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

+ **CRL.A. 676/2017 & CRL.M (Bail) 1226/2017**

Reserved on: October 26, 2017

Date of decision: November 14, 2017

BALRAJ @ LADI

..... Appellant

Through: Mr.Anupam S. Sharma, Ms.Prachee Satija and Mr. Prakarsh Airan, Advocates.

versus

STATE

..... Respondent

Through: Ms.Kusum Dhalla, APP for State with SI Pramod Kumar, P.S. Shalimar Bagh, Delhi.
Ms.Aishwarya Rao and Ms.K.B.Hina, Advocates for the complainant.

WITH

+ **CRL.A. 780/2017 & CRL.M (Bail) 1446/2017**

NAWAB SINGH

..... Appellant

Through: Mr. Anup Banerjee with Mr. Rajeev Kumar and Mr. Pappu Singh, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Kusum Dhalla, APP for State with SI Pramod Kumar, P.S. Shalimar Bagh, Delhi.
Ms.Aishwarya Rao and Ms.K.B.Hina,

Advocates for the complainant.

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CRL.A. 455/2017

KANWALJEET KAUR @ SONIA

..... Appellant

Through: Mr Salim Ahmed and Ms.Charu Dalal,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Kusum Dhalla, APP for State with
SI Pramod Kumar, P.S. Shalimar
Bagh, Delhi.
Ms.Aishwarya Rao and Ms.K.B.Hina,
Advocates for the complainant.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

JUDGMENT

14. 11. 2017

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Dr. S. Muralidhar, J.:

1. The challenge in these three appeals is to the judgment dated 22nd March 2017 and the order on sentence dated 1st April 2017 passed by the learned Additional Sessions Judge ('ASJ') in Sessions Case Nos. 58286/2016 & 59458/2016.

2. By the said judgment, dated 22nd March 2017, the trial court found the three Appellants guilty of the offence punishable under Section 365/34 IPC. Nawab Singh (Appellant in Criminal Appeal No. 780 of 2017) (Accused No.2 A-2) and Balraj @ Ladi (Appellant in Criminal Appeal No. 676 of 2017) (A-3) were convicted for the offence punishable under Section 302/34

IPC, Section 307/34 IPC and Section 387/34 IPC. Kanwaljeet Kaur @ Sonia (Appellant in Criminal Appeal No. 455 of 2017) (A-1) was convicted for the offence under Section 387/109 IPC, Section 302/111 IPC and Section 307/111 IPC.

3. By the order of sentence dated 1st April 2017:

(i) All three Appellants, A-1 A-2 and A-3, were sentenced to undergo seven years rigorous imprisonment ('RI') under Section 365/34 IPC with fine of Rs. 5,000 each, in default of payment of which, they would further undergo simple imprisonment ('SI') for six months.

(ii) Appellants Nawab Singh (A-2) and Balraj (A-3) were sentenced to undergo seven years RI under Section 387/34 IPC with fine of Rs. 5,000 each, in default of payment of which, they would further undergo SI for six months.

(iii) Both A-2 and A-3 were further sentenced to life imprisonment for the offence under Section 302/34 IPC with fine of Rs. 15,000 each, in default of payment of which, they would further undergo SI for one year. They are also sentenced to undergo ten years RI for the offence under Section 307/34 IPC with fine of Rs. 10,000 each, in default of payment of which, they would further undergo SI for one year.

(iv) Kanwaljeet Kaur @ Sonia, A-1, was sentenced to undergo seven years RI for the offence under Section 387/109 IPC with fine of Rs. 5,000, in default of payment of which, she would further undergo SI

for six months. She was also sentenced to undergo life imprisonment for the offence under Section 302/111 IPC with fine of Rs. 15,000, in default of payment of which, they would further undergo SI for one year. A-1 was also sentenced to undergo ten years RI under Section 307/111 IPC with fine of Rs. 10,000, in lieu of payment of which, she would further undergo SI for one year.

(v) All the sentences were directed to run concurrently.

Case of the prosecution

4. Dr. Anil Kumar Nangia (PW-3) was running his clinic at 290, Chand Nagar, Delhi. Manju (PW-1), who was working as a compounder in the clinic, lodged a complaint on 3rd May 2004 with Police Station (PS) Tilak Nagar. In the complaint, PW-1 stated that at around 9.15 am she was administering an injection to one of the patients when she heard the noise of a lady and a man arguing with PW-3. She states that they were asking PW-3 to accompany them but he was refusing to do so. When she peeped into the room, PW-1 found Kanwaljeet Kaur @ Sonia (A-1), the wife of the deceased brother-in-law of PW-3, having one small child in her lap and a tall person aged 30-32 years of dark complexion (later identified as A-2), asking PW-3 to accompany them. When PW-3 refused, A-1 is alleged to have said “*yeh aise nahi chalega*”. Thereafter, the tall person showed a pistol to PW-3 and said “*Tu aise nahi manega*”. PW-3 then accompanied them. The tall person while leaving also told PW-1: “*koi gadbad mat karna verna teek nahi hoga*”. On the basis of the above complaint, FIR No. 261/04 under Section 364/34 IPC was registered at PS Tilak Nagar on 6th May 2004.

5. On the very same day, i.e. 3rd May 2004, information was received under DD No. 17 that at KP-267, Maurya Enclave, the landlord and his daughter had been mercilessly beaten. The police reached the spot and found Saudagar Singh and his wife Kartar Kaur (father-in-law and mother-in-law respectively of PW-3) in an injured condition. Both of them were taken to the hospital. The police also learnt that their injured daughter Gurdeep Kaur (PW-2, wife of PW-3) had already been taken to the hospital. The police reached there and recorded the statement of PW-2.

6. PW-2 said that on the previous Friday, PW-3 had dropped her and their infant daughter at her parental home, i.e. KP-267, Pitampura at 11 pm. On 3rd May 2004, at about 9 am, she went to sleep after entrusting her infant daughter to her father (Saudagar Singh). At around 10 am, she woke up to give milk to her daughter and came to the drawing room where she found two persons arguing with her father. She found her daughter in the lap of her husband (PW-3). The shorter of the two persons (later identified as A-3) was pointing a pistol at the head of PW-3. The tall person had a knife in his hand. They were asking Saudagar Singh (her father) to transfer property in the name of Sonia (A-1). Saudagar Singh informed them that he had already disowned A-1 from the property. Saudagar Singh then wrote on a blank paper that his daughter and son-in-law (PW-2 and PW-3 respectively) will have no right in the property. PW-2 further stated that despite this the tall person dealt many knife blows to Kartar Kaur (mother), Saudagar Singh (father) and herself (PW-2). As a result, she became unconscious. Upon regaining conscious, she found her parents lying injured and she herself was injured on both hands. There was no one else. She then came out and raised

an alarm to seek help upon which people took her to the hospital. On the basis of said information, another FIR No. 397/04 under Section 302/307 IPC was registered at PS Shalimar Bagh, New Delhi.

7. PW-3 stated to the police that soon after the incident at KP-267, Pitampura, the accused, i.e. Nawab Singh (A-2) (the tall person) and Balraj (A-3) (the shorter one) asked him to give them Rs. 30 lakhs for the protection of himself and his daughter. According to him, they took him with his daughter in his car. They first went to Punjab National Bank, Tilak Nagar Branch but the bank was closed. Thereafter, they went to M.K. Property Dealers but even there he could not get any money. Thereafter, he took them to the house of Avtar Singh where he met Ranjeet Kaur (PW-6). Avtar Singh was not there. Thereafter, PW-3 took both A-2 and A-3 to New Popular Motors, run by Harsimran Singh Madhok (PW-9) and he offered to sell his car. PW-9 offered to pay Rs. 1,12,000 for the car. After leaving the car there, PW-3 along with A-2 and A-3 and PW-9 went to Jail Road but they were not able to get money.

Charge

8. After investigations in both FIR No. 261/04 at PS Tilak Nagar and FIR No. 397/04 at PS Shalimar Bagh, charge sheets were filed. The said two FIRs were clubbed together and charges framed. All the accused were charged for the offences under Section 365/34 IPC, Section 384/34 IPC, Section 323/34 IPC and Section 307/34 IPC. Additionally, A-2 and A-3 were charged for the offences punishable under Section 25 of the Arms Act, 1959.

9. On 30th May 2007, the charges were amended by the learned ASJ. All the accused were charged for the offence under Section 365/34 IPC, Section 302/34 IPC (two counts) for causing the deaths of Saudagar Singh and Kartar Kaur, Section 387/34 IPC for committing extortion by putting Saudagar Singh in fear of death of PW-3, Section 307/34 IPC for causing injury to Gurdeep Kaur (PW-2), Section 387/34 IPC for extortion of money by putting PW-3 under fear of the death of his daughter.

10. After the prosecution examined 35 witnesses and the statements of the three accused under Section 313 Cr PC were recorded, at the stage of final arguments, an application was filed by the prosecution before the trial court for alteration of charges by framing charge of abetment *qua* Kanwaljeet Kaur @ Sonia (A-1) for the offence punishable under Section 111 IPC. This application was allowed by the trial court by an order dated 29th October 2004 whereby charges were framed against A-1 under Section 365/34 IPC, Section 387/109 IPC, Section 302/111 IPC and Section 307/111 IPC. However, the charges framed against A-2 and A-3 by the order dated 19th October 2010 were left unaltered.

Statements of the accused under Section 313 Cr PC

11. Kanwaljeet Kaur @ Sonia (A-1) in her initial statement under Section 313 Cr PC stated:

“I am the victim of the instant case as above explained. I am in custody since 4th May 2004 and during the pendency of the instant case my daughter has also been kidnapped on 12th November 2011, who is also a legal heirs of my deceased in laws.”

An additional statement of A-1 under Section 313 Cr PC was recorded on 6th June 2013 to put to her further incriminating circumstances emanating from the evidence of the PWs.

12. In his statement under Section 313 Cr PC, Nawab Singh (A-2) stated as under:

“I am innocent and I have been falsely implicated and I have not involved in the incident, I had not gone either to the clinic of Dr. Anil Nangia or to the parental house of Gurdeep Kaur as alleged. I was brought to PS Shalimar Bagh by the police officials after lifting me from Jalandhar, Punjab. ASI Jai Narayan had met at PS Shalimar Bagh after I was called at the said PS and was arrested in the said case after being falsely implicated. The police was mixed up with Dr. Anil Nangia and in order to cover up his ill-deeds, I was falsely implicated in this case, so that they could show that the case had been worked out. I am not at all involved in the occurrence. No recovery was effected on my pointing out in pursuance of any disclosure statement. The recoveries have been planted upon me. My signatures were taken on many papers under force, which were fabricated into various memos later on. The statements of witnesses have been fabricated against me in order to falsely implicate me.”

13. Balraj @ Ladi (A-3), in his statement under Section 313 Cr PC, stated:

“I am innocent and I have been falsely implicated and I have not involved in the incident. I had not gone either to the clinic of Dr. Nangia or to the parental house of Gurdeep Kaur as alleged. I used to sell clothes on a rehri (Hawker) in Tilak Nagar Market. I was given a slip from MCD. Police Officials of PS Tilak Nagar including ASI Jai Narayan used to demand money from the hawkers of Tilak Nagar Market. I had refused to concede to the illegal demands of ASI Jai Narayan and also asked other hawkers not to pay anything to him or his staff, as a result of which he inimical towards me. ASI Jai Narayan had

met me at PS Shalimar Bagh after I was called at the said PS and was arrested in the said case after being falsely implicated. At that time he had told me that, that is the result of being a leader of hawkers. The police was mixed up with Dr. Anil Nangia and in order to cover up his ill-deeds, I was falsely implicated in this case so that they could show that the case had been worked out. I am not at all involved in the occurrence. No recovery was effected on my pointing out in pursuance of any disclosure statement. The recoveries have been planted from me. My signatures were taken many papers under force, which were fabricated into various memos later on. The statements of witnesses have been fabricated against me in order to falsely implicate me.”

14. Balraj (A-3) examined his mother Sukhvinder Kaur (DW-1). She stated that since A-3 who was a hawker refused to give money to ASI Jai Narayan, he got A-3 falsely implicated in this case. In her cross-examination she admitted that she did not make any complaint to any higher official regarding paying money to ASI Jai Narayan. Next, one Vikas was examined as DW-2. He too spoke on the same lines as DW-1. Nawab (A-2) examined Satvinder Singh (DW-3) to speak to his being lifted from Jalandhar by the Delhi Police.

Impugned judgment of the trial Court

15. By the impugned judgment dated 22nd March 2017, the trial court convicted the three accused as aforementioned. The trial Court came to the following conclusions:

- (i) The MLC of PW-2 (Ex.PW-14/A) proved that the injuries suffered by PW-2 were dangerous. She remained hospitalized for nine days. As an injured witness, her testimony could not simply be brushed

aside in the absence of any major contradictions *qua* the testimony of other witnesses.

(ii) The testimonies of both PW-3 and PW-2 were consistent in the material particulars except some minor contradictions which were natural. Both PWs 2 and 3 stated that A-3 was holding a pistol to the head of PW-3; A-2 and A-3 asked Saudagar Singh to transfer the property in the name of Sonia (A-1) the only contradiction being half the property or its entirety; both demanded that no part of the property be given to PWs 2 or 3 to which Saudagar Singh agreed; A-2 and A-3 attacked Saudagar Singh and Kartar Kaur with sharp edged weapons and when PW-2 intervened she was attacked the only contradiction being whether by A-2 or A-3.

(iii) As regards PW-3 not intervening to prevent the attack on his in-laws and wife, that he was having his daughter on his lap was spoken to by PW-2.

(iv) The independent witnesses, PW-6 and PW-9 were able to identify A-2 and A-3 accompanying PW-3 after the incident. The non-detection of blood was questionable but lost its importance in view of the two independent witnesses.

(v) In his cross-examination it was suggested to PW-3 that he took the assailants along to different persons to pay them money for having done his work. These were the assailants who were with him when he visited PWs 5, 6 and 9. Both PWs 6 and 9 identified A-2 and A-3 as

the ones accompanying PW-3 and therefore it was clear that they were the assailants.

(vi) There was no merit in the contention that it was PW-3 who committed the offence along with other persons. PW-2 denied that PW-3 was demanding a share in the property in his name.

(vii) There were some lapses in the investigation inasmuch as Mumtaz Ahmad, who is stated to have made the No. 100 call informing about the attack on Saudagar Singh, Kartar Kaur and Gurdeep Kaur, was not traced and therefore, could not be examined. Dr. Gaurav, brother of PW-3 and Anita the sister of PW-3 were not examined. However, the benefit of the lapses of the IO should go to the accused if otherwise the case of the prosecution is proved and established.

(viii) Both PWs 2 and 3 were consistent that both A-2 and A-3 assaulted the two deceased with sharp edged weapons and caused their death. The post mortem reports confirmed this. From the sketches of the weapons recovered it appeared that they were indeed sharp edged weapons and according to the doctor the injuries on the deceased could be caused by those weapons.

(ix) The non-joining of public witnesses to the recovery of the weapons was not fatal by itself. Keeping in view that both PW-34 and PW-36 were reliable and trust worthy and stood the test of cross-examination, the recovery of the weapons at the instance of the accused stood proved.

(x) Although there was delay registering FIR 261 of 2004 at PS Tilak Nagar, there was no delay on the part of PW-1 in reporting the matter to the police on 3rd May 2004 itself. Therefore the complainant cannot be faulted. No benefit could be granted to the accused for this lapse on the part of ASI Jai Narayan.

(xi) Therefore, the prosecution had discharged its onus of proving the guilt of the accused for the offences charged.

16. By a separate order on sentence, the trial court proceeded to award the sentences to the accused as noted hereinbefore.

Unduly long trial

17. Before proceeding to note the submissions, the Court would like to highlight a disconcerting aspect. The trial in the present case continued over an inordinately long period of over nine years. PW-1 was first examined on 29th September 2005. The final cross-examination of all the PWs (some after being recalled) concluded much later, i.e. on 25th November 2014, more than nine years later. This has to be kept in view while examining the testimony of the PWs.

The present appeals

18. The appeals of A2 and A3 were admitted on 9th August 2017 and 13th July 2017, respectively. As far as A1 is concerned, her appeal was admitted on 15th May 2017 and, by an order dated 13th July 2017, after noting that she had served more than 13 years of the sentence concurrently

awarded to her, this Court suspended her sentence subject to her furnishing a personal bond in the sum of Rs. 20,000/- with one surety in the like amount to the satisfaction of the learned trial court.

19. This Court has heard the submissions of Mr. Salim Ahmed, learned counsel appearing for A-1, Mr. Anup Banerjee, learned counsel appearing for A-2 and Mr. Anupam Sharma, learned counsel appearing for A-3. Ms. Kusum Dhalla learned APP appeared for the State, and Ms. Aishwarya Rao and Ms. K. B. Hina, learned counsel represented the complainant.

20. As already noticed, as regards FIR No. 261/2004 registered at PS Tilak Nagar for the offences under Section 364/34 IPC, the eye witnesses were PW-1 and PW-3. As far as the FIR No. 397/2004 registered at PS Shalimar Bagh for offences under Section 302/307 IPC and other offences is concerned, the two eye witnesses for the killing of Saudagar Singh and his wife Kartar Kaur are PW-2, their daughter, and PW-3, Dr. Anil Kumar Nangia, their son-in-law. As regards the events immediately thereafter where, according to the prosecution, PW-3 was forced to accompany, with his infant, A-2 and A-3 in his own car, the witnesses are PW-5 (Satpal), the proprietor of M/s Palika Properties, PW-6 (Ranjeet Kaur), wife of Avtar Singh and PW-9 (Harsimran Singh Madhok).

21. In order to counter the case of the prosecution, all the three counsel for the accused persons have attempted to characterize PW-2 and PW-3 as related and 'interested' witnesses. The line of defence that emerged during the cross examination of both these witnesses is that PW-3 was the master mind behind the murder of his in-laws; that he wanted to grab the property

of his in-laws, even to the exclusion of his own wife PW-2 and, therefore, hired two contract killers, neither of whom was A-2 or A-3. As far as PW-2 is concerned, although it is not denied that she is an injured witness, they attempt to discredit her by suggesting that she was the beneficiary of the deeds of PW-3 as the property would fall to their share to the exclusion of A-1 whose child was otherwise the heir of her deceased husband, the son of Saudagar Singh and Kartar Kaur. It is submitted that there are material contradictions and inconsistencies in the depositions of PW-2 and PW-3 that make them untrustworthy and unreliable. On PW-2 identifying the assailants, it is argued that their photographs were shown to her by the police before she was examined, and therefore her identifying them in Court is of no value.

Law concerning interested witnesses

22. Before proceeding to examine the evidence of the aforementioned eye witnesses it is necessary to briefly recapitulate the law in relation to interested eyewitnesses one of whom is injured. In ***Dalip Singh v. State of Punjab 1954 SCR 145***, the Supreme Court explained:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our

observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

23. In *State of Bihar v. Basawan Singh AIR 1958 SC 500* the Constitution Bench of the Supreme Court held:

“The correct Rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person.”

24. In *Darya Singh v. State of Punjab (1964) 3 SCR 397* it was observed by the Supreme Court as under:

“There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. **But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it..... [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish**

the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. **On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars.**" (emphasis supplied)

25. In *Sarwan Singh v. State of Punjab (1976) 4 SCC 369*, the Supreme Court explained:

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

26. In *Jayabalan v. UT of Pondicherry (2010) 1 SCC 199*, the Supreme Court held as under:

"23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. **The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency.**" (emphasis supplied)

27. In *Waman v. State of Maharashtra (2011) 7 SCC 295* the law was

summarized thus:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. **In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.**”
(emphasis supplied)

28. The legal position was succinctly encapsulated in *Raju v. State of Tamil Nadu AIR 2013 SC 983*

“.....we are concerned with four categories of witnesses – a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. **A court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.**”
(emphasis supplied)

29. The law in relation to interested witnesses, as explained in the above decisions, is that their evidence is not to be looked upon with suspicion only because of their relationship with the deceased. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. Their evidence must be scrutinised carefully to ascertain if it has a ring of truth. It must also be examined for consistency.

Analysis of the evidence of PW 2

30. First, the Court would like to take up the evidence of the injured eye witness PW-2, the daughter of the deceased Saudagar Singh and Kartar Kaur. The evidence of Dr. Ravinder Khurdi (PW-14) shows that PW-2 suffered multiple lacerated wounds on her scalp, face and both hands with chopped left index and middle finger and chopped right index finger and other associated injuries on dorsum left hand extending to palmar aspect. When she was brought to the Muni Maya Ram Hospital she patient was profusely bleeding and in a state of shock. Her injuries were noted as:

- i) Multiple lacerated wound over scalp - right forehead inverted u shaped 7 to 8 cm in length;
- ii) L forehead across the L temporal region length approx 10 cm;
- iii) CLW over the parietal region of scalp 2-3 in number splitting the temporalis inside;
- iv) Lacerated wound over dorsum going towards palmar on L hand;
- v) Absent L index finger chopped off at the site and middle finger chopped off but hanging with a small skin tag;
- vi) R hand index finger chopped off

31. The above injuries were described as “dangerous - sharp and blunt”. The fact remains therefore, that in the brutal attack on her, PW-2 lost her left index and middle finger and the right index finger. The above medical evidence was not challenged by any of the accused.

32. From her evidence, it is seen that her brother Gurmukh Singh, son of the

deceased, and the husband of A-1, expired in 2002, but prior thereto he had not remained in touch with his family. He was the younger brother of PW-2. PW-2 was unable to comment on the relationship between her brother and A-1 as they were not in touch with him at all. She only attended the place of obsequies when her brother died and did not visit his residence. She denied the suggestion that Gurmukh Singh committed suicide. She stated that she had no contact with A-1, except seeing her twice. She was aware that A-1 had filed a case against her parents which was referred to the Crime Against Women Cell ('CAW Cell') and that A-1 was demanding Rs. 40 lakhs which Saudagar Singh did not have. This complaint in the CAW Cell was in fact filed in September 2003.

33. It also emerges that PW-2 was herself a dentist and was employed as such prior to her marriage to PW-3. It also transpired that PW-3 was, prior to his marriage to PW-2, previously married and she was aware of this. The suggestion to her that PW-3 was pressurizing her about her share in the property of her parents was denied by her in her cross examination. She also stated that the injuries suffered by her virtually finished off her career as a dentist. Her most vital tools, her index and middle fingers on the left hand and the right index finger, were chopped off.

34. It must be noted here that there are two facts that totally negate the suggestion on behalf of the accused that PW-2 was desperate to get her parents' property for herself and her husband (PW-3) and therefore went along with PW-3 in his planning to kill her parents. The first is that way back on 22nd October 2001 Saudagar Singh had taken out a publication in

the newspaper debarring his son Gurmukh Singh (husband of A-1) from his properties. Secondly, on 25th October 2001, he executed a Will bequeathing all his properties to PW-2. Consequently, PW-2 could not have had any anxiety on this score.

35. As regards the actual events, PW-2 has stated, without any contradiction, that she was dropped at her parents' house along with her infant child on Friday evening whereas the incident happened on Monday morning. The suggestion to her that there was a discussion between PW-3 and her parents about any property on Friday when she was dropped was denied by her. The suggestion that PW-3 also threatened her parents was denied by her.

36. PW-2 was clear that the incident took place on the morning of 3rd May 2004. Although, in her examination-in-chief, she had initially mentioned the date as 30th June 2004, later in her examination-in-chief itself she mentioned the correct date i.e. 3rd May 2004.

37. When she woke up from her nap on the morning of 3rd May 2004 in her parents' house, PW-2 noticed that some people were quarrelling with her parents. PW-3 had been made to sit on a settee in the drawing room, holding their infant child on his lap. She has clearly stated that, "one short-statured person put a pistol on his head." She identified the short-statured person in the Court as A-3 (Balraj). The other person, who according to PW-2 was present at her parents' house at that time, was the tall one and when she stated so she pointed towards Nawab Singh (A-2). According to PW-2, A-2 was demanding that "half of the property be transferred in the name of the lady accused Sonia @ Kanwaljeet Kaur, who is the wife of my deceased

brother.” At this point, PW-2 identified A-1 (Kanwaljeet Kaur @ Sonia) as well. She pointed out that earlier to that date, her father disowned A-1 and her deceased husband in writing. Under the threat of the accused, he stated in writing on a blank paper that he would give all his property to A-1 but not in the name of PW-3 or PW-2. She heard her father telling A-2 and A-3 that since he had given the above statement in writing, they should go away. But A-2 and A-3 told him that they would not do so but would take away PW-3 and the infant child with them by tying their hands. When her father protested, “the tall one by name Nawab Singh took out a knife.” PW-2 then states that, “My father tried to escape by screaming and went near the balcony but the accused followed my father and I also followed but the accused had taken my father to the balcony there he attacked my father a knife. There was a tussle and my father was trying to rescue himself. The accused Nawab Singh, gave a call to the accused Balraj, “*kar de*”. I heard the same. My mother was also sitting in the drawing room. The accused Balraj had attacked my mother on her head. I had seen my mother having suffered the injuries on her head. When I came to see my mother the accused Nawab Singh, followed me and attacked me on my head with a knife. I tried to rescue by raising my hands and my fingers were severed on both my hands at the attack caused by the Nawab Singh, with a knife. (Witness had shown both her hands where the two fingers on the left hand and pointing finger on the right hand are amputated).”

38. She also stated that on 6th May 2004, the police had shown her the post-card photos of the accused persons and on seeing the photographs, she identified all of them. This is one of the points repeatedly emphasised by

counsel for A-2 and A-3.

39. PW-2 was first examined by the counsel for A-1 on 29th September 2005 which continued on 30th September 2005, on which date, she was also cross-examined by the counsel for A-3. As far as A-2 is concerned, his counsel was absent but A-2 himself declined to cross examine this witness. In this cross-examination, nothing was elicited from the witness as regards her describing the actual incident of being attacked on herself and her parents. She stated that the entire incident lasted about ten minutes. She stated in her cross-examination that it was true that, “when the incident happened we four family members were present and two intruders have come. My husband could not intervene or protest since all of a sudden the accused attacked us. I was protecting myself when I was attacked and I cannot say whether my husband intervened or not.”

40. She denied the specific suggestion that it was PW-3 who was behind the entire incident or that neither A-2 nor A-3 was actually present in the house at the time of attack. She denied the suggestion that she was deposing falsely because of her being threatened by PW-3. She denied that she was seeing the accused for the first time in the Court.

41. At this stage, it may be noted that while there was no Test Identification Parade (‘TIP’) conducted for the purposes of PW-2 identifying A-2 and A-3, the TIPs were organized for identification of A-2 and A-3 by PW-1 and PW-3 in FIR No. 261/2004 registered at PS Tilak Nagar. In both those instances A-2 and A-3 declined to participate. Both of them have stated that their photographs had already been shown to the witnesses at the PS.

42. One of the serious objections taken by learned counsel for A-2 and A-3 is the absence of the TIP to enable PW-2 to identify them. However, where the evidence of the witness inspires confidence, particularly when she is an injured eye witness, the mere absence of the TIP would not discredit her testimony. What is significant here is that A-2 and A-3 were complete strangers as far as PW-2 was concerned. Her describing them as ‘short statured person’ (A-3) and a ‘tall person’ (A-2) is, by and large, a correct identifying characteristic and her evidence is natural and probable in this regard. There is absolutely no need for her to falsely implicate A-2 or A-3.

43. In the cross examination that took place on 18th November 2008, PW-2 denied the suggestion that she knew A-2 and A-3 prior to the incident. Her answers in this regard were as under:

“It is incorrect to suggest that I knew accused Balraj and Nawab prior to the incident. It is incorrect to suggest that I was treating the mother of accused Nawab regarding her teeth. Nawab Singh accused had come to my husband two times to take medicine. I do not remember as to whether I had stated to the police in my statement that Nawab Singh accused took medicine from my husband two times. My statement was recorded by the police two times. I did not tell the police of PS Shalimar Bagh and PS Tilak Nagar that my husband knew Nawab Singh accused. It is incorrect to suggest that my husband did not like Nawab Singh visiting my house (Volunteered, since I did not know Nawab Singh, there was no question of his coming to my house. It is incorrect to suggest that I know the entire family of Nawab Singh.”

44. When she was again cross-examined, more than three years later, on 18th

December 2008, this time by counsel for A-2, PW-2 stated:

“It is correct that accused Nawab and Balraj were never shown to me by the police. It is incorrect to suggest that Police did not show them to me as I had stated to the police that I knew them beforehand. It is correct that I stated to the police in my statement that I knew accused Balraj and Nawab. (Vol. I started knowing them after the commission of the offence). I had stated to the police that I know both the accused only from the date of the commission of offence. (Confronted with Ex. PW2/DA where it is not so recorded).”

45. It seen that there was a concerted attempt in trying to discredit PW-2 by suggesting to her that she somehow already knew A-2 and A-3 and was therefore, able to identify them correctly in the court. This attempt obviously did not succeed. PW-2 was, in fact, able to identify A-2 and A-3 correctly in the court. She was a natural witness. Although she was related to the deceased, her deposition cannot be cast aside when one considers that she was an injured witness present at the spot.

46. The only other contradiction, if it may be termed that, was her stating that A-2 had asked Saudagar Singh to transfer “half of the property in favour of accused Sonia” whereas in her initial statement to the police, the word ‘half’ was absent. This is hardly something material that can discredit her otherwise natural and consistent testimony.

47. There are certain other contradictions sought to be highlighted. One was about A-2 calling out to A-3 by uttering the words ‘kar de’ which was not present in her previous statement. The other was with regards to having seen

A-3 attack her mother on the head and at that time, A-2 followed PW-2 and attacked her. When viewed in the overall perspective, these contradictions too cannot be said to be material. The fact remains that her presence at the spot is not doubted. Her witnessing the attack on her parents and herself by A-2 and A-3, who were armed with a gun and knife respectively, has not been demolished by the defence counsel. She has stood firm on the material aspects of the attack on herself and her parents by A-2 and A-3. She further explained in her cross examination that:

“All this happened too fast and hence I cannot say about the same. The accused persons had pointed a pistol on the head of my husband and they were not allowing my husband to move”

48. It was important for the defence to establish that PW-3 was somehow free to move and ought to have intervened to save his wife and in-laws from the attack. They failed in this attempt as well which is evident from the following question and answer:

“Question: I put it to you that right now you have deposed before the court that your husband was not allowed to move, therefore, he did not intervene and whereas on 30/09/2005 you deposed I cannot say whether my husband intervened or not. Which one is correct?

Ans. It has been my constant stand that my husband was not allowed to move by the accused persons.

It is incorrect to suggest that it has not been my constant stand that my husband was not allowed to move by the accused persons. It is incorrect to suggest that the accused persons have been falsely implicated at the instance of my husband and the police. It is incorrect to suggest that accused persons were not present on the spot or that the incident as narrated by me never occurred. It is incorrect to suggest that I am deposing falsely. It

is correct that I had deposed before the Court that I was unconscious and brought to the hospital and regained consciousness on 06.05.04. It is correct that I had stated to the police that on 06.05.04 the police had showed me the postcard photographs of accused persons and on seeing the photographs, I identified all the accused. (Confronted with Ex. PW2/DA where it is not so recorded).”

Analysis of the evidence of PW 3

49. Next is the evidence of PW-3 himself. The case of the defence is that he is an ‘interested’ witness because he, in fact, wanted the property of the deceased for himself. It is even suggested that he wanted to get his own wife (PW-2) killed for that purpose.

50. On 3rd May, 2004, he was at his clinic and PW-1 (his compounder, Manju) was present. He states that at around 9.15 am, A-1 and A-2 came to his clinic and asked him to go with them. Even while he refused, A-2 took out a pistol and threatened him. He asked A-1 whether she also was in the party of A-2 to which A-1 replied in the affirmative by nodding her head. He accompanied them in his own car with A-1 with her child sitting in the rear seat accompanied by A-3. While going towards Pitampura, near Kesav Puram Depot, the accused asked him to stop. A-2 then asked A-1 to get down from the car. She got down with her child. Then the three of them, i.e. PW-3, A-2 and A-3 reached KP-267, Pitampura, the residence of Saudagar Singh, the father-in-law of PW-3. He states that he was walking in the front with A-2 and A-3 following him and climbed the stairs to reach the first floor. Saudagar Singh saw him through the *zalidar* door. PW-3 then entered, followed by A-2 and A-3. On the settee, PW-3’s infant daughter was

sleeping. The accused asked PW-3 to sit down. He took the baby onto his lap and sat on the settee.

51. PW-3 attributed certain specific actions to the two accused, A-2 and A-3. As far as A-3 (Balraj @ Ladi) is concerned, he states that A-3 aimed the revolver at his head. Saudagar Singh then enquired who A-2 and A-3 were. In reply, A-2 stated that it was irrelevant for him to know. He asked Saudagar Singh to declare half his property in the name of A-1. When Saudagar Singh told A-2 that they should either go to the Court or a *panchayat*, A-2 threatened Saudagar Singh that his head would be blown off if he did not do as instructed. At that point, Saudagar Singh wrote on a paper that PW-2 and PW-3 shall have no share in the property. After writing the above, Saudagar Singh gave the paper to A-2 and asked him to leave since their work was over. A-2 and A-3 told Saudagar Singh that they would still take PW-3 with them by tying his hands. At this point, Saudagar Singh told A-2 and A-3 that PW-3 should be spared. Saudagar Singh then tried to go to balcony and his wife Kartar Kaur tried to go to balcony by opening the iron door which was bolted by A-2 and A-3. At that point, A-3 pulled Kartar Kaur back and she fell down on the floor as she was unable to walk properly. When A-2 was pulling Saudagar Singh, PW-2 came forward to rescue her father. PW-3 states that at that time he heard the call, '*kar de*'. A-2 immediately attacked Saudagar Singh with a "sharp weapon like sickle and caused injuries on his head." A-3 attacked both Kartar Kaur and PW-2 with a knife. PW-3 is categorical that "both these accused had caused injuries to my father-in-law, mother-in-law and my wife." After so attacking, A-2 and A-3 asked PW-3 to go with them. PW-3 states that his in-

laws and PW-2 were not in a position to move. Carrying his child, he accompanied A-2 and A-3 at gunpoint and proceeded towards his car.

52. The criticism mounted by the learned counsel for A-2 and A-3 of the above testimony is first to suggest that A-2 and A-3 were in fact not present at all in the house of Saudagar Singh and Kartar Kaur. In order to make good their respective defence of *alibi*, A-2 and A-3 were required to lead positive evidence. This, they failed to do. In his statement under Section 313 Cr PC, A-2 states that he was falsely implicated and that the police was mixed up with PW-3 “in order to cover up his ill deeds.” He claims to be lifted from Jalandhar, Punjab. He claimed that the recoveries were planted on him, that his signatures were taken on papers under force and later they were fabricated into the memo.

53. As far as A-3 is concerned, his case is that he used to sell clothes as a hawker in Tilak Nagar Market and had been given a slip by the MCD. According to him, he refused to concede to the demand of money of ASI Jai Narayan as a result of which, the latter became inimical to him. He says that is why he was called to the PS and arrested after being falsely implicated. For this he examined DWs 1 and 2, both of whose evidence was natural or convincing. A-3 too suggests that the police was mixed up with PW-3. A-3 further claimed that no recovery was effected on his pointing out. He maintains that the recoveries were planted. A-2 and A-3 state that their signatures were taken on blank papers which were later fabricated in order to falsely implicate them.

54. As already noticed, both A-2 and A-3 refused to join the TIP in which

PW-3 and PW-1 were to identify them. As for fixing the identity of A-2 and A-3, PW-3 was very clear in his identification of them in the witness box. The learned APP, on permission, cross-examined PW-3 on some points. PW-3 denied that A-2 and A-3, along with PW-3, had been taken to the house of A-1 by the police and that from the house of A-1 they reached the house of A-2 and from there they got to know the address of A-3. He also denied the suggestion that in the house of A-2, a group photo was shown to him in which A-2 was seen wearing a turban. He then states:

“It is correct that one passport size photograph was also shown to me and on seeing the photograph I identified it as of the accused Balraj. (Witness volunteers) that the group photo of Nawab, was shown to me at the PS where I identified it.”

55. The question then arose as to whether PW-3 knew A-2 from before the incident. On this aspect, he stated:

“I did not tell the police at any point of time that I knew Nawab accused. Actually I did not know Nawab accused prior to the present occurrence. I knew Kanwaljeet accused as once she visited my clinic for medical treatment of her child. I do not remember if I stated before the police that Nawab accused had come to my Clinic for medical treatment (confronted with portion A to A of Ex.PW-3/DA where it is recorded that Nawab accused had come to the witness a number of times and got prescribed medicines). I do not remember if Nawab accused ever came to my Clinic prior to the occurrence. It is incorrect to suggest that mother and brother of Nawab accused used to come to my clinic for medical treatment. It is incorrect to suggest that I knew Nawab and his family members even prior to the present occurrence or that in this regard I have deposed falsely.”

56. There were confrontations put to PW-3 about him not stating earlier to

the police about A-1 and A-2 coming to his clinic and asking him to accompany them and his refusing to accompany saying that it was clinic hours or that when he refused, A-2 took out a pistol and threatened him. In this context, it requires to be seen that there are two statements attributed to PW-3. One is Ex.PW3/DA. In the statement, he also is not supposed to have stated that it was A-2 and 'Ladi' who made A-1 leave the car.

57. These contradictions as to what happened at the clinic do not appear to be material when one considers the other witness to this part of the chain of events, i.e. PW1. She clearly stated that there was a tall person having a pistol in his hand who was pressurizing PW-3 to go with him. She identified A-2 correctly in the Court. She knew A-1 from before so her identifying A-1 was natural. She states that A-1 remained in the clinic for about five to ten minutes. In her statement (Ex.PW1/A), she had stated before the police that two persons had taken away PW-3 – one was male and one was female. She denied the suggestion about police tutoring her to say that the taller person was A-2. Nothing much appears to have been elicited from PW-1 to discredit her version.

58. There was a concerted attack mounted on the evidence of PW-3 by all three accused on various counts. As far as A-2 and A-3 are concerned, they have advanced inconsistent pleas. On the one hand, both of them say that they have been wrongly implicated, and that they were not even present when the incident took place. On the other hand, they have tried to project that the incident did not take place in the manner described as far as attack by them on the deceased and PW-2 was concerned. In any event, neither A-2

nor A-3 has been able to prove the plea of *alibi* to show that they were elsewhere when the incident took place.

59. As far as A-1 is concerned, her contention is that she has been falsely implicated. Her attempt is to show that both PW-2 and PW-3 are interested witnesses. Her contention is that although they were both aware that, by a Will executed by Saudagar Singh on 21st October 2001 itself, the property was to come to their share, they still went ahead and decided to kill the parents of PW-2. There is a further inconsistency in this inasmuch as A-1 seems to suggest that PW-3 wanted to eliminate PW-2 as well.

60. As far as A-2 and A-3 are concerned, they seek to take advantage of the above line of defence of A-1 by also suggesting that it was PW-3 who was the mastermind behind the attack on the deceased and his own wife. A-2 has gone to the extent of suggesting that even the attack on PW-2 was carefully planned to make it appear to be a genuine attack whereas only a few fingers were chopped in a manner that did not really inconvenience PW-2.

61. Having carefully perused the evidence of PW-3, the Court is not satisfied that any of the above pleas can be said to be even remotely substantiated from the evidence on record. It must be noticed that PW-3 was able to stand a torturous cross-examination spread over several years. He was first examined-in-chief on 30th September 2005 and his cross-examination finally came to an end on 25th November 2014.

62. As far as the theory that it was PW-3 who masterminded the entire incident, it does not appear even possible that he would do so at the risk of

very severely injuring his own wife, particularly when there is nothing to show that they were desperate for the property of the parents of PW-2. PW-3 was already running his clinic and any motive that he may have had to eliminate the deceased is not even remotely established. Only some fanciful questions have been put in the cross examination which have been rebuffed both by PW-2 and PW-3. There is not even a trace of any dithering by either witness on the material aspects to raise a doubt that PW-3 may have himself planned the attack. It also defies logic that they would do so when the Will executed by Saudagar Singh well before the incident has already bequeathed the property in their name. The main fact that they had sold the property after the incident does not in any way throw any doubt on their respective depositions as far as the incident itself is concerned.

63. All the three accused have repeatedly stressed on the aspect that there was no blood stain whatsoever on the clothes of PW-3; that it is extremely unnatural for two people who have not even moved around in a small area where a lot of blood was splattered and come out totally unscathed; that he was not injured at all; that even as per PW-2, he made no attempt to prevent A-2 and A-3 from attacking the deceased and importantly, after the incident, he did not visit PW-2 in the hospital for several days. According to the defence, all of these factors show that PW-2 was in fact, responsible for the deaths of the parents of PW-2.

64. It has come in the evidence of PW-2 that A-3 was pointing a pistol at PW-3 who was made to sit on the sofa with a baby in his lap. The mere fright of the fear of baby being harmed was sufficient for PW-3 not to be

adventurous in trying to get up from his seat. It would further be remembered that the entire incident was over in a span of ten minutes with A-2 and A-3 inflicting brutal knife wounds on the elderly couple as well as on PW-2. With two assailants armed with sharp-edged weapons, it is but natural that PW-3 would not want to risk his own life and the life of the baby he was holding by attempting to intervene. In fact, he was sitting in one place throughout so the fact that there were no blood stains on his clothes cannot be said to be improbable or unnatural.

65. PW-3 continued to be under the threat of A-2 and A-3 even thereafter. They made him drive his car and take them from place to place. Therefore, this part of the story of the prosecution case is also totally probable and has been proved by the consistent evidence of PW-2 and PW-3.

66. A-2 and A-3 have attempted to discredit PW-3 as regards the description of the weapons that were used for committing the offence. Much has been made of the fact that the knives were described as '*rapis*' when in fact they were not *rapis* at all. It is seen that these weapons are not sophisticated. They are not branded objects that one purchases in a shop. These are crude sharp-edged weapons. Trying to draw a fine distinction about the weapons having to answer the description of '*rapis*' would be missing the point entirely. Clearly, from the sketches of the weapons, forming part of the trial court record, it is seen that they were indeed sharp-edged weapons which were like '*rapis*'. The prosecution was careful to describe them as weapons which were in the nature of *rapis*. In any event, this can hardly help either A-2 or A-3 when it is comprehensively established in the unshaken

testimonies of PW-2 and PW-3, supported fully by the medical evidence, that fatal injuries in the form of multiple stab wounds were suffered by both Saudagar Singh and Kartar Kaur. That the death was homicidal and as a result of multiple stab wounds is established beyond reasonable doubt.

67. The attempts over several years of torturous cross-examinations of PW-2 and PW-3 have been unable to be shake either of them in their clear, cogent as well as consistent testimonies regarding the presence of both A-2 and A-3 and the fact that they wielded the weapons attributing to them to cause of death of Saudagar Singh and Kartar Kaur as well as grievous injuries to PW-2. Both testimonies also clearly point to the participation of and linkage of A-1 in the crimes.

Other pleas

68. The PCR form recorded the earliest point in time, around 10:34 am, that an incident where both the parents of PW2 and she herself were brutally attacked has been conveyed to the police. Further it also records that the sister of PW-3 informed the police about the kidnapping of PW-3. From the side of A-1, it is sought to be contended that if indeed both the incidents, i.e. the kidnapping of PW-3 and the murder of the deceased were all interconnected then two FIRs ought not to have been registered. Reliance is placed on the decision of the Supreme Court in ***T.T. Anthony v. State of Kerala AIR 2001 SC 2637***.

69. In the considered view of the Court, the above submission is misconceived. As described by PW-1 (Manju), PW-3 was forced to accompany A-1 and A-2 at gun point and made to drive his own car from his

clinic. That was clearly one offence that warranted registration of the FIR at the place where it occurred, i.e. within the jurisdiction of PS Tilak Nagar. That it might have been registered three days late does not in any way falsify the deposition of PW-1, fully supported by the version of PW-3 himself. As rightly noted by the trial Court the failure by the police to formally register this FIR at PS Tilak Nagar does not in any manner discredit the version of PW-1.

70. After being made to drive to Pitampura, A-2 and A-3 made PW-3 take them to the house of his in-laws again under threat to his own life. This is also clearly established. There is definitely therefore, a continuity of events. The brutal murder of his in-laws and grievous injuries to his wife at the hands of A-2 and A-3 called for the other FIR which was registered at PS Shalimar Bagh. Ultimately, both FIRs were consolidated by the Court. The Court, therefore, does not find this to be a major discrepancy whatsoever. In any event what prejudice this linking of the FIRs has caused to them, if at all, has not been shown by any of the accused.

71. From the side of A-1, it is sought to be argued that PW-1 was a planted witness; that she knew A1 from before and it was, therefore, easy for her to implicate A-1 and that she made inconsistent statements in this regard.

72. A careful perusal of the evidence of PW-1 indicates that she was consistent about having seen A-1 and A-2 at the clinic; about PW-3 being taken away from there by them and forced at gun point to drive his own car. Certain contradictions have certainly been pointed out by confronting PW-1 with her previous statement to the police but these are not material enough

to discard her testimony. Further on the material aspects, she is corroborated by PW-3 himself.

73. On behalf of A-2 and A-3, arguments were advanced about the events that transpired after the killing of the parents of PW-2. There is an argument made regarding recoveries having been planted on them. The argument as regards the two knives is that PW-3 described it as a 'sickle' but PW-2 as '*rapi*'. The weapon described in the sketch is named as '*darati*' and '*khukri*'. As regards the pistol, it is stated that as per the forensic test, the bore of revolver was .32 bore whereas according to ACP B.R. Mann (PW-34), the bore was .25 bore. It is also stated that the pistol recovered is not even in working condition and, therefore, could not have been used for abducting or threatening anyone. It is, therefore, contended that the gun was a planted weapon.

74. The above submissions do not impress the Court. The description of the knives used by A-2 and A-3 do not, in any manner, throw doubt on the fact that the injuries received by PW-2 herself and the two deceased were grievous injuries by a sharp-edged objects, whether one calls them as '*rapi*', '*khukri*' or '*darati*'. The sketch of the weapon recovered and supported by medical evidence is enough to conclude that those weapons could have been used to cause death of the deceased. As far as the gun is concerned, it is of no consequence if it was .25 or .32 bore or whether it was not in working condition. It is nobody's case that the pistol was actually fired during the incident but only that it was used to threaten PW-3. Consequently, this discrepancy is of no assistance whatsoever to any of the accused.

75. It was urged that the distance between the clinic of PW-3 and his in-laws' place at Pitampura was such that a far longer time, than that suggested by the prosecution, would have elapsed by the time he reached Pitampura by car. The Court does not find this to be of any great significance. The time of receipt of the complaint as reflected in the PCR record for both FIRs and the fact that it was a public holiday (being Muharram) does not give rise to any grave doubt about the timing.

76. There is much made by counsel for the accused regarding non-lifting of the finger prints and blood stains from the car of PW-3. It is further sought to be suggested that the two accused, i.e. A-2 and A-3, could not be expected to wear the bloodstained clothes for five days in the extreme summer month of May and someone must have noticed blood on their shirts. It was contended that the blood on the shirts ought to have matched with the blood of the deceased. Likewise, it is stated that the blood on the weapons ought to have been tested.

77. It must be remembered that this is a case where we have two eye witnesses; one is an injured witness who has spoken cogently about the actual killings that took place without any serious contradiction. All of the other factors, viz., the finger prints matching, the blood group matching etc., would be in the nature of corroborative pieces of evidence. Where there is direct evidence of an eye witness, the fact that there may not be sufficient corroborative evidence is not very significant. There could be number of reasons for why no blood group matching was done which the Court would not like to hazard guesses about at this stage. It is sufficient to be noticed

that one of the weapons of offence did match the 'A' blood group of the deceased.

78. Much is also made of the fact that PW-9 stated that he found the conduct of PW-3 suspicious when he visited his shop and that he did not notice bloodstains on the clothes of PW-3 or A-2 or A-3. It is nobody's case that there were blood stains on PW-3. Therefore, the above statement by PW-9 does not contradict the case of the prosecution. As regards PW-9 finding the conduct of PW-3 suspicious, the context in which it was stated was not that PW-9 doubted that PW-3 was guilty of any offence. It was only that he found it strange that PW-3 would ask for so much money. It further tallies with the case of the prosecution that A-2 or A-3 were desperate for money to be paid to them by PW-3 and therefore, they forcibly took him from place to place for that purpose.

79. The evidence of PW-6 and PW-9, apart from PW5, supports the case of the prosecution as to the events that took place subsequent to PW-3 leaving the place of occurrence in his own car at the instance of A-2 and A-3 along with his baby. At every stage, he was under the fear of harm being caused to his baby and that would explain his strange behaviour. It is not suggestive of any culpability on the part of PW-3 as is put forth by the accused.

80. The non-examination of three persons by the prosecution is sought to be made much of. These three are: Mumtaz Ahmed, who was a tenant in the premises owned by the deceased and who was the first to give information to the police about the occurrence; Dr. Anita, who is the sister of PW-3 and; Dr. Gaurav Aggarwal, who is the brother-in-law. Dr. Anita is stated to have

called the police immediately after PW-3 was taken away by A-1 and A-2.

81. While it would have strengthened the case of the prosecution even further if these three persons had been examined, the Court is unable to be persuaded to hold that the prosecution deliberately kept these witnesses behind. Once the prosecution case finds complete supports from the eye-witnesses accounts of PW-2 and PW-3, one need not look elsewhere for further corroboration and further evidence as regards the occurrence. As far as the actual incident of killing of Saudagar Singh and Kartar Kaur and causing of the grievous injuries to PW-2 is concerned, the Court is satisfied that the eye-witness accounts of PW-2 and PW-3 do not suffer from any major or material contradictions. They fully corroborate each other as to the events that transpired in the span of ten minutes in the premises of the deceased on 3rd May 2004.

82. The Court is not able to accept the contention that PW-3 somehow masterminded the entire killing of his own in-laws by hiring two killers neither of whom was A-2 or A-3. There is nothing that has emerged in the cross examination of the PWs to even remotely substantiate such a plea. The involvement of A-1 in the entire occurrence is more than sufficiently established by the evidence of PW-1 who corroborates PW-3 on all the material aspects concerning the involvement of A-1. Additionally, both PW-2 and PW-3 have consistently stated that A-2 pressurized Saudagar Singh into giving in writing that he was leaving the property only to A-1. This brings to the fore the link of A-1 with A-2 and A-3 and therefore, completely proves the case of the prosecution convincingly.

83. It was submitted on behalf of A-1 that no effort was made to recover the paper containing the writing of Saudagar Singh to the above effect. It has emerged in the depositions of PW-2 and PW-3 that this piece of paper was possibly given to A-2. What A-2 did with it is not for anyone to guess. It is not unusual that the prosecution was not able to recover this piece of paper. Moreover, A-2 was on the run and was arrested more than five days after the incident. What he did with the paper, if any, is for him to explain. The non-recovery of that piece of paper therefore does not weaken the case of the prosecution one bit.

84. The minor contradictions about the number of persons who took PW-3 away from the clinic as spoken by PW-1; the absence in the statement first made to the police by PW-3 about A-1 having nodding her head in assent when asked if she was a party to the abduction, or the letting off of PW3 by A-2 and A-3 when they found that they could not extract any further money, are not material enough to doubt the veracity of the evidence of PW-2 and PW-3.

85. In order to show that A-1 was already in litigation with the deceased, learned counsel for the complainant argued that there are documents to show that there was a civil suit filed by A-1 for claiming her share and share of her child in the property and there were some proceedings ongoing before the CAW Cell. These are certainly factors that help the case of the prosecution that there was sufficient motive for A-1 to have organized the killing of the deceased as she was uncertain about getting a share in the property.

86. There is a discussion in para 108 of the trial court judgment of the evidence of Satvinder Singh (DW-3) regarding the arrest of A-2 at Jalandhar. A-2 is the son of DW-3's wife's *mausi*. His cross-examination by the APP exposed the hollowness of his claim about A2 having been forcibly lifted from his house at Jalandhar. He failed to report about any such incident considering that the persons who came there were in civilian clothing according to him. That they would tell him that they are from Crime Branch of the Delhi Police seems far-fetched. It has further come in evidence that. The learned trial Court was, therefore, right in disbelieving DW-3.

87. The other two defence witnesses were DW-1 and DW-2. DW-1 was Sukhvinder Kaur, the mother of A-3, who spoke about her son having been working as a hawker at Tilak Nagar. However, in cross-examination, she stated that she did not complain to the higher officials regarding the alleged bribe demand by ASI Jai Narayan. She is certainly an interested witness trying to save her own son. The other defence witness was Vikas, who again did not inspire confidence. The discarding of the defence evidence by the trial Court, therefore, cannot be faulted.

Conclusions

88. The evidence of the two eye witnesses, PW-2 and PW-3, was consistent and reliable on the material aspects of the crime. They remained unshaken despite extensive cross-examination spread over several years. PW-2 was a grievously injured eye witness who had absolutely no reason to falsely implicate A-2 and A-3. Both PWs 2 and 3 are consistent on the role and

involvement of A-1 in the crime as well. The evidence of PWs 2 and 3 is sufficient to bring home the guilt of the three accused for the offences with which they were charged. In the case of A-1, the offence of abetment of the murders of Saudagar Singh and Kartar Kaur has been proved by the prosecution beyond all reasonable doubt. The sentences awarded by the learned trial Court are fully consistent with the offences proved against the accused by the prosecution and also do not call for any interference.

89. For all of the aforementioned reasons, the impugned judgment dated 22nd March 2017 passed by the learned ASJ, convicting the Appellants for the offences for which they were charged, and the impugned Order on Sentence dated 1st April 2017 are hereby affirmed.

90. The appeals are accordingly dismissed but, in the circumstances, with no orders as to costs. The bail bonds of Appellant Kanwaljeet Kaur @ Sonia (A-1) are cancelled and she is directed to surrender forthwith. The pending applications are disposed of.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 14, 2017

Rm/rd