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

+ **CRL.A. 34/2018 & CRL.M.(B) 44/2018**

SURESH @ PAWAN Appellant

Through: Mr. K. Singhal, Advocate and Mr.
Sanjeev Yadav, Advocate

versus

STATE Respondent

Through: Mr. Amit Chadha, APP.

+ **CRL.A. 159/2018 & CRL.M.(B) 247/2018**

ISLAM Appellant

Through: Mr. K. Singhal, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI Respondents

Through: Mr. Amit Chadha, APP.

+ **CRL.A. 162/2018 & CRL.M.(B) 250/2018**

KALIM @ SONU Appellant

Through: Mr. K. Singhal, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Kewal Singh Ahuja, APP.

+ **CRL.A. 163/2018 & CRL.M.(B) 251/2018**

KISHAN Appellant

Through: Mr. K. Singhal, Advocate

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Kewal Singh Ahuja, APP

+ **CRL.A. 61/2018 & CRL.M.(B) 115/2018**

SADDAQ HUSSAIN

..... Appellant

Through: Mr. Chanan Parwani, Advocate with
Ms. Sajni Kachwaha and Mr. Samar
Kachwaha, Advocates & Mr. Sanjeev
Yadav, Advocate

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for State.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER
21.03.2018

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Dr. S. Muralidhar, J.:

1. These are five appeals directed against the common judgment dated 13th November 2017 passed by the learned Additional Sessions Judge ('ASJ'), North District, Rohini Courts, Delhi in Sessions Case No.59365/2016 arising out of FIR No.382/2016 registered at Police Station ('PS') Jahangir Puri. By the impugned judgment, the learned ASJ convicted the Appellants for the offences punishable under Sections 302/34 IPC, 323/34 IPC, 307/24 IPC, 341/34 IPC and 455/34 IPC.

2. The appeals are also directed against the order on sentence dated 18th November 2017 whereby each of the Appellants was sentenced as under:

- (i) For the offences under Section 302/34 IPC for rigorous imprisonment ('RI') for life with fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment ('SI') for 1 year.
- (ii) For the offence under Section 307/34 IPC to 14 years RI with fine of Rs.5,000/- and in default to undergo SI for 1 year.
- (iii) For the offence under Section 323/34 IPC to undergo SI for 1 year ,
- (iv) For the offence under Section 341/34 IPC to undergo SI for one month,
- (v) For the offence under Section 455/34 IPC to undergo RI for 7 years with fine of Rs.2,000/- and in default of payment of fine to undergo SI for six months.

The charge

3. The charge against the Appellants was that on 3rd July 2016, at around 10:30 pm, near Khatta, ITI on the main road Jahangir Puri, Delhi all of them, in furtherance of their common intention:

- (i) obstructed the way of Vijay (the deceased) and Jeet did not allow them to move and, therefore, committed the offence of wrongful restraining them punishable under Section 341/34 IPC,
- (ii) caused the death of Vijay by stabbing him repeatedly thereby committing the offence under Section 302/34 IPC,
- (iii) stabbed Jeet Kumar with the intention and knowledge that had he been killed, they would have been guilty of murder thereby committing the offence punishable under Section 307/34 IPC.
- (iv) causing knife injuries to Abhishek (PW-9), son of Shiv Kumar, thereby committing the offence punishable under Section 324/34 IPC.

- (v) caused simple hurt to Sushila thereby committing the offence under Section 323/34 IPC, and
- (vi) entered the jhuggi of Beena (PW-13) during the night after making preparation to cause hurt thereby committing the offence punishable under Section 455/34 IPC.

The PCR calls

4. The process of law was set in motion with a call being made to Police Control Room ('PCR') at 11:24 pm on 3rd July 2016 by one Suresh stating that a quarrel was ongoing at K-Block huts behind ITI, Jahangir Puri. The PCR form (Ex.PW-19/A) noted that after the police reached there, the message was that "*do jaankaro ka jhagra tha. Ek lady injured thi jise BJRM hospital me hosh hawash me admit karwa diya, ASI Ram Chander*".

5. There were three other PCR calls. The PCR form for the call at 11:38 pm (Ex.PW-21/A) gave the name of the caller as Shiv Pal and again mentions that there was a quarrel at the K-Block Jhuggi in Jahangir Puri. There was a third call at 11:28 pm from one Raj Pal to the same effect. The message noted in the PCR form (Ex.PW-21/B) is that Jeet, son of Ramesh, and Vijay, son of Salig Ram, were both injured with knives and that their family members have already taken them to BJRM Hospital. The fourth call to the PCR (Ex.PW-21/C) was made by one S. Bano where the message again was that a quarrel was happening near the *khatta* near ITI, Jahangir Puri.

6. A strange feature of the present case is that none of the four PCR callers were examined as prosecution witnesses (PWs).

Initial reaction of the police

7. There were four DD entries recorded corresponding to the four PCR calls at PS Jahangir Puri: DD Nos.62A, 63A, 64A and 65A. Assistant Sub-Inspector ('ASI') Ram Chander (PW-31) was the first police officer to be alerted. On receiving DD No.62A, he along with Constable Vinod (PW-27) reached the spot and learnt that the injured had already been removed to BJRM Hospital. There they found Sushila (PW-14), Vijay (the deceased) and Jeet had been admitted there. PW-31 went through their MLCs. He stated that he did not find any eye-witnesses at the hospital.

8. PW-31 then recorded the statement of Jeet (Ex.PW-31/A). Jeet told him that he along with Vijay were on their way to answer nature's call at the *khatta* when Saddaq (A-5), Suresh (A-3), and Krishan (A-2) stopped them. In the quarrel that ensued, they started stabbing Vijay and Jeet. As they were fleeing, Vijay fell to the ground. At the same time, Sandeep, Sonu @ Kalim (A-4), and Islam (A-1) also reached there and started stabbing Vijay indiscriminately. Jeet went away and reached the Jhuggi of his *mausi*, Beena Devi (PW-13), and bolted the door from inside. A-5 then kicked the door open and thereafter all the above named accused stabbed Jeet indiscriminately with knives and a sword type weapon. On PW-13 raising an alarm, all the accused ran away. On the way, A-5 caused injury to Abhishek (PW-9) with a sword type weapon.

9. Jeet is further supposed to have stated to PW-31 that on the previous day, i.e. 2nd July 2016, there had been a quarrel between him and Munni Lal (PW-3) which ended in a compromise.

10. On the basis of statement of Jeet (Ex.PW-31/A), the *rukka* was prepared and handed over to Constable Vinod (PW-27) for registration of the FIR. PW-31, at the instance of Jeet, prepared a rough site plan (Ex.PW-31/C). The crime team was called and inspected the scene of the crime and gave a report (Ex.PW-31/D).

11. What is strange about this crime team report is that while they lifted the two earth control samples from the site, no other bloodstains or blood filled earth was collected. Interestingly, even the house of PW-13 which was supposed to have been broken into was not properly inspected. If the door was broken into, the door should have been photographed but that was not done. There appears to have been no seizures made at that point in time. Another important aspect is the bloodstained clothes of neither Vijay nor Jeet nor anyone carrying them to the hospital were collected. No knives were seized and nothing was sent to the FSL for examination.

The MLCs of the victims

12. At this stage, it is necessary to refer to the MLCs of the victims. The MLC of Vijay (the deceased) was (Ex.PW-17/A). It showed the time of his being brought at the BJRM Hospital as 11:45 pm on 3rd July 2016. He was brought there by his mother, Guddi (PW-10). The presence of the smell of alcohol was noted. As far as the injuries are concerned, the first injury noted is a sharp incised wound on the left thigh measuring approximately 3 cm x 1 cm. The second was a sharp incised wound of 3 cm x 1 cm on the left leg. This report was signed one Sanjay Singh, Senior Resident (SR) who was not

examined as a PW. This MLC noted that the patient was conscious. There is no endorsement about the patient not being fit for statement. The advice was for stitching of the wound and referral to surgery. However, nothing is known as to how long Vijay was admitted at this hospital.

13. The MLC bears the rubber stamp of Dr. Mukesh Mandal (PW-17), who first examined Vijay, Sushila (PW-14) and Jeet but the final opinion as to the nature of injuries on the MLC of Jeet was given by the SR Surgery to whom Jeet had been referred for further management. In the cross-examination, he stated “after perusal of all MLCs, it is observed that there was no injury on the fatal part of the body of the respective subjects”.

14. Why the statement of Vijay, who was conscious at that time, and not unfit to make a statement, was not recorded is a mystery. PW-31, who reached the hospital and saw Vijay and perused his MLC, offers no explanation for this lapse.

Vijay's treatment

15. The prosecution is unable to explain when Vijay was discharged from the BJRM Hospital. The Investigating Officer (IO) did not collect the discharge summary. His father Salig Ram (PW-8) stated that Vijay was taken from the BJRM Hospital (he does not say when) to the Lok Nayak Jai Prakash ('LNJP') Hospital and was treated there for about 15-20 days. Since there was no improvement in his condition, Vijay was treated in the private hospital, the name of which PW-8 again did not remember. Thereafter, Vijay was brought home but his treatment continued. One day, Vijay's

condition deteriorated and PW-8 took him to a private hospital from where he was referred to the Ram Manohar Lohia ('RML') Hospital where Vijay died the following day. In other words, although the incident took place on 3rd July 2016, Vijay ultimately expired on 17th September 2016. Therefore, although Vijay was alive for a period of over two and a half months, no effort was made by the police to get his statement recorded even under Section 161 Cr PC let alone getting his statement recorded under Section 164 Cr PC before a Metropolitan Magistrate (MM). There is again no explanation for this very serious lapse of the IO.

The position concerning Jeet

16. The position as regards Jeet, who was injured in the attack, was no different. His MLC reveals that he was brought to the BJRM Hospital at 12:16 am on 4th July 2016. In his case also, alcohol smell was present. As many as six sharp incised wounds were noticed. These were (i) on the right arm; (ii) on the left thigh; (iii) on the right lateral aspect of thigh; (iv) on the right index finger; (v) on the left arm and forearm; and (vi) on the right shoulder. He was referred to surgery.

17. Importantly, PW-17 who first examined Jeet, categorized all the injuries as 'simple'. Jeet admittedly died not as a result of these injuries. He was killed in some other incident on 25th December 2016 for which there is a separate case registered. Thus, although Jeet was available from 3rd July 2016 till 25th December 2016, no attempt was made by the IO to have Jeet's statement under Section 164 Cr PC recorded before an MM. The evidence of an injured eye-witness which could have been invaluable to the prosecution

was thus lost. Yet another major lapse by the IO.

Eye witness testimonies

18. This appears to be a case where there was utter carelessness on the part of the IO. This becomes very apparent when one carefully peruses the testimonies of the eye-witnesses, one of whom was injured. The key eye witness for the prosecution is Guddi (PW-10), the mother of Vijay, who is an interested witness. In this context the settled legal position may be recalled. In ***Dharnidhar v. State of Uttar Pradesh (2010) 7 SCC 759***, the Supreme Court explained:

“12. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the court. It will always depend upon the facts and circumstances of a given case. In *Jayabalan v. UT of Pondicherry (2010) 1 SCC 199*, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under: (SCC p. 213, paras 23-24)

“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. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

19. In the above background, the Court proceeds to examine the testimony of PW-10. She states that she was present along with her son Vijay and his friend Jeet when they were returning from the Sulabh Sauchalaya on 3rd July 2016. She states that Vijay and Jeet were going 20-25 paces ahead of her. It was monsoon and it was drizzling. At around 10:00-10:15 pm, Saddaq (A-5), Suresh (A-3) and Krishan (A-2) who were residents of the same *jhuggi* area obstructed Vijay and Jeet. According to her, A-2 and A-5 were having knives in their hands and A-3 was having a sword. In the meantime, Islam (A-1), Sandeep and Sonu @ Kalim (A-4) also joined them with weapons in their hands. They too were resident of the same area. All of them attacked Vijay and Jeet as a result of which Vijay sustained injuries and fell down. PW-10 raised an alarm as a result of which all of the accused ran away.

20. Upon hearing the shouts of PW-10, her brother Munni (not examined) also reached there. With his help and the help of some other persons, PW-10 took Vijay to the BJRM Hospital. She states that after some time, Jeet, who was completely drenched in blood, was also brought to the hospital. She too confirms that Vijay was thereafter taken to LNJP Hospital where he remained admitted for 17 days. Since the treatment there was not progressing well, PW-10 got Vijay discharged and got him admitted to some private hospital where he was operated upon and discharged after a few days. She states that one day Vijay's condition became very serious. This was around two-and-a-half months after the date of the incident. They took him to the RML Hospital where he died the following day.

21. In her cross-examination PW-10 confirmed that her *sari* became

completely drenched with blood when “I took my son to the hospital”. Yet even her clothes were not seized by the IO much less the clothes of Vijay or Jeet. There is, once again, no explanation for this lapse in the investigation. It is strange that even the statement of PW-10 was recorded by the police only on 5th July 2016 and not on the date of the incident, i.e. 3rd July 2016, or even on the immediate following day.

22. There were only two witnesses whose statements were immediately recorded. One of them was Abhishek Kumar (PW-9) who was an injured witness. Abhishek was Jeet’s brother. However, he did not actually witness the attack on Vijay or Jeet. He only saw Jeet coming towards their *gali* being pursued by the accused carrying knives. According to him, Suresh (A-3) gave him a sword blow on the upper back near his shoulder. Thereafter, he escaped to another *gali*. The MLC of Abhishek, however, does not corroborate his testimony. It simply shows an abrasion injury on his shoulder. Therefore, this witness cannot be said to be very useful as far as the attack on Vijay is concerned. At most, his testimony can corroborate the fact that Jeet was chased by the accused armed with knives and swords.

23. The other witness whose statement was recorded on 4th July 2016 itself was Chandan (PW-12). He too noticed Jeet being chased by A-5, A-3 and Sandeep and their entering the house of Beena Devi (PW-13). However, he did not see who attacked whom and in what manner due to fear of being harmed. He noticed, after the accused left, that Jeet had sustained multiple stab wounds and was profusely bleeding. Therefore, even this witness can, at best, be said to prove injuries on Jeet and not the attack on Vijay for

which we have only the evidence of PW-10. However, she being a related and an interested witness, there had to be a corroboration of her testimony by the medical evidence which is not forthcoming in the present case.

24. We have certain other eye-witnesses whose testimonies were relied upon by the prosecution. Their statements were supposed to have been recorded by the police at the earliest instance. Yet Constable Vinod Kumar (PW-27), in his cross-examination stated: “In my presence, ASI Ram Chander did not record the statements of any of those public persons present at the spot”. All around there appears to be an unexplained laxity on the part of PW-31 who, it should be recalled, stated that no eye-witnesses were found either in the hospital or at the spot. Nevertheless, since the prosecution case rests essentially on the eye-witness testimonies, they require to be discussed .

25. Beena Devi (PW-13) is the aunt of Jeet. According to her, between 10:30 and 11:00 pm on 3rd July 2016, Jeet entered her *jhuggi* while shouting in fear stating that he was being followed by the accused persons who were having knives and sword in their hands. Jeet then went upstairs and closed the door of the room. She states that the accused persons who had followed him broke open the door and thereafter attacked Jeet with knives and swords. She tried to intervene but they pushed her away by holding her by the neck. In her cross-examination PW-13 also states that she accompanied Jeet to the hospital and that “my clothes had bloodstains but the police had not taken the same in possession”. She further stated that the police never asked her to hand over bloodstained clothes. She maintained that “there was no animosity between the accused persons and the deceased person”.

26. As already noticed, the crime team did not collect any material objects from the house of PW-13 that would have corroborated her version. No photographs were taken of the broken door or the articles scattered in the room. What would have material pieces of evidence for the purposes of Section 455 IPC were simply not gathered by the police.

Medical evidence does not corroborate the ocular evidence

27. The eye-witness testimonies can form reliable sources of evidence for the prosecution provided they are uninterested witnesses and more importantly where they have been corroborated on the material aspects by other evidence, particularly medical evidence.

28. In *Mani Ram v. State of U.P. 1994 Supp (2) SCC 289* the sole eyewitness stated that the deceased was shot on his back while running, whereas the medical evidence showed that it was on the right shoulder and front side of the upper arm of the deceased. The Supreme Court acquitted the accused on observed:

“It is well settled by long series of decisions of this Court that where the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case.”

29. In *Thaman Kumar v. Union Territory of Chandigarh (2003) 6 SCC*

380 it was explained by the Supreme Court as under:

“The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye-witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category it may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third category no such inference can straightway be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony.”

30. In *State of U.P. v. Ram Bahadur Singh (2004) 9 SCC 310*, the Supreme Court upheld the acquittal of the accused on the ground that the ocular evidence was seriously contradicted by the medical evidence.

31. In the present case, what the prosecution has failed to demonstrate is that the injuries inflicted on Vijay in the first instance on 3rd July 2016 were the injuries that ultimately caused his death. In other words, the prosecution was required to prove that there was a homicidal killing of Vijay by the accused as a result of the injuries inflicted by them on him on 3rd July 2016. This requires the medical evidence to be scrutinized very carefully.

32. The MLC of Vijay drawn up on 3rd/4th July 2016 and the injuries noted therein has already been referred to. At this stage, therefore, it is important to refer to the report of Vijay's post-mortem. His post-mortem examination was conducted by Dr. Anshul Saxena (Ex.PW-23). The report showed the following five external injuries:

- “1. Partially healed wound, measuring 9x6 cm, was present over left gluteal region, situated 5 cm away and 8 cm below upper end of gluteal cleft.
2. Irregularly shaped partially healed wound, measuring 16 x 10 cm, was present over back of left thigh and leg, situated 6 cm above left popliteal fossa.
3. Partially healed wound with granulation tissue and yellowish slough, measuring 18 x 4.5cm, was present over back of left leg and ankle.
4. Partially healed wound with granulation tissue, measuring 7x6 cm, was present over left heel.
5. Partially healed wound with granulation tissue, measuring 10 x 5 cm, was present over left foot. Toes of left foot were amputated.”

33. It will be straightaway noticed that there are more injuries in the post-mortem report when compared with the MLC of Vijay. Injuries at serial Nos.1, 4, and 5 in the post mortem report were not noted in the MLC. This discrepancy has not been explained by the prosecution. PW-23, in his cross-examination, further stated as under:

“As far as external injuries mentioned in the postmortem report, the same are not on the vital part of the body, however, I cannot accurately opine as to the vital part with regard to the internal injuries that might have been caused earlier as the patient was admitted in the hospital on 03.07.2016 and died on 17.09.2016.”

34. Although learned APP sought to contend that the cause of death of Vijay was septicaemia resulting from the knife wounds, there was no pointed question to the treating doctors who saw Vijay whether the ultimate cause of his death were the injuries he suffered on 3rd July 2016. Consequently, it cannot be said that the medical evidence corroborates ocular testimony as far as injuries of Vijay being fatal and being the cause of his death was concerned. There is too wide a time gap, i.e. two-and-a-half months, between the date of the incident and that of his death. It had to be conclusively proved by the prosecution that the knife injuries caused to Vijay on 3rd July 2016 as noted in his MLC were the cause of his ultimate death. That has not been proved by the prosecution.

35. The trial Court appears to have overlooked this important aspect while proceeding to convict the accused for the offence under Section 302/34 IPC. In the considered view of the Court, the prosecution has failed to prove the guilt of the accused for the offence under Section 302/34 IPC and they are entitled to the benefit of doubt in that regard.

Injuries on Jeet

36. Turning now to the injuries of Jeet, there are a number of eye witnesses who have spoken about the accused inflicting knife injuries on him. Jeet had five incised wounds as noted in his MLC. What is also evident from the endorsement by the doctor who examined him, i.e. PW-17, is that those injuries were simple in nature. It appears that one Dr. Atul Jain (PW-26) also saw Jeet at the surgery. However, he went through the MLC on 14th October 2016 and noted that Jeet had multiple old scars present “over right forearm,

right thigh and shoulder”. He opined the nature of injuries to be simple. He pointed out to his encircling of the relevant words in the MLC at point X1.

37. Dilip (PW-16) supposedly noticed Jeet being followed by 5-6 boys having knives and swords. However, he declined to identify any of the accused. He stated, “I was away from that place and I had just seen them running towards that side”. This, again, is another unhelpful witness for the prosecution. As far as Ikram (PW-15) is concerned, he confirmed that his mobile phone was used by a lady to call the police. He did not state anything beyond that which could help the prosecution.

38. Consequently, while the Court is satisfied that the attack on Jeet with swords and knives may have been corroborated by the above medical evidence, it certainly does not show that the injuries were dangerous or that there was any attempt made by any of the accused to actually murder Jeet. Therefore, medical evidence as far as Jeet is concerned, does not corroborate the eye-witness testimony for the purposes of bringing home the guilt of the accused for the offence under Section 307/34 IPC. The accused are, therefore, entitled to the benefit of doubt as far as the said offence is concerned as well.

39. However, considering that Jeet suffered as many as six incised but simple injuries as a result of the attack on him with sharp edged weapons the accused can be held guilty of the offence punishable under Section 324 read with Section 34 IPC.

Injuries to Sushila

40. As regards the brick injury supposed to have been suffered by Sushila, (PW-14) no attempt was made to in fact recover the said brick. Her evidence, in fact, is interesting. She states that when she came down the *gali*, she saw a quarrel was ongoing “between many public persons” and that she sustained an injury by one of the bricks on her head. A perusal of her MLC reveals that there was a superficial abrasion on the right parietal region and the injury was simple in nature. She has not named any person as having caused any injury to her. The case against the accused for causing injuries to Sushila (PW-14) is also not proved. The same is the position, as already noted, with regard to the alleged injuries to PW-9 Abhishek.

Shoddy investigation

41. Inspector Radhey Shyam (PW-32), the IO, has interestingly made a statement that he received the file of the case from “MHC(R) for further investigations” only on 5th August 2016 and he found that none of the accused had been apprehended till then. All the arrests were thereafter made on the basis of the information given by some secret informer. Why the police waited for more than a month to do so is not explained. None of the accused has actually been shown to be absconding. A-1 was simply standing on the road in the same area and he pointed out the houses of the other accused and they were all arrested from their respective houses. One of them, Kalim @ Sonu (A-4), was already in judicial custody in some other case.

42. The fact of the matter is that none of the weapons of the offence used in

the offence could be recovered by the police. There are too many gaps in the investigation which have not been sufficiently explained by the prosecution. The serious lapses in investigation which have made the acquittal of the present accused, for all but one offence, inevitable have already been adverted to by this Court.

43. The Court is conscious that merely on account of lapses in the investigation, an accused should not be let off. The Supreme Court in *Amar Singh v. Balwinder Singh 2003 (2) SCC 518*, observed: “where the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.” However, in a case as the present one, where the ocular evidence is not corroborated by the medical evidence and there are serious lapses in investigation, the converse of the aforementioned dictum would hold true.

44. In *State of Gujarat v. Kishanbhai (2014) 5 SCC 108* the Supreme Court while acquitting those accused of raping and brutally murdering a young child, essentially on a account of the serious lapses in the investigation, observed:

“17. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the accused-respondent innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he

has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long drawn litigation, spanning over a decade, or more.

.....

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.”

45. This is yet another such case where the lapses in investigation are too numerous to be overlooked. The above directions of the Supreme Court, therefore, bear iteration.

Conclusion

46. The net result of the above discussion is as under:

(i) All the Appellants are acquitted for the offences punishable under Sections 302/34, 307/34, 341/34, 323/34 and 455/34 IPC.

(ii) The Appellants are convicted for the offence under Section 324/34 IPC for inflicting simple injuries with sharp-edged weapons on Jeet.

(iii) As regards the sentence for the aforementioned offence under Section 324/34 IPC, each of the Appellants is sentenced to the period already undergone by each of them.

47. Unless wanted in some other case, each of the Appellants will be released forthwith. Each of them will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court forthwith.

48. The appeals and pending applications are disposed of in above terms. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 21, 2018

'anb'