2 cm x 0.2 cm x 0.5 cm present inner side of lip. It is thus submitted on behalf of the State that the injuries sustained by the injured (since deceased) had been caused due to the injuries inflicted with a sharp edged weapon on the injured (since deceased) especially the following injuries : -

(1) Stitched wound, 2 cm length over left side of chest in mid clavicular line at the level of sixth rib, situated 6 cm below left nipple, on opening the stitches margins contused measuring 2 cm x 1 cm x chest cavity deep.

(2) Stitched wound 2.5 cm in length over left side of chest, at anterior axillary line at third inter-costal space, 8 cm outer to left nipple, on opening the stitches margins contused 2.5 cm x 1 cm x chest cavity deep, which was seen in the ordinary course of nature.

It was submitted on behalf of the State that injuries No. 1 and 2 were clearly inflicted with pre-meditated intent and knowledge that the injuries being inflicted were so imminently dangerous that they could in all probability cause the death or such bodily injury as was likely to cause death and that these injuries inflicted and act had been committed by the accused/the appellant herein Naval Kishore without any excuse for causing death or such injuries and it was thus submitted on behalf of the State that the accused/the appellant herein Naval Kishore was liable for the commission of the offence punishable under Section 302 read with Section 34 of the IPC, 1860 and that he deserves no leniency whatsoever.

ANALYSIS

51. A considered perusal of the available record and the testimonies on record of the eye-witness **Rahul Singh (PW-6)** i.e. the nephew of the injured Mukesh (since deceased) and the prosecution version set forth in the FIR establishes that the incident resulted out of a sudden quarrel. This is so in as much as testified by **Rahul Singh (PW-6)** that he along with his maternal uncle Mukesh (since deceased) had gone to the *Parchoon* shop of **Somnath Shukla (PW-10)** for taking curd with the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were already present and were also taking curd and that when the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) were taking curd, the shopkeeper asked what quantity of curd was required to which the accused/the appellant herein Naval Kishore told the shopkeeper *“jitna tere paas hai, poora de de”*, to which the shopkeeper told them *“itna dahi kya karoge”* then Nitin (JCL) said *“naale me phekenge, tumhe isse kya matlab”*, on which the maternal uncle of Rahul i.e. Mukesh (since deceased) told him that they were harassing the shopkeeper on which the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL)

started quarrelling and abusing Mukesh and the co-accused Nitin (JCL) caught hold of Mukesh (since deceased) and the accused/the appellant herein Naval Kishore went inside his house and came along with a *Chenni* like weapon (used to make hole in wood) and attacked Mukesh with the said weapon due to which injuries Mukesh fell down on the ground and in the meantime a noise was made by Rahul and other persons and two police officers reached and apprehended the accused/the appellant herein Naval Kishore and the co-accused Nitin (JCL) at the spot along with the weapon whereafter Mukesh was shifted to the BSA Hospital with the help of their neighbor in his vehicle.

52. In his cross-examination (PW-6) Rahul Singh has been unable to state whether or not the injured Mukesh (since deceased) had taken drinks on that day. Furthermore, in reply to a query put to the witness Rahul to the effect :

“I put it to you that when accused Naval Kishore left the place of incident, you and your Mama also started moving from the said place?”

it was responded by the Rahul: *Answer: It is correct. Vol. but we had only reached till the house of Nitin, where Naval had gone.*

53. Furthermore, the witness Rahul Singh (PW-6) stated “ It is correct that in the quarrel my Mama had also bitten the finger of the accused/the appellant herein Naval Kishore.

54. The statements of **Ct.Rajiv (PW-17)** and **Ct. Sandeep (PW-20)** who first reached the spot bring forth that there was a large gathering at the spot with heated tempers with people shouting *maro maro* and the cross-examination of **Ct.Rajiv (PW-17)** shows that persons present were shouting at each other and had *lathis and dandas* in their hand. The evidence led by the prosecution through the testimony of **Rahul Singh (PW-6)** and **Ct. Rajiv (PW-17)**, **Ct.**

Sandeep (PW-20) and **Somnath Shukla (PW-10)** itself brings forth that the assault committed on Mukesh (since deceased) was without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel wherein there is nothing to indicate that the offender accused/the appellant herein Naval Kishore had taken undue advantage or acted in a cruel or unusual manner and the offence thus falls within the ambit of Exception 4 to Section 300 of the IPC, 1860 which provides as follows:

“Exception 4-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault”

55. It is essential to observe that the Exception 4 to Section 300 categorically lays down that it is immaterial in such cases; which party offers the provocation or commits the first assault.

VERDICTS RELIED UPON ON BEHALF OF THE APPELLANT

56. On behalf of the accused/the appellant herein Naval Kishore reliance was placed, *inter alia*, on the verdict of the Hon’ble Supreme Court in ***Ankush Shivaji Gaikwad vs. State of Maharashtra JT 2013 (7) SC 26*** to contend that the case falls within the ambit of Exception 4 to Section 300 of the IPC, 1860 and that the accused/the appellant herein Naval Kishore was if held to be guilty, was guilty only of culpable homicide not amounting to murder as the act was not pre-meditated and was a result of a sudden fight and that the offence fell within the ambit of Section 304 Part-II of the IPC, 1860 for which, four requirements were only required i.e. (i) it was a sudden fight; (ii) there is no

premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

57. It was submitted further on behalf of the appellant that the number of wounds of the injuries inflicted per se does not make an act culpable under Section 300 of the IPC, 1860. Reliance was placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in the case of **Surinder Kumar vs. Union Territory, Chandigarh 1989 (2) SCC 217**, to the effect:

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight (ii) there is no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. In the present case, the deceased and PW-2 had entered the room occupied by Sikander Lal and his family members and had demanded vacant possession of the kitchen. When they found that the appellant was disinclined to hand over possession of the kitchen, PW-2 quarrelled and uttered filthy abuses in the presence of the appellant's sister. On the appellant asking him to desist he threatened to lock up the kitchen by removing the utensils, etc., and that led to a heated argument between the appellant on the one side and

PW-2 and his deceased brother on the other. In the course of this heated argument it is the appellant's case that PW 2 took out a knife from his pant pocket. This part of the applicant's case seems to be probable having regard to the antecedents of PW 2. It is on record that PW 2 was convicted at Narnaul on two occasions under [Section 411, IPC](#) and his name was registered as a bad character at the local police station. It was presumably because of this reason that he had shifted from Narnaul to Chandigarh a couple of years back and had started to live in the premises rented by PW 4. When the appellant found that PW 2 had taken out a pen knife from his pocket he went into the adjoining kitchen and returned with a knife. From the simple injury caused to PW 2 it would appear that PW 2 was not an easy target. That is why the learned Sessions Judge rejected the case that Amrit Lal had held PW 2 to facilitate an attack on him by the appellant. It further seems that thereafter a scuffle must have ensued on Nitya Nand intervening to help his brother PW 2 in which two minor injuries were suffered by the deceased on the left arm before the fatal blow was inflicted on the left flank at the level of the 5th rib about 2" below the nipple- It may incidentally be mentioned that the Trial Court came to the conclusion that the injury found on the neck of PW 2 was a self inflicted wound and had therefore acquitted the appellant of the charge under [Section 307, IPC](#), against which no appeal was carried. We have, however, proceeded to examine this matter on the premise that PW 2 sustained the injury in the course of the incident. From the above facts, it clearly emerges that after PW 2 and his deceased brother entered the room of the appellant and uttered filthy abuses in the presence of the latter's sister, tempers ran high and on PW 2 taking out a pen knife the appellant picked up the knife from the kitchen, ran towards PW 2 and inflicted a simple injury on his neck. It would be reasonable to infer that the deceased must have intervened on the side of his brother PW 2

*and in the course of the scuffle he received injuries, one of which proved fatal. Taking an overall view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. **The High Court refused to grant him that benefit on the ground that he had acted in a cruel manner but we do not think that merely because three injuries were caused to the deceased it could be said that he had acted in a cruel and unusual manner.** Under these circumstances, we think it proper to convict the accused under [Section 304, Part I, IPC](#) and direct him to suffer rigorous imprisonment for 7 years. In the result, this appeal partly succeeds. The order of conviction and sentence passed under [Section 302, IPC](#) is set aside and the fine, if paid, is directed to be refunded. The appellant is convicted under Section 304 Part I, [IPC](#) and is directed to suffer rigorous imprisonment for 7 years.”*

(emphasis supplied)

58. It was also contended on behalf of the appellant that where Exception 4 to Section 300 IPC, 1860 operates even if injuries inflicted are on the vital part of the body yet the benefit of Exception 4 to Section 300 IPC, 1860 has to be granted and reliance thus was placed on behalf of the appellant on the verdict of the Supreme Court in ***Buddhu Singh and Ors. vs. State of Bihar (Now Jharkhand) (2011) 14 SCC 471*** in which case the injury inflicted by an axe blow on the head of the deceased had resulted in the fracture of the frontal bone and death was almost instantaneous though in the hospital but the incident had taken place suddenly without there being any previous history qua which it was held by the Supreme Court to the effect:

“8. Considering the overall material, we are of the view that there is hardly anything on record which can be said against the accused Ledwa Singh and Balchand Singh though the common intention on their part could be attributed since

they had done the over act of grappling with and pinning down the deceased. Now, seeing his father and brother had been grappling with the deceased, the accused Buddhu Singh dealt an axe blow which could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. Again the defence raised on behalf of the accused that there could not have been the intention to commit the murder of the deceased is justified by the fact that the accused Buddhu Singh did not repeat the assault. Under the circumstances, we feel that the prosecution has been able to establish the guilt of the accused persons under Section 304 Part II I.P.C.

We, accordingly, modify the finding of the High Court and convert the conviction of the accused from Section 302 IPC to Section 304 Part II IPC and sentence each of them to the period already undergone. Accused Buddhu Singh is stated to be in jail for the last five years whereas other accused persons namely; Ledwa Sngh and Balchand Singh are stated to be in jail for the last ten years. They be released from the jail forthwith unless they are required in any other case”

59. Reliance was also placed on behalf of the appellant in relation to this aspect on the verdict of the Supreme Court in ***State of Madhya Pradesh vs. Ghanshyam Singh (2003) 7 Scale 387***, wherein it was held that where there was a free fight between the parties, the act of using a fire arm and firing two shots by the accused fell under the Exception 4 to Section 300 and was not relatable to Section 302 of the IPC, 1860 and held that the said offence fell within the ambit of Section 304 Part-I of the 1860.

APPLICABILITY OF SECTION 304 PART-I OR PART-II ?

60. On behalf of the State it was strongly contended that even if the offence falls within the ambit of Exception 4 to Section 300 of the IPC 1860 and even if it be held that the death of Mukesh was held to be only by commission of

offence of culpable homicide not amounting to murder in terms of Section 304 of the IPC 1860, the offence would fall within the ambit of Section 304 Part-I of the IPC and not Section 304 Part-II of the IPC as sought to be contended on behalf of the appellant. Section 304 of the IPC 1860 prescribed as follows:

“304. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

61. On behalf of the appellant reliance was placed on the verdict of the Supreme Court in ***State of Uttar Pradesh vs. Inderjeet @ Sukhatha* 2000 (7) SCC 249** to contend that a carpenter’s tool cannot be stated to be a deadly weapon capable of being utilized to cause murder. The verdict of the Supreme Court in ***Surinder Kumar vs. Union Territory, Chandigarh* JT (1989) (1) SC 505**, too lays down that the number of wounds caused during the occurrence is not a decisive factor, nor is the infliction of injury on the vital parts of the injured/deceased per se sufficient to detract from applicability of Exception 4 to Section 300 of the IPC in the circumstances of the case for as laid down in ***Buddhu Singh and Ors. vs. State of Bihar (Now Jharkhand)* (2011) 14 SCC 471** where the axe blow was inflicted on the head of the deceased on a very vital part resulting in the fracture of the frontal bone and death was almost instantaneous but the incident had taken place suddenly without there being any

previous history to which it was held that the prosecution had been able to establish the guilt of the accused only under Section 304 Part-II of the IPC, 1860 and that where a blow was inflicted on the vital part of the body though not intended to, the same would not suffice to hold the accused guilty of culpable homicide amounting to murder.

62. It has been laid down by the Supreme Court in ***Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh*** (2006 (11) SCC 444 to the effect:

“Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under [section 302](#), are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance

or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

CONCLUSION

63. As already observed elsewhere hereinabove in the instant case, the prosecution evidence led itself establishes that the incident had taken place without any premeditation in the heat of passion in the course of a sudden quarrel in which even the injured (since deceased) had bitten the hand of the accused/the appellant herein as testified by Rahul, the nephew of the deceased, the eye-witness and that in the circumstances the weapon of offence per se was a carpenter's tool not ordinarily used as a weapon for commission of murder, coupled with the factum that the witness Rahul Singh (PW-6) has testified that when the accused/appellant Naval Kishore had left the place of the incident, he (PW-6) Rahul Singh and Mukesh (since deceased) had also started moving from the spot and they i.e. (PW-6) and Mukesh (since deceased) had only reached till the house of Nitin (JCL) where the accused/appellant Naval Kishore had gone coupled with the factum that the *Chenni* Ex.P-3 was stated to have been taken out from the house of Nitin (JCL), the circumstances of the case established beyond any reasonable doubt that the infliction of the injuries on the person of Mukesh

(since deceased) by the accused/appellant Naval Kishore was without any premeditation and pursuant to a sudden quarrel and in the heat of passion and that thus in the circumstances of the instant case the accused/appellant Naval Kishore cannot be held guilty of commission of culpable homicide amounting to murder under Section 302 of the IPC, 1860.

64. Reference can be made on this aspect to the law laid down by the Apex Court in *Samuthram @ Samudra Rajan v. State of Tamil Nadu*, (1997) 2 *Crimes 185 (Mad.)* which is to the following effect:

“To invoke Exception 4 to section 300, four requirements must be satisfied, namely (i) it was a sudden fight, (ii) there is no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.... The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly;”

65. Thus the conviction of the accused/appellant Naval Kishore vide the impugned judgment dated 26.07.2014 in Sessions Case No. 43/2014 by the learned ASJ-05 North , Rohini Court under Section 302 read with Section 34 of the IPC, 1860 is converted to a conviction under Section 304 Part-II of the IPC, 1860 in as much as Section 304 Part-II of the IPC 1860, penalizes culpable homicide not amounting to murder if the act is done with a knowledge that it is likely to cause death but without any intent to

cause death or to cause such bodily injury as is likely to cause death. This is so in as much as in the circumstances of the case where the injuries were inflicted, *inter alia*, on the portions of the chest with a sharp edged weapon i.e. *Chenni* Ex.P-3, the knowledge that the injuries being inflicted on Mukesh (since deceased) by the accused/appellant Naval Kishore would be likely to cause death, though without any intention to cause death or to cause such bodily injury as was likely to cause death, would have to be essentially attributed to the appellant.

QUANTUM OF SENTENCE

66. With regard to the question of sentence, a submission was made on behalf of the appellant that the accused/the appellant herein Naval Kishore was aged 19 years at the time of the incident with his date of birth 12.01.1992 and that he is the eldest of five siblings and has four sisters and one brother, and that his father is now unable to continue his work as his hand got injured in a road accident and that the appellant has clear antecedents and there are no other criminal cases against him and his jail record is excellent and that the appellant has been a victim of his own circumstances, and also taking into account that while awarding the impugned judgment the learned trial Court had also directed the North District Legal Authority to award compensation to the legal heirs of the deceased under the Delhi Victim Compensation Scheme 2011 or under any such scheme applicable in terms of Section 357A of the Cr.P.C. 1973.

67. On behalf of the accused/the appellant herein Naval Kishore it was further submitted that the accused/the appellant herein Naval Kishore be released on the period of detention already undergone by him in as much as, as per the nominal roll dated 01.03.2017 received from the Superintendent Central Jail-2, Tihar, New Delhi as on 07.02.2017, the accused/the appellant herein Naval Kishore herein had already undergone six years and 26 days of

incarceration and that his conduct in the jail had been exemplary. On behalf of the appellant a Letter of Appreciation dated 30.09.2016 issued by the Superintendent Central Jail-2, Tihar and Certificate of Excellence in recognition and appreciation of the good work of the appellant and his contribution to Prison Administration in the year 2016 were inter alia relied upon on behalf of the appellant.

68. The appellant who was released on interim bail vide order dated 01.02.2017, extended vide order dated 06.03.2017 has surrendered on 28.03.2017 as informed by learned Amicus Curiae Ms. Inderjeet Sidhu. In view of the accused/the appellant herein, Naval Kishore having undergone detention of a period of six years and 26 days as on 07.02.2013 and the factum that there are no previous adverse antecedents against him, and the factum that the offence was committed when the appellant was 19 years of age, his date of birth being 12.01.1992, taking into account the factum that the offence as already held hereinabove has been committed without any pre-meditation, the order on sentence dated 26.07.2014 is modified and the sentence of life imprisonment along with a fine of Rs.2000/- for the offence punishable under Section 302 read with Section 34 of the IPC, 1860 and in default of payment of fine to undergo SI for two months, is modified to a period of sentence of rigorous imprisonment for a period of eight years for the offence punishable under Section 304 Part-II of the IPC, 1860 only. The period of detention already undergone by the accused in relation to FIR No. 13/2011, PS S.P. Badli shall be set off under Section 428 of the Cr.P.C. 1973. The sentence imposed vide the impugned order on sentence dated 30.07.2014 of a life imprisonment along with a fine of Rs.2000/- and in default of payment of fine to undergo SI for two months is thus set aside.

69. However, taking into account the factum that there are no other cases against the accused/the appellant herein Naval Kishore and no previous convictions against him, it is essential that the sentence imposed upon the accused acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation. The current development in penology is the emphasis of reformation and rehabilitation of the offenders instead of retribution in this regard, the implementation of the Model Prison Manual as directed by the Supreme Court in W.P(C) 406/2013 vide order dated 05.02.2016 and the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May, 1977, have been elaborately discussed vide our verdict in the case *Sanjay vs. State* 2017 III AD (Delhi) 241, dated 20.02.2017. Thus as laid down by the Supreme Court in *Phul Singh Vs. State of Haryana* in Criminal Appeal No. 506/1979 decided on 10.09.1979 that the “*carceral period reforms the convict*” it is essential that the following directives are given to the reduced sentence of imprisonment:

70. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible :

- **appropriate correctional courses through meditational therapy;**
- **educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;**

- involvement in sports activities and creative art therapy
- shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent,
- ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti – social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons;
- adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;
- conducting of Psychometric tests to measure the reformation taking place; and
- that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.

71. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

72. Copy of this judgment be also sent to the Director General, Prisons, Delhi and to the Secretary, Law, Justice and Legislative Affairs, GNCTD, Delhi to ensure compliance of the above directions.

73. The impugned judgment dated 26.7.2014 and impugned order of sentence dated 30.07.2014 in Sessions Case 43/2014 in relation to FIR No. 13/2011, PS Samaypur Badli shall stand modified in the above terms.

74. Criminal Appeal No. 1747/2014 is disposed of accordingly.

75. The Registry shall ensure that the copy of the judgment is forthwith served to the appellant and the Jail Superintendent, Tihar.

76. The record of the trial Court be returned forthwith.

ANU MALHOTRA, J

ACTING CHIEF JUSTICE

APRIL 17, 2017

mk/mr

