

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

Judgment reserved on : 02.05.2018

% **Judgment delivered on: 02.07.2018**

+ **CRL.A. 522/2000**

KAMAL KUMAR

..... Appellant

Through: Mr. K.K. Sharma, Senior Advocate
along with Mr. D.K. Sharma,
Advocate.

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor, along with Inspector
Bhanu Prakash, P.S – Mukherjee
Nagar, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S. TEJI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal has been filed by the appellant-Kamal Kumar under Section 374 Cr.P.C. against the judgment of conviction dated 24.07.2000 and order on sentence dated 31.07.2000 passed by learned Additional Sessions Judge, Tis Hazari Court, Delhi whereby the appellant has been convicted under Section 302/34 IPC and sentenced to undergo imprisonment for life and fine of Rs.2,000/- and in default of payment of

fine to further undergo simple imprisonment for four months for the offence under Section 302/34 IPC.

2. The factual matrix emerging from the record is that on 01/12/1995, an information was received from ASI Harphool Singh that at Indira Vikas Colony one person was lying injured and Police be sent to the said area. The said information was recorded in the daily diary vide No.24A at about 08:09 p.m. and the same was intimated to HC Sajjan Singh and the SHO Insp.Virender Singh Chauhan. The Inspector along with staff and SI RP Singh reached Indira Vikas Colony in their Govt. vehicle where HC Sajjan Singh was found present. There was a lot of blood on the spot and on inquiry it came to be known that the family members of the deceased had removed the deceased to Hindu Rao Hospital. Const. Dalbir was left at the spot for safety. In the hospital, MLC of the deceased Vishal was collected on which the doctors declared the deceased brought dead and sent the body to the mortuary. The complainant Vivek Kumar was present in the hospital along with his father Ramesh Chand. Vivek Kumar stated that he was an eye witness to the incident. SI RP Singh recorded the statement of the complainant-Vivek Kumar, brother of the deceased at the Hospital. He stated that he studies at Patrachar Vidyalaya in 10th Standard as a student. His father is employed with Delhi police as a Sub Inspector. He further stated that about three months ago, his brother Vishal (deceased) had developed feelings for Ms.Rita who is the daughter of Bodhraj. Both of them got married in a temple against the will of their family members. After marriage, they both went to the house of *bua* of Rita at Karnal. The father of Rita Sh Bodhraj, on getting to know that she was living with her *bua*, went to Karnal and brought her back home. Vishal also returned back to his home

the very next day. A meeting took place between the father of Rita and the father of the deceased, where it was settled that the relationship between them be brought to an end and there will not be any ill will towards each other. Though this settlement was arrived, Kamal-brother of Rita continued to nurse a grudge against the deceased. Kamal had said that he will take revenge for insulting his sister. Thereafter he had also extended threats on several occasions. On the day of incident i.e. 01.12.1995, after having some food, the complainant and the deceased were requested by their father to get some clothes from a nearby tailor. Upon reaching the tailor's shop, they found the shop to be closed. Thereafter, they started proceeding back to their home when at about 07:40 p.m., accused Kamal and his servant Pawan intercepted them. In front of the house of Laxmi Chand Pandit bearing house no.7/8 Indira Vikas Colony, accused Kamal and Pawan caught hold of Vishal and inflicted multiple stab wounds. The complainant Vivek Kumar raised an alarm, and his father and his uncle Brahm Prakash came to the rescue. On seeing them coming, accused Kamal and Pawan escaped from the spot of incident. Vishal was bleeding profusely and was covered in blood. He was removed to Hindu Rao Hospital in a TSR. The doctors declared him dead.

3. On the basis of statement of the complainant, DD No.24A and MLC of the deceased, a case was registered under Section 302/34 IPC. IO collected the blood soaked clothes of the deceased from the Hospital and seized them. Inspector sent a Crime Team to the place of incident with a photographer to take photographs of the crime scene. Blood stained earth, Earth Control and blood samples were picked from the spot and seized. The site plan was prepared. Accused persons were arrested and their disclosure

statements were recorded. At the instance of accused Kamal, the weapon of offence i.e. a Knife was recovered. Its sketch was prepared and the same was seized. The blood stained clothes of the accused were also seized. Post Mortem of the deceased was got conducted. Exhibits were sent to FSL Malviya Nagar. Sh. Ramesh Chand, father of the deceased produced documents and photographs of the marriage of the deceased with Rita and the same were seized. After conclusion of investigation, charge-sheet was filed in the court.

4. Charge for the offence under Section 302/34 IPC was framed against the appellant and co-accused Pawan Kumar, to which they pleaded not guilty and claimed trial.

5. To prove its case, the prosecution had examined 3 eye- witnesses, namely, Vivek Kumar (PW1)- Brother of deceased, Ramesh Chand (PW4)- Father of deceased and Brahm Prakash (PW5)- Uncle of deceased. Other formal witnesses were also examined.

6. After completion of prosecution evidence, the statement of the accused persons under Section 313 Cr.P.C. was recorded in which they claimed innocence and denied the entire case of the prosecution. The appellant examined a defence witness, namely, Laxmi Chand (DW-1).

7. On appreciation of evidence and material brought on record, the trial court convicted the appellant and co-accused Pawan Kumar under Section 302/34 IPC vide impugned judgment dated 24.07.2000 and order on sentence was passed on 31.07.2000. Feeling aggrieved of the same, the appellant has preferred the instant appeal.

8. Argument advanced by the learned counsel for the appellant is that Laxmi Chand, who was an eye witness to the incident and had also informed the police about the incident, was not examined and investigated by the prosecution. To corroborate this, the appellant relies upon the statement of ASI Harphool (PW 12), where he deposed that he was informed by an unknown person through telephone that one person was lying in injured condition at Indira Vikas Colony vide DD No.24A. Further, the appellant contends that as per the cross examination of PW5-Brahm Prakash, Laxmi Chand had informed the police of the incident. As per the statement of DW-1 Laxmi Chand, he was present at his house; on hearing noise he inquired and saw one person was lying outside his house soaked in blood, subsequent to which he made a phone call on No.100 from a telephone booth.

9. Ld. Counsel submits that as per the case of the prosecution, accused Kamal made a disclosure statement in the presence of PW-4. Thereafter, the accused led the police party to 82/83, Jharoda Dairy from where the weapon of offence i.e. knife was allegedly recovered in the presence of PW-4 along with blood stained clothes of the accused persons. Ld. Counsel for the appellant submits that the said recoveries were doubtful and were planted, as there was no independent public witness present there at the time of recovery of the said knife and blood stained clothes. He further contended that the fingerprints on the knife did not match with those of the accused. He further argued that though it came in the statements of PW1 and PW5 that one Jyoti Sharma had witnessed the incident, but the prosecution had not examined her. He further submitted that PW5 stated that Tyag Raj and Dr.Mahesh had also helped putting Vishal in the three wheeler, but those witnesses have not been examined by the prosecution. Even the clothes of

PW5 were not seized by the police to establish his presence at the spot at the time of the incident.

10. In support of the above contentions, the appellant has placed reliance on *Anil Kumar Goswami v. State (NCT of Delhi)*, 2012 (1) JCC 47, to press the contention that no complaint regarding extending of threats by the accused, or his family members to the deceased was ever lodged and that there was no public witness to the alleged recovery of knife and clothes of the accused. He has also relied upon *Golbar Hussain and Ors. v. State of Assam and Ors.*, (2015) 11 SCC 242; and *Satish Kumar v. State*, 1996 Cri.L.J. 265, to submit that there is no independent witness to corroborate the testimony of the relatives of the deceased and that they being related witnesses, are interested witnesses and are not credible and reliable; and, that in the absence of independent public witness to the recovery, the same cannot be relied upon.

11. Per contra, learned APP for the State has argued that PW1-Vivek being brother, PW4-Ramesh being father and PW5-Brahm Prakash being uncle of the deceased have duly supported the case of the prosecution. From their testimony, the incident has been duly proved. The MLC Ex.PW2/A of the deceased shows that he was taken to the hospital by his father (PW4). The MLC of the accused shows that he was medically examined on 02.12.1995 at 9.45 a.m. showing abrasion on right thumb dorsal region. The recovery of knife and blood stained clothes of the accused has duly been established from the testimony of PW4, PW13, PW18 and PW20. The FSL report further corroborates the case of the prosecution that blood group 'A' of the deceased was found on the clothes of the accused. Even the doctor

had stated that the injuries on the person of the deceased could be caused with the recovered knife. Regarding non-examination of Jyoti Sharma, learned APP submits that though she was named as a witness, but since she was not traceable, she was dropped as a witness by the Court on 29.04.1999. Even the Non-Bailable Warrants issued against her were returned unexecuted. Regarding Laxmi Chand, Ld. APP submits that he was not an eye witness inasmuch, as, IO Insp. Virender Singh Chauhan had stated that when he enquired from Laxmi Chand regarding the incident, he stated that he was sleeping at that time and that was the reason for his non-examination by the prosecution. Mr. Katyal further submitted that the recovery of knife and clothes of the accused was effected at about 2.40 a.m., and since those were odd hours, it was hardly possible to find any public witness at that time. Even the IO made efforts to join the labours from the adjoining dairy in the investigation, but they refused to join.

12. We have heard and considered the submissions advanced by learned counsel for the appellant, and by the learned APP for the State. We have also gone through the evidence led by the parties and the impugned judgment.

13. The first eye witness to the incident is PW-1 Vivek Kumar. In his statement, PW-1 stated that on 01.12.1995 on the request of his father, he and his brother Vishal (deceased) had gone to the tailor shop to collect some clothes, but decided to return home as the shop was closed. The accused Kamal intercepted PW-1 and his brother and stabbed Vishal multiple times with a knife. Pursuant to the attack, PW-1 raised an alarm, to which PW-4 Ramesh Chand- who is the father of PW-1 and the deceased, and PW-5

Brahm Prakash- who is the uncle of PW-1 and the deceased, rushed to the place of incident. Both the accused persons on seeing PW-4 and PW-5 approaching them, fled from the place of incident.

14. The other key witness in the present case is PW-4 Ramesh Chand- who is the father of the deceased. PW4 stated that on 01.12.1995, after having food with his children he had asked his sons Vishal and Vivek to bring the clothes from the tailor's shop. Thereafter PW4 along with PW5 had gone outside for a stroll. After about 5-6 minutes, PW4 heard his son Vivek shouting and consequently PW4 and PW5 went towards Gali no.7 where they saw accused Pawan Kumar had caught hold of his son, and Vishal was stabbing him and he was lying on the ground. He further deposed that accused Kamal kept on stabbing Vishal even after he fell on the ground. PW4 along with PW1 and PW5 removed the deceased to Hindu Rao Hospital. The son of PW4 was declared brought dead in the hospital. Statement of PW1 was recorded. The blood stained clothes of the deceased were seized in a pulanda and were taken into custody vide Ex.PW1/C. The blood was picked up by the police from the earth at the place of incident. Earth control was also taken. These were taken into possession vide Ex.PW1/D. The accused Kamal was thereafter arrested vide personal search memo Ex.PW4/A and co-accused Pawan was also arrested vide memo Ex.PW4/B. The articles were taken into custody and were sealed in the pulanda with the seal of BS. PW4 also deposed that the accused Kamal made a disclosure statement in his presence. The accused Kamal then lead the police party- in which PW4 was also present, to Jharoda Dairy bearing property no.82/83. Recovery of the knife was made from the room and the same was taken into possession vide Ex.PW4/D. The sketch of the knife was

prepared before its sealing vide Ex.PW4/E. The blood stained clothes of the accused Kamal and co-accused Pawan were taken into possession vide Ex.PW4/F. PW4 identified the dead body of Vishal vide Ex.PW4/H. The photographs of the son of PW4 along with Rita were produced which are marked A1-A4. PW4 also identified the clothes of accused Kamal Kumar which were produced in the Trial Court vide Ex.P-10, P-11 and P-12. PW4 also identified the clothes of the accused Pawan vide Ex.P-13, P-14 and P-15. The knife used by the accused Kamal for the commission of the offence was also identified by PW4 vide Ex.P-9.

15. The other key witness of the present case is PW-5 Brahm Prakash, who is the uncle of the deceased. PW5 deposed that on 01.12.1995, he had come out of the house along with PW4 to take a stroll. PW5 heard the shouts of his nephew Vivek (PW1), and so PW5 along with PW4 ran towards Gali no.7. On reaching the spot, PW5 saw that the accused Pawan had caught hold of the deceased, while accused Kamal was stabbing him. The deceased was lying on the ground and the accused Kamal was stabbing him. The accused persons on seeing PW4 and PW5 coming towards them fled from the place of incident. Thereafter, PW4 and PW5 had removed the deceased to Hindu Rao Hospital in a three wheeler where he was declared brought dead. PW5 also identified the accused Kamal in the court.

16. PW5 in his cross-examination stated that the deceased and Rita had eloped and got married against the wishes of their families. On getting the knowledge that the deceased and Rita had eloped to their *bua's* house, the father of Rita, namely, Sh.Bodh Raj went to Ambala where they were staying and had given beatings to the deceased and had brought Rita back to

their home. Vishal (deceased) thereafter, ran away from the house of the *bua* of Rita and had come back to Delhi on the next morning. The deceased told PW5 telephonically that he was given beatings by Bodh Raj. PW5 further stated that the deceased Vishal had given prior intimation to him and informed that the accused Kamal was planning to kill Vishal, as the accused Kamal was not happy about the marriage. Vishal had also intimated him of the danger he apprehended from the family of Kamal, though no complaint was lodged against the appellant. PW5 further stated that a quarrel had taken place between Kamal and Vishal. PW5, thus corroborated the prosecution story. He affirmed the presence of the accused Kamal at the place of incident, and established the motive to commit the said offence.

17. We do not find any merit in the submission of learned counsel for the appellant that PW-1, PW-4, or PW-5 were interested witnesses in the sense that they were interested in securing conviction of the accused by hook or by crook. No doubt, they are related witnesses since they were the brother, father and uncle of the deceased respectively. Their interest only lay in securing conviction of the guilty persons whom they had seen attacking the deceased. However, their interest did not extend to falsely implicate the accused and to secure their conviction since they had no subsisting animosity with the accused, and they had nothing to gain monetarily, or otherwise, by falsely securing their conviction. Since the deceased was related by blood with PW-1 and PW-4, and was a close relative of PW-5 – being his nephew, they could not be expected to falsely implicate innocent persons, and to let the real culprits get away with their crime.

18. In *State of Rajasthan Vs. Kalki*, (1981) 2 SCC 752, the Supreme Court rejected the contention that the wife of the deceased was a “highly interested” witness on account of her relationship with the deceased. The Supreme Court observed in *Kalki* (supra):

“7. ... True, it is, she is the wife of the deceased; but she cannot be called an “interested” witness. She is related to the deceased. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be “interested”. In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents.”

19. The decision in *Kalki* (supra) has been followed by the Supreme Court in *State of Uttar Pradesh Vs. Kishanpal & Others*, (2008) 16 SCC 73.

20. We may observe that in a subsequent decision rendered in *Raju @ Balachandran & Others Vs. State of Tamil Nadu*, (2012) 12 SCC 701, another bench has observed that the observations made in *Kalki* (supra) that “A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be “interested”” is too narrow & generalized and needs rethink. However, in the facts of the present case, we are not concerned with the generalized proposition laid down in *Kalki* (supra), and we only wish to emphasize that “interested witness” is not the same as “related witness”. In the present case, the accused did not probablise the defence that PW-1, PW-4 and PW-5 were “interested witnesses” inasmuch, as, they had monetary gain to derive by securing the

conviction of the accused, or they had specific reason for harbouring personal animosity towards the accused. The dispute between the families of the accused and the deceased stood settled, since they had agreed to dissolve the marriage of the deceased with the sister of the accused Kamal. In fact, the said history provided motive to the accused to commit the offence. Moreover, there are other corroborative evidences brought on record to support the testimonies of PW-1, PW-4 and PW-5, as taken note of in the judgment.

21. The investigating officer PW20 Virender Singh Chauhan deposed that on the day of incident he was on patrolling duty and had received an information through wireless. It was also marked to HC Sajjan Singh, the emergency officer who along with Ct. Dalbir Singh reached the spot. The IO along with SI RP Singh reached the spot where HC Sajjan Singh was present along with Ct. Dalbir Singh. On reaching the place of incident, he saw the blood of the injured lying there and the injured had already been removed to Hindu Rao Hospital by his family members. Ct. Dalbir Singh was left for the safety of the spot. PW20 along with SI RP Singh went to the hospital where the MLC (Ex.PW2/A) of the deceased was obtained. Doctor opined the injured as brought dead. Statement of PW2 u/s 161 Cr.P.C. was recorded as he claimed to be the eye witness. The crime team and photographers were sent to the spot. On reaching the place of incident, Ct. Dalbir Singh had produced two pulandas. PW20 got lifted the blood with cotton, blood stained earth and all the samples were taken into possession vide memo Ex.PW1/D. Photographs were also taken at the spot. The place was also inspected by the crime team. PW20 also stated that the house of Bodh Raj was situated near the place of incident. On getting information that

his son Kamal Kumar @ Kamal and Pawan Kumar @ Pawan could be present at Jharoda Dairy, PW20 along with PW4 Ramesh Chand and SI RP Singh went there and arrested the accused persons. Their personal search memo Ex.PW4/A and Ex.PW4/B were prepared. Upon interrogation, the accused Kamal disclosed that he can get the knife recovered used in crime. His disclosure statement Ex.PW4/C was recorded, in pursuance of which, he got recovered the knife which was seized. It was blood stained and was produced in the presence of the eye witnesses PW4 and SI RP Singh. The blood stained clothes of the accused Kamal were seized vide seizure memo Ex.PW4/F. Similarly, the accused Pawan Kumar's clothes were also seized vide seizure memo Ex.PW4/G. The identification statement of PW5 was recorded along with the statement of PW 4 and also of PW2. PW20 recorded the statements of witnesses. Charge sheet was thus filed.

22. PW20, thus, corroborated the prosecution story, as he affirms the recovery of the blood stained clothes of the accused and the knife used in commission of the said offence at the instance of the accused/appellant. He also corroborated the recording of statement of the complainant and arrest of the accused persons.

23. The postmortem on the dead body of the deceased was conducted by Dr.C.B Dabas (PW8). PW8 deposed that on 02.12.1995 at about 12.30 p.m., he conducted the postmortem on the dead body of Vishal. The body was received with the alleged history of sustaining stab injury. On examination, PW8 found one linear scratch abrasion 7 cm X 0.2 cm situated over right side face and adjoining part of neck, one stab wound 3 X 0.8 cm situated on right side of neck in front of the medial end being 2 outer to midline, one

stab wound 1.5 X 0.2 cm in front of neck in midline, 4cm above supra sternal notch, edges of all these (2-3) wounds were clear cut and medial angles were rounded and lateral angles being acute, incised wound 3 X 1 cm situated in web of right thumb and index finger, stab wound 1.5 cm X 0.5 cm X 4 cm deep situated on right buttock, one stab wound 1.5 X 0.5 X 3 cm deep situated on middle part of right buttock on inner part, one stab wound 1.5 X 0.5 X 3.5cm deep situated on right buttock on inner part, superficial incised wound 2 X 4cm situated over right buttock just below the previous injury mentioned placed vertically with margins being clean cut upper angles being round and lower angle were acute located at the height of 92cm above right heel, grased abrasion in area of 12 X 5cm with keeping of cuticle in lower part, situated over upper quadrant of left buttock, one stab wound 1.5 X 0.5cm X 2cm deep situated over outer middle part of left buttock, placed vertically with upper angle being rounded and lower angle acute. Direction of injury being from behind to forward and slightly upward direction and located at the height of 96cm above left heel, abrasion 3 X 2cm over left shoulder, one stab wound 1.5 X 1cm depth placed obliquely on left side front of chest with upper angle being round and lower angle acute lying 15cm outer to midline and 10cm below left nipple and 129cm above left heel. One stab wound measuring 1.5 X 0.5cm situated over front of chest in lower part, placed horizontally 3cm outer to midline on left side 15cm below left nipple opposite 8th costal cartilage at the height of 126cm above left heel. The lateral angle of the wound is round and middle angle is acute, one stab wound 1 X 0.8cm situated on right side front of abdomen in lumber region about 3cm outer to midline at level of umbilicus placed transversely with middle angle being round and lateral angle being acute

located at a height of 113cm above right heel and one stab wound 1.5X0.6cm placed transversely with posterior angle being round and anterior angle being acute located at a height of 122cm above left heel. As per the opinion of the doctor, cause of the death was shock and hemorrhage as a result of ante-mortem injuries. Injury no.2 was opined to be sufficient to cause death individually in ordinary course of nature. Injury no.9 and 11 were caused by the use of blunt force impact with a hard surface/object. Injury no.1, 2 to 8, 10 and 12 to 15 were opined to be caused by a sharp edged weapon and ante-mortem in nature. He proved the postmortem report vide Ex.PW8/A.

24. The testimony of PW8 and the postmortem report Ex.PW8/A of the deceased further corroborates the case of the prosecution that the death of the deceased was caused due to stab wounds caused by a sharp edged weapon, and injuries sustained on the neck were the cause of death of the deceased. Thus, it is proved beyond reasonable doubt that the death of the deceased was a homicidal one.

25. Learned counsel for the appellant argued that as per the cross examination of PW5 Brahm Prakash, Laxmi Chand was an eye witness who had informed the police of the incident and, despite this, Laxmi Chand was not examined as a prosecution witness and was not interrogated. As per the statement of PW20- who is the IO in the present case, he stated that on his second visit to the spot, he spoke with Laxmi Chand who was an occupant of the house which was situated in front of the place of incident. Laxmi Chand stated that at the time of incident he was sleeping and had no knowledge of what was happening whatsoever. The explanation given by

the IO is that, since as per his own statement, Laxmi Chand was sleeping at the time of the incident and was not an eye witness to the incident, there was no necessity to examine him or to record his statement.

26. We are not impressed by this submission of learned counsel for the appellant as Laxmi Chand was examined as a defence witness – DW1 by the appellant to substantiate his plea that he was the eye witness of the incident. DW1 in his testimony, deposed that, on 01.12.1995 at 7.30 p.m., he was present in his house. On hearing the noise, he came outside and saw that one person was lying outside his house with injuries and he was soaked with blood. No other person was standing there. He did not see any person with injuries. DW1 made a telephone call at No.100 from a telephone booth.

27. Thus, from the testimony of DW-1, it is evident that he was not a witness to the incident of stabbing of the deceased, and he came into the picture after the deceased had been stabbed. He categorically stated that he did not see any assailant also. Thus, non-examination of DW-1 as a prosecution witness is immaterial.

28. The learned counsel for the appellant further argued that the recovery of knife and clothes is doubtful. He submits that the finger prints on the knife did not match with the finger prints of the appellant. The knife used for committing the offence was recovered within a few hours at the instance of the appellant with PW4 being an eye witness to it vide seizure memo Ex.PW4/D. As per the FSL report Ex.PY, the blood on the knife matched with the blood of the deceased. Similarly, the clothes of the appellant were seized at his instance vide Ex.PW4/F. As per the FSL report vide Ex.PY, the blood on the clothes of the appellant matched with the blood of the

deceased. Therefore, the submission of learned counsel for the appellant that the recoveries were doubtful has no basis. Though, it is apparent that the finger prints on the knife did not match with that of the appellant, but the same cannot be said to be fatal to the case of the prosecution in view of the testimony of the eye witnesses and other incriminating evidence.

29. Next contention of the learned counsel for the appellant is that Jyoti Sharma was one of the eye witnesses of the incident. He submits that the prosecution has not examined her for the reasons best known to them, and her non-examination, being one of the independent public eye witnesses, creates doubt about the case of the prosecution. We have gone through the submission of the learned counsel as well as record of the Trial Court. The Trial Court record shows that Ms. Jyoti Sharma was cited as a witness as per the List of Witnesses attached with the final report u/s 173 Cr.P.C. Record further reveals that she was summoned as a witness but she was not traceable. Even NBWs were issued to her to secure her presence but the same were returned unexecuted and ultimately she was dropped as witness by the Trial Court vide order dated 29.04.1999. Thus, there is no force in the contention of the appellant that Ms. Jyoti Sharma was not cited as a prosecution witness.

30. As discussed above, the eye witnesses have specifically attributed the role of the accused/appellant Kamal in causing stab injuries to the deceased Vishal. PW1, who was with the deceased at the time when they were stopped in the street by the accused persons, has categorically stated that accused Pawan Kumar caught hold of Vishal and then accused Kamal gave knife blows to him. His testimony has been duly corroborated by other eye

witnesses, PW4 and PW5, who have also stated that when they reached the spot on hearing the shouts of PW1-Vivek, they saw that deceased Vishal was caught held by the accused Pawan Kumar, whereas accused Kamal was giving him knife blows. They have also stated that the deceased fell on the ground and he was stabbed by accused Kamal while he was on the ground also. Though all these eye witnesses were cross-examined at length by the defence, but their testimony remained unimpeached and unchallenged. They stuck to their stand that it was the accused Kamal, who gave knife blows on the person of the deceased. The testimony of eye witnesses have duly been corroborated by the recovery of the knife and blood stained clothes of the deceased and accused persons, postmortem report of the deceased and FSL report. On a reading of the opinion of the doctor, postmortem report Ex.PW8/A and the testimony of PW1, PW4 and PW5, there is no doubt that the accused Kamal gave knife blows to the deceased which resulted into death of the deceased. In our view, the testimonies of PW1, PW4 and PW5 are natural, consistent and trustworthy and the accused/appellant has failed to put any dent to their testimonies.

31. Reliance placed by learned counsel for the appellant on **Anil Kumar Goswami** (supra) is misplaced. In this case, the Court disbelieved the case of the prosecution not only on the basis that the prosecution had not established the factum of issuance of threat by the accused to the deceased six months prior to the incidence, but the prosecution had also failed to establish the other essential incriminating circumstances to secure the conviction of the accused. In that case, the dagger (Ex.P1) was recovered but the same was not shown to the doctor, who conducted the post-mortem on the body of the deceased, to prove that the injuries caused to the deceased

could be possible with the said weapon got recovered by the appellant. The position is materially different in the present case. The decision in *Anil Kumar Goswami* (supra), therefore, has no application in the facts of the present case.

32. Reliance is also placed on *Golbar Hussain* (supra). This decision, in fact, supports the case of the prosecution, since the Court observed that the testimonies of PW-4 and PW-5, who were related witnesses – being brothers of the deceased, were admissible and there was no bar to their admissibility. However, they were not relied upon, since they were found to be contradictory to each other, and they were also not corroborated by independent evidence. The decision in *Golbar Hussain* (supra), therefore, does not advance the case of the accused.

33. Learned counsel for the appellant has also relied upon *Satish Kumar* (supra). In the facts of that case, the Court did not find the testimony of PW-1 – being the mother of the deceased, to be credible since she claimed that the deceased had made a dying declaration to her, naming the accused. However, there was no mention of the name of the accused in the first statement of PW-1 – the mother, on the basis of which the FIR came to be registered. In this case, the Court also found that the I.O. had made no effort to join independent witnesses before recording the disclosure statement of the accused and before effecting the recoveries. The Court observed that it was not the case that no such public witnesses were available or any sincere effort was made in joining the public witnesses, but without success. However, in the facts of the present case, the recoveries were made in the dead of the night at 2 a.m. when public witnesses would normally be not

available. Moreover, the prosecution had cited an independent witness, namely Jyoti Sharma but she could not be served with the summons as well as the warrants, since she could not be located. Consequently, the decision in *Satish Kumar* (supra) has no application in the facts of the present case.

34. In view of the totality of the above discussion, we are of the opinion that the appellant has failed to dent the case of the prosecution and the impugned judgment. Rather, the evidence brought on record i.e. testimonies of the eye witnesses, which have duly been corroborated by the recovery of blood stained knife and clothes; postmortem report of the deceased, and; the opinion of the doctor with regard to use of the knife, conclusively establishes the case of the prosecution against the appellant that he has committed the murder of the deceased. We do not find any illegality or infirmity in the impugned judgment rendered by the learned ASJ. Consequently, the judgment of conviction passed by the trial court is upheld, and the sentence passed is sustained.

35. Appeal is accordingly dismissed.

(VIPIN SANGHI)
JUDGE

(P.S. TEJI)
JUDGE

JULY 02, 2018