

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 10.12.2018
Judgment Pronounced On: 20.12.2018

CRL. A. 323/2015

RAJESH

..... Appellants

Through Ms. Saahila Lamba, Advocate

Versus

STATE

..... Respondent

Through Ms. Radhika Kolluru, APP

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present appeal under section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') assails the judgment and order of conviction and order on sentence dated 27.10.2014 and 31.10.2014

respectively, in Sessions Case No. 62/1/2010, titled as '*State vs. Rajesh s/o Chandan Singh*', emanating from FIR No. 57/2010 (hereinafter referred to as the 'subject FIR').

2. By way of the impugned judgment and order of conviction and order on sentence dated 27.10.2014 and 31.10.2014 respectively, Rajesh (hereinafter referred to as 'Appellant') was convicted and sentenced under the provision of section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') to Rigorous imprisonment for life along with a fine of Rs. 10,000. In default of payment of fine, the Appellant has been sentenced to undergo simple imprisonment for a further period of six months. However, the benefit of the provision under section 428 Cr.P.C has been granted to the appellant.

3. The fulcrum of the case of the prosecution is that on 22.08.2010 around 9:45 PM, the Appellant murdered one Rajbir (hereinafter referred to as the 'deceased') by inflicting a blow on his head with an iron rod in front of the house of Rishal Singh, Phirni Wala Road, Village Kair (hereinafter referred to as the 'crime spot').

4. On 22.08.2010 around 10:15 PM, a PCR call [Ex.PW-3/A] was received by HC Rakesh (PW-3) by an informer, namely, Kaptan (PW-10)

informing about the underlying incident and the same was recorded. DD No. 20A was recorded and handed over for investigation to Ct. Naveen Kumar (PW-12), SI Hazari Lal (PW-13/A), HC C.L Meena (PW-14) and SHO Insp. O.P Meena(PW-20), the IO in the present case, who reached the crime spot where the dead body of the deceased was found lying in a pool of blood. A *danda* [Ex.PW-13/C] was also found lying alongside the head of the deceased which was also smeared with blood. A PCR Van and CAT Ambulance ALPHA 24 were present at the crime spot. The Incharge of the Ambulance declared the deceased dead. Upon enquiry, the names of the deceased, as well as, that of the Appellant were disclosed. The crime team was summoned to the crime spot and photographs thereof were taken by HC Sat Pal (PW-6). Smt. Krishna, the wife of the deceased (PW-1) was already found present at the crime spot, upon whose statement the rukka [Ex.PW-1/A] was prepared by PW-20 and was handed over to PW-12 for getting an FIR registered at the police station J.P Kalan. An FIR No. 57/10 got registered under section 302 IPC against the Appellant on 23.08.2010 at 12:55AM. During investigation, exhibits such as blood stained earth control [Ex.PW-13/B], blood of the deceased [Ex.PW-13/A] and the *danda* [Ex.PW-13/C] were lifted from the crime spot, seized and sent for forensic

examination. A scaled site plan [Ex.PW-2/A] was prepared on the pointing out of the crime spot at the instance of PW-1. Statement of Jagbir (PW-9), the brother of deceased and nephew of the Appellant was also recorded.

The dead body of the deceased was identified by Sh. Om Prakash and PW-9 [Ex.PW-15/E]. Post mortem on the dead body [Ex.PW-15/F] was conducted by Dr. Parvinder Singh (PW-15) on 23.08.2010 and the body was handed over to PW-9. The cause of death was opined to be “cranio cerebral damage (Head Injury), caused by a hard blunt force’s impact which was sufficient to cause death in ordinary course of nature”.

During the course of investigation of the case, the Appellant was apprehended on 23.08.2010 near a wine shop at Kair Saulda Road and was arrested [vide arrest memo Ex.PW-5/B]. His personal search got conducted [Ex.PW-5/C] and upon interrogation, his disclosure statement [Ex.PW-5/PA] was recorded by the IO (PW-20) and HC Shiv Charan (PW-5). Pursuant thereto, at the instance of the Appellant, the weapon of offence which was an iron rod was recovered, found lying amidst rain water, from a field near the wine shop at Kair Saulda Road which was (vide seizure memo of iron rod Ex.PW-5/E). On the Appellant pointing out the spot of recovery [Ex.PW-5/A], a site plan was prepared [Ex.PW-5/F]. A sketch of the iron rod was

prepared and the weapon was sent for forensic examination. [Ex.PW-5/D]
The said rod was also identified by PW-1 and PW-9.

5. By way of order dated 05.05.2011, charge was framed under section 302 of IPC against the Appellant. The Appellant pleaded not guilty and claimed trial. At the stage of evidence, in support of its case, the prosecution examined 20 witnesses. The statement of the Appellant was recorded under section 313 of the Cr.P.C. The Appellant denied committing murder of the deceased; and further denied making any disclosure statement, as well as, the recovery of the weapon of offence being effected at his instance. Furthermore, the Appellant stated that he was falsely implicated in the case by the police officials in connivance with PW-1 as he carried a bad reputation in the area and it was easy to rope him in the case. He further alleged that PW-1 wanted to grab the property of the deceased after his death and has consequently, falsely implicated him. The Appellant chose not to examine any witness in his defence.

6. Broadly, the Trial Court has based the conviction of the Appellant on the following grounds :

- i. Testimony of PW-1 who is the eye witness, confirming the involvement of the Appellant in the commission of the offence;

- ii. Nature of injuries inflicted by the Appellants; and
- iii. Intention of the Appellant to murder the deceased on account of past animosity.

7. Learned counsel appearing on behalf of the Appellant urges that the cause of death of the deceased was due to an accident as opposed to murder being allegedly committed by the Appellant. In order to substantiate the submission, learned counsel would place reliance on DD. No.20A, vide which the information regarding the incident was passed on to the police, and asserts that the same indicated that the deceased was injured in a road accident. Furthermore, it is urged in this regard that the cross examination of the PW-15 reveals that the fatal head injuries No.1 and 2 on the body of the deceased could be caused due to a road accident.

8. Further, learned counsel would asseverate that the deposition of PW-1 does not corroborate with the medical evidence on record inasmuch as, the former deposes about a single blow inflicted by the deceased whereas, the post mortem report [Ex.PW-15/F] indicates as many as 10 external injuries on the body of the deceased, wherein Injuries No.1 and 2, according to the statement by PW-15, as aforestated, could be caused due to a road accident.

In this behalf, it would be urged that it would, therefore, not be prudent to base conviction upon the statement of PW-1.

9. Learned counsel appearing on behalf of the Appellants would then urge that the testimony of PW-10, who has been declared as a hostile witness, supports the case of the Appellant.

10. *Per contra*, Ms. Radhika Kolluru, learned Additional Public Prosecutor appearing on behalf of the State, whilst supporting the impugned judgment in its entirety, would urge that the findings of the Learned Trial Court require no interference.

11. It would be asseverated that the prosecution has established beyond reasonable doubt, by way of cogent medical evidence, as well as, the evidence of the eye witness; coupled with the factum of existence of motive to kill the deceased, that the Appellant has committed murder of the latter and therefore, the mandate of the provision of Section 302 of the IPC is satisfied in the facts of the present case.

12. We have heard counsel appearing on behalf of the parties and perused the evidence on record.

13. On the facts of the present case, the conviction of the Appellant appears to be hinged upon the direct evidence of PW-1, the wife of the

deceased, who is the sole eye witness to the incident. In this regard, it would be important and necessary to extract her testimony *in extenso* :

“24.08.2011

Two months before 20th August, 2010, Rajesh son of Chandan who was residing our Ghair had quarrel with us as we had borrowed some money from his wife. He was under the influence of liquor and had quarreled with us that we had not returned his money. We had told him that the money was already returned. I had lodged report with the police regarding the aforesaid incident. On the same day in the evening at about 5:00 pm, my son, namely, Praveen aged 8 years and my other son, Ashish aged 10 years, were playing on the road and the accused who was returning with his buffaloes after grazing had blocked the way of my children and had abused them.

On 22.08.2010, my husband, Rajbir, had taken meal for my brother-in-law (jeth) namely jaqbir to the Gher at about 8:00 pm. He did not return home till 9.00/9.30 pm. At this I went to the Gher to enquire as to why he had not returned home. There I was informed by my husband and Jaqbir that Rajesh, who was under the influence of liquor had beaten my brother in law. Thereafter I alongwith my husband left for my house and told my brother in law to bolt the door of the Gher. When we reached the Gher of Rishal Singh, my husband was walking ahead of me Rajesh came from behind from the side of his house and he was holding a rod/saria in his hand and gave a blow with the same on the head of my husband, due to which the brain of my husband came out and he fell down on the ground. I raised alarm and several villagers collected there. After inflicting blow on the head of my husband, Rajesh ran away from the spot alongwith the rod/saria. My husband was holding a long danda in his hand which fell down from his hand when he sustained injury. Somebody from the public informed the police on 100 Number. The police came to the spot. My husband had already died. One police official namely Prakash Meena came to the spot and recorded my statement

and I put my thumb impression on the same. My said statement is Ex.PW-1/A bearing my thumb impression at point A.I identified the accused Rajesh present in the court. (correctly identified).

The police had lifted the blood and blood stained earth from the spot and had kept these things in the small plastic containers (dibbi). The danda belonging to my husband was also taken by the police and some writing work was also done by the police at the spot and my thumb expressions were obtained on the same.

Since, due to incident I was weeping and upset as such I did not notice as to what was done with the plastic containers and the danda. The dead body of my husband was removed by the police to the PS. Again said the dead body was removed from the spot but I do not know where it was taken from spot.

After several days of the incident, the police official namely Prakash Meena alongwith a Sikh Gentleman had come to the spot and had measured the spot with the help of 'Pheeta' and some document was prepared at my instance regarding the spot as to what had happened at which place and I had put my thumb impression on the said document.

01.09.2011

About 2 months prior to the murder of my husband Rajbir, there was a quarrel between accused Rajesh and my husband and the **accused had threatened to kill my husband Rajbir. My husband had lodged a complaint with the police and accused Rajesh was arrested by the police.**

Even before the murder of my husband, accused under the influence of liquor used to beat my jeth who is handicap, for no reason.

Some documents were prepared by the police at the spot in my presence and my thumb impression was obtained thereon, but since I am illiterate, I am not in a position to given the description of the documents prepared at the spot.

Court observation: Since the witness is illiterate, let the documents prepared by the IO whereupon the thumb impression of this witness was obtained and the exhibits lifted from the spot, be proved through the statements of the other witnesses and the IO.

I can identify the case property if shown to me.

At this stage, the case property has been produced by the MHC(M) which is consisting one duly sealed cloth parcel No. 4 sealed with the seal of NK FSL DELHI having written FSL No.2010/B-44646/Bio No. 1157/10 and particulars of the present case FIR written on it. Seals on the parcels are intact and are now directed to be broken and parcel opened. **On opening, the parcel is found containing one iron rod. One paper slip is affixed on the iron rod having written aforesaid FSL and Bio No. on it. The rod is shown to the witness and is identified by her as Ex.P1.**

The MHC(M) has further produced one another sealed cloth parcel NO. 3 bearing the aforesaid FSL No. and BIO No. on it besides the particulars of the present case FIR. The cloth parcel is duly sealed with the seal of FSL NK DELHI. Seals are intact and are now directed to be broken and case property opened. On opening, the cloth parcel is found containing one wooden danda/sheru about which the witness states that her husband, deceased Rajbir was carrying the said sheru with him to protect from dogs. The wooden danda/sheru is shown to the witness which is blood stained. The witness states that after her husband was hit by accused with iron rod, he fell down on the ground and the shreu/wooden danda came under his head and as such, got blood stained. One paper slip is affixed on the wooden danda having written the aforesaid FSL and Bio No. on it.

The wooden danda/sheru is identified by the witness as Ex.P2

17.04.2012

XXXX by Sh. Samir Tandon, Ld. Counsel for the accused Rajesh.

The wife of the accused Rajesh plough fields. Accused Rajesh is having four children. Accused Rajesh was not doing any work and he used to eat and drink only and indulged in illegal activities. The children of the accused used to remain alone in the house when their mother used to go for their work. The eldest daughter of accused Rajesh was living with her Bua before her (daughter of accused) marriage and three children of the accused Rajesh out of the four are married. Accused is having quarter to four (pone-chaar) bighas of land and the parents of wife of accused Rajesh namely Sheela, used to financially help Rajesh and his wife Sheela to run their house. As and when required my husband used to borrow some money from the wife of the accused Rajesh and similarly, the wife of accused Rajesh used to borrow money from my husband and they both used to return their said money. No record in writing was made in respect of the aforesaid monetary transaction between my husband and the wife of accused Rajesh. They both used to return money in a short span i.e. 10-15 days. Vol. My husband Rajbir used to take money from the wife of accused Rajesh for his tractor as and when required and wife of accused Rajesh used to take money from my husband for agriculture purposes.

Once accused Rajesh had quarreled with my husband as he was under the impression that my husband had not returned the money borrowed by him from the wife of accused Rajesh and at that time, accused Rajesh was under the influence of liquor and his wife was telling that my husband had returned the money to her land in this regard some police complaint was lodged. I am illiterate so I cannot tell the date of the said complaint. However, the said complaint was lodged by my husband and the police had reached and 'bahut ho-halla hua' and there the wife of accused Rajesh had given in writing that my husband had returned her money (Usne Likha Ki Kaka Ne Mera Paisa De Diya Hai). My husband Rajbir was Kaka of accused Rajesh in relation. I had not stated all these facts to IO as no such questions were put to me by the IO. The aforesaid incident of quarrel when the police had reached on the complaint of my husband, took place about 2/2 ½ months before the present incident. My husband had called the police from his mobile phone. I do not know the mobile

number of my husband as I do not know how to dial a number. My husband always used to keep his mobile phone with him. I was not standing exactly at the place where my husband along with the police officials was stand, so I cannot tell if my husband had given a complaint in wiring to the police or he had orally made his complaint.

It is wrong to suggest that there is no mention of any monetary transaction or dispute of money in the complaint of my husband or that no such statement was given by the wife of accused Rajesh.

No complaint was lodged with the police by me when accused Rajesh had blocked the way of my children and had abused them.

On the day of the incident of the present case, my husband/deceased Rajbir had returned from his work with his tractor at about 6 pm. My husband was using the tractor for agriculture purposes.

I used to start preparing meals at about 7:30 p.m. and thereafter my children along with me and my husband used to dine together. On the day of incident, I had prepared the food and my children were taking dinner and it was drizzling on that day and my husband asked me that he would go to give meals/dinner to his elder brother Jagbir at gher and he went from the house at about 8 p.m along with the dinner for his elder brother Jagbir. On that day, my husband has not taken his dinner but he was to take dinner after his return. My husband had not taken umbrella along with him as it was only drizzling.

When I reached at the 'gher' of Jagbir after about 1/1 ½ hour, my husband Rajbir and Jagbir were talking to each other and by that time, my Jeth Jagbir had not taken his dinner. In my presence, Jagbir had not taken dinner.

I did not call the police after my husband was assaulted by the accused. I had tried to save my husband when he was assaulted by the accused Rajesh, I embraced

the accused to save my husband, despite that accused gave blow on the head of my husband with rod. After my husband fell down, I touched my husband and I found that he was not breathing and I had checked my husband after the accused had run away from there. My hands and clothes got blood stained. During the investigation, Inspector O.P Meena had asked me to produce my blood stained clothes, but I had not given him my blood stained clothes since they were already washed off as said clothes were got changed after the incident by my daughter and relatives. I was not asked by any of the police officials on the day of the incident that I had to keep my blood stained clothes as it is. Vol. After the incident, I was not in my senses.

I remained at the spot for about one hour after arrival of the police. After the murder of my husband, I never went to the police station. Once Inspector O.P Meena along with one Sikh official came and they had prepared some documents after taking measurements. Vol. I had put my thumb impression on some papers on the day of the incident i.e on the day of murder of my husband.

At this stage, further cross-examination is deferred at the request of the Ld. Counsel Sh. Samir Tandon.

XXXX by Sh. Samir Tandon, Ld. Counsel for the accused Rajesh.

It is incorrect to suggest that my husband, deceased Rajbir had not given any complaint against accused Rajesh at any point of time. After this incident I did not go back to my home on that night prior to the arrival of the police there. My statement was recorded by the police at the spot itself at about 10/10:30PM. Police remained there till about 1 a.m. There was no light at the spot when my statement was recorded. I had not stated in the statement recorded by the police that my husband Rajbir was having danda in his hand.

The prior incident which had taken place about 2-2 and half month before this incident had taken place at about 4-5 pm. The complaint regarding this incident was given by

my husband. Vol. When I reached the gher the police was already there. In that case neither my statement was recorded by the police nor my thumb impression was obtained on any paper as I had no role in that. My husband had not given anything in writing to the police at that time however, police had recorded something in writing about which I am not aware. I am illiterate so I had not read the said written work done by the police there and I do not know what was written by the police. In this case, at any point of time I have not been shown any complaint/statement showing any money transaction with accused or his wife.

When the police arrived at the spot in the present case, I was wearing the same clothes I was wearing before this incident. I had also not washed off my hands before the arrival of the police. I had not stated to the police in my statement that my clothes were bloodstained. **The police had reached at the spot after about half an hour of the incident and during this period of half an hour no vehicle had passed through the said road. None from the public had passed through from the road VOL.** When I had raised alarm some villagers reached there. There are about 200-250 houses between my house and the gher of Jagbir (my jeth). **My husband deceased Rajbir was walking ahead of me while we were returning and he was at the distance of about one and a half feet from me. It is correct that on the said road there are houses on one side and fields on the other side. My husband was walking on the right side of the road i.e. on the side of the field.** I did not notice on which side of the road the police was conducting the investigation as at that time I was weeping and in bad state of mind and many persons from the public were also there. I do not know if the police made any enquiry from the persons who had assembled. However, to my knowledge police had made enquiry from my jeth.

It is incorrect to suggest that I was not there at the spot at the time of the incident. It is further incorrect to suggest that I had not accompanied my husband while he was returning from gher. It is further incorrect to suggest that I had not witnessed the incident or that there was no money transaction dispute with the accused or his wife. It is

further incorrect to suggest that due to past animosity with the accused he has been falsely implicated by me in this case.

It is further incorrect to suggest that I have deposed falsely or that I had come as false witness in this case.

I had informed the police about the distance between me and my husband twice.”

(Emphasis supplied)

14. At the outset, it is observed that, before us, no challenge is made *qua* the presence of PW-1 at the crime spot, at the time of the commission of crime. PW-1 has categorically denied the suggestion of her absence at the crime spot at the relevant time. The factum of her presence is further affirmed by the testimonies of PW-9 and PW-10, as well as, the crime team, present at the crime spot. It is, therefore, an irrefutable fact that PW-1 is a credible eye witness to the incident. It is further observed that PW-1 has categorically assigned specific role to the Appellant in the commission of the crime.

15. A plain reading of the unshattered testimony of PW-1 reflects that after returning from the house of PW-9, on the night of the fateful incident, the deceased was walking ahead of PW-1, on the right side of the road and that the Appellant attacked the deceased from behind. On the deceased being so assaulted, PW-1 immediately embraced the Appellant, in order to save the deceased from further assault, and despite her efforts, the Appellant had

inflicted a blow on the head of the deceased with an iron rod. In this behalf, it would be apposite to hold that the action of PW-1 embracing the Appellant to prevent him from inflicting further injuries, as reflected from her cross examination, itself belies the assertion of the Appellant that the incident was a mere accident and in essence, is an admission on the part of the latter that he had inflicted a blow on the deceased's head with an iron rod. In addition thereto, PW-1 has categorically testified in her cross examination that no vehicle passed through the road before the arrival of the police officials at the crime spot. In the absence of any vehicle passing along the subject road, it is not credible or believable that a road accident could have caused the death of the deceased.

16. A perusal of the photographs appended to the Trial Court record, as well as, the testimony of HC Sat Pal (PW-6), the photographer of the crime team reflects that there is not an iota of any mention of tyre marks found on the subject road that would buttress the submission of the Appellant to the effect that the death of the deceased on 22.08.2010 was on account of a road accident. Furthermore, the correct PCR information [Ex.PW-3/A] recorded at 10:15 PM, as rightly held by the learned Trial Court, subsequent to the one recorded at 10:05 PM records, "Ek Aadmi ka murder", to clearly and

unequivocally establish that the same was a case of murder and not an accident.

17. Even otherwise, a perusal of the statement of the Appellant under section 313 of Cr.P.C would reveal that the Appellant, in his defence, has cast blame on PW-1 for the death of the deceased for she would be the sole beneficiary of his property after his death. He further attributes his bad reputation in the area for his false implication. It is in this context that it is observed that neither has the Appellant made any statement about the plea of accident taken on his behalf, nor has he set up an alibi. In view of the foregoing, the contention raised by the Appellant that the death of the deceased was by virtue of an accident is just kite flying, and the same is accordingly rejected as an alternate hypothesis.

18. The Hon'ble Supreme Court of India in **Jagrup Singh v. State of Haryana** reported as (1981) 3 SCC 616 whilst discussing a case entailing death of the deceased caused by a blow on the head by a *gandhala* observed *inter alia* that in the absence of any circumstances negating the presumption, the same would be deemed to have intended to cause such bodily injury as is sufficient to cause death. The relevant paragraph of the aforesaid judgment is reproduced hereinbelow :

*“6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. **If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death.** The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.”*

(emphasis supplied)

19. In the instant case, after conducting postmortem on the body of the deceased, PW-15 opined the cause of death of the deceased to be cranio cerebral damage (Head Injury), caused by a hard blunt force's impact which was sufficient to cause death in ordinary course of nature. The external injuries found on the body of the deceased are extracted hereinbelow :

“(i) Lacerated wound measuring 17X3 cm present over right fronto temporo parietal region of skull with fracture of underlying right parietal, frontal and temporal bones (communitated fractures) underlying brain substance exposed and lacerated placed obliquely extending from middle of forehead upto top of right parietal area, 7.5 cm from right ear pinna.

- (ii) *Abraded constusion measuring 15X2.5 cm situated over right frontal temporo parietal region of skull, parallel and adjacent to injury No. 1 with fracture (communitied) of underlying skull bones (parietal temporal and frontal bones).*
- (iii) *Lacerated wound measuring 6X1.5 cm placed obliquely situated over lift side of forehead, 2.5 cm from injury no. 1.*
- (iv) *Lacerated wound measuring 3.5X1.5 cm situated over left side of forehead obliquely placed, extending from middle of both eye brows upto middle of left side forehead.*
- (v) *Lacerated wound measuring 4.5X1.0 cm situated over back right ear pinna upper part.*
- (vi) *Contusion (Bluish colour) of size of 5X4 cm situated over and around right eye.*
- (vii) *Contusion (bluish colour) of size of 6X4 cm situated over and around left eye.*
- (viii) *Abraded confusion measuring 5X1.5 cm situated over left side of forehead, 2 cm above left eye brow.*
- (ix) *Abraded contusion 4X2 cm situated over lateral aspect of left eye.*
- (x) *Contusion 6X2 cm situated over left temporal region 1 cm above left ear lobule.”*

In addition thereto, on an internal examination, PW-15 found the following injuries on the head of the deceased :

“Effusion of blood present under the scalp all over the skull. Fracture (communitied) in right frontal, temporal and parietal bones present. Subdural and sub arachnoid hemorrhage present over right fronto temporo parietal lobes of brain. Free and clotted blood present at the base of the brain. Ventricles contains blood.”

20. There is no gainsaying that an injury inflicted by a weapon such as an iron rod on a vital part of the body i.e the head in the present case, would tantamount to being sufficient in the ordinary course of nature to cause death. *A fortiori* the force with which the fatal injury was caused is further bolstered by the medical evidence on record, as well as, the testimony of the police officials of the crime team who saw the brain of the deceased exposed and pieces thereof scattered at the crime spot.

21. The learned Trial Court whilst rejecting the contention of the Appellant that the testimony of PW-1 to the effect that the Appellant inflicted a single blow on the head of the deceased is manifestly in contradiction to the post mortem report observed as follows :

“Ld. Counsel for the accused has submitted that there are 10 injuries present over the head of deceased while as per the statement of complainant accused gave a blow on the head of her husband due to which his brain came out. It is submitted that 10 injuries cannot be possible by one blow. On perusal of the statement of complainant, it is revealed that she has not mentioned as to how many blows were given on the head of her husband. She has stated that Rajesh came from behind from the side of his house and he was holding a rod/sariya in his hand and gave a blow with the same on the head of her husband due to which the brain of her husband came out and he fell on the ground. In cross examination, she has stated that she tried to save her husband when he was assaulted by accused Rajesh, she embraced the accused to save her

husband despite that accused gave blow on the head of her husband with rod. PW1 has specifically stated that she embraced the accused and it seems that she did not notice as to how many blows were given by the accused. Further, it has been clearly stated by PW1 that after rod blow, her husband fell down on the rod. The force of rod in the present case was such that the mind (bheja) of deceased has come out. The sketch of rod by which blow was given is Ex.PW5/D. I have perused the same and it is revealed that it is not a simple sariya type rod but it is strong, thick rod with handle and it seems that it is a gym rod. In my view there is possibility of causing the injury (ies) as sustained by deceased by this rod. PW1 Krishna is a illiterate lady. This observation has also come in evidence. She also stated that she does not know the mobile number of her husband as she does not know how to dial a number. PW1 is an illiterate witness. She is not expected to make parrot like statement. She many not have been able to clarify the things properly. But in the facts and circumstances of the present case, it is emphatically clear that she has witnessed the incident and saw accused giving blow o the head of her husband. It is stated by PW1 that her husband had fallen down on the ground after he was given blow. It is a matter of general knowledge that when the deceased had fallen on the ground, he may also have sustained other injuries due to his falling on the ground. In consideration of the injuries on the head of deceased, it is revealed from the cross examination of PW15 Dr. Parvinder that injuries mentioned in post mortem report from sr. no. 3 to 10 are not sufficient to cause death and that injuries no. 6 to 10 could be caused by giving fist blow. Contusion is an injury caused by rapture of small blood vessels in tissues. Injury no. 1 and 2 are sufficient to cause death. Injury no. 1 and 2 could have been caused by same type of object and other injuries could have been caused by different objects. The statement of PW15 Dr. Parvinder clearly indicate that injury no. 1 & 2 were caused by one weapon and injury no. 3 to 10 were caused by another weapon. It is manifest that injury no. 3 to 10 were not sufficient to cause death. On perusal of the injuries mentioned from sr. no. 3 to 10, it is revealed that they are lacerated wounds, contusions and abraded contusions. PW1 has stated that she tried to save her husband when he was assaulted by

accused, she embraced the accused to save her husband, despite that accused gave blow on the head of her husband with rod. The statement of PW1 clearly indicate that some manhandling had also taken place between accused and deceased when PW1 had tried to save and during which injuries would also have been caused. In my view such injuries could be possible by manhandling as well as fall. It has come in evidence of PW1 that her husband had fallen after he was hit and therefore it seems that the injuries from sr. no. 3 to 10 was sustained by deceased due to manhandling and due to fall when he was hit by the accused. The submissions of Ld. Counsel for the accused is, therefore not well founded that only one blow was given by accused while deceased sustained 10 injuries. So, the case laws relied upon by the Ld. Counsel for the accused, with due respect are not applicable to the present facts and circumstances of the case.”

22. In a catena of decisions, the Hon’ble Supreme Court of India has enunciated that while appreciating variance between medical evidence and ocular evidence, oral evidence of eye-witness has to get primacy as medical evidence is basically opinionative. [Ref : **Mange v. State of Haryana** reported as **AIR 1979 SC 1194**]

23. In view of the above legal position and having perused the evidence on record, in our considered view, the learned Trial Court has not erred in holding that the testimony of PW-1, the sole eyewitness need not be disbelieved on the sole ground of discrepancy in relation to the number of injuries sustained by the deceased as deposed by PW- 1 vis-a- vis the post mortem report inasmuch as, the testimony of PW-1 is not fundamentally

inconsistent with the post mortem report. *Ex facie* the variance is only qua the number of injuries sustained by the deceased.

24. A perusal of the post mortem report suggests that the Injuries No. 1 and 2 on the head of the deceased were sufficient in the ordinary course of nature to cause death and the same were caused by the same type of weapon. PW-15 further deposes that the head injury was caused by a blunt force's impact. Having ruled out the possibility of a road accident being the deceased's cause of death, as alleged by the Appellant, the same appears to be a case of assault on the deceased which corroborates with the testimony of PW-15 to the effect that there were no defensive wounds found on the body of the deceased; coupled with the fact that the only weapon as alleged by the prosecution and recovered at the instance of the Appellant, subsequent to his disclosure statement, is the iron rod; which leads to but one inescapable conclusion that the Injuries No. 1 and 2 are caused by the blow inflicted by the Appellant with the iron rod recovered at his instance. Insofar as, Injuries No. 3-10 are concerned, the same appear to be the result of the deceased falling on the ground upon being assaulted from the back.

25. Furthermore, on a plain reading of the testimony of PW-1, it is evident that before she embraced the Appellant in order to save the deceased from

the blow inflicted on his head with an iron rod, the Appellant had already assaulted the deceased. This testimony read in conjunction with the post mortem report [Ex. PW-15/F] clearly and unerringly leads to the conclusion that the assault was not limited to the infliction of a single blow with an iron rod to the head of the deceased by the Appellant. This conclusion is further buttressed, as aforesaid, in the post mortem report delineating the multiple injuries.

26. It would be trite to observe that the testimony of PW-15 to the effect that Injuries No.1 and 2 could have been caused by a road accident is merely opinionative for the reason that PW-15 was never shown the weapon of offence by the IO during the investigation, as testified by him in his cross examination. Therefore, in the absence of production of the weapon of offence before PW-15, the relevant statement of the latter could only be based on conjectures and surmises.

27. Insofar as, the submission of the learned counsel for the Appellant in relation to the testimony of PW-10 supporting the case of the Appellant is concerned, the same does not advance the case of the latter, inasmuch as, the testimony of PW-10 *qua* the entire underlying incident is based on the information passed by his daughter to him, who is incidentally not cited as a

witness at the trial. Since no direct evidence within the meaning of section 60 of Indian Evidence Act, 1872 is adduced by him in this behalf, the same would tantamount to sheer speculation and as such is eschewed as hearsay evidence.

28. The Hon'ble Supreme Court of India in **Sahadevan v. State of Tamil Nadu** reported as **2012(5) SCALE 415** with regard to extra judicial confessions has enunciated the following principles :

- “22.(i) The extra judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
(ii) It should be made voluntarily and should be truthful.
(iii) It should inspire confidence.
(iv) An extra judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
(v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

29. A plain reading of the above principles makes it abundantly clear that an extra judicial confession can be safely made the basis for the conviction of an accused, in the event the same, (i) is made voluntarily; (ii) inspires confidence; (iii) is corroborated by a chain of cogent circumstances and prosecution evidence; and (iv) does not suffer from any material discrepancies and improbabilities.

30. In the present case, an extra judicial confession was made by the Appellant to PW-9 immediately after the former committed murder of the deceased. PW-9 has testified that around 9:35-9:45 PM, the Appellant knocked the door of PW-9, called him outside his house and slapped him whilst holding an iron rod in one hand and also stated to him '*ye tera sher mara hua pada hai road pe*' whereafter he left with the iron rod. PW-9 further states in his cross examination that on the same day, at around 10PM the Appellant came to his *baithak* and threatened PW-9 with the same iron rod not to disclose about the incident to anyone. The iron rod [Ex.PW-5/E] so recovered, as well as, the *danda* [Ex.PW-13/C] are identified by the PW-9.

31. In the instant case, it is observed that no challenge is laid against the extra judicial confession made to PW-9 by the Appellant and the same stands as an admitted fact since PW-9 has not even been cross-examined on the aspect of the extra judicial confession made to him. Further, it is observed that the same was made by the Appellant voluntarily and instantly after the commission of the crime, without any undue influence or pressure. The extra judicial confession by the Appellant also corroborates the information recorded in the subject FIR and the same therefore inspires confidence. It has

been corroborated by a chain of cogent circumstances and prosecution evidence. Furthermore, the extra judicial confession made by the Appellant evidently does not suffer from any material discrepancies and improbabilities.

32. PW-9 has further deposed that 2 months prior to the date of incident, the Appellant quarreled with the deceased and PW-9 on the issue of the Appellant having borrowed money from the Appellant's wife which the Appellant alleged was not returned to them. He further testified that on 22.08.2010, when PW-9 returned to his house at around 7:30PM, he saw the Appellant standing on the roof of his house and the deceased standing at the door of his house and quarreling. Around 7:45PM, when the deceased along with PW-1 came to PW-9's house to offer him food, the latter informed PW-1 about the altercation having taken place between the deceased and the Appellant and also warned the deceased to be cautious of the Appellant and carry a 'lakdi' with him as they could potentially be assaulted by the Appellant.

33. A perusal of the testimony of PW-1 further reflects that about 2 months prior to the incident, the deceased fell into an altercation with the deceased, a police complaint of which was lodged by the deceased.

34. A perusal of the testimony of PW-13/A further confirms the factum of a police complaint in respect of the altercation being lodged by the deceased around 2 months prior to the incident, which culminated into the arrest of the Appellant by PW-13/A under sections 107/151 Cr.P.C and a kalandra was filed in this behalf [Ex.PW-13/DA], the contents of which corroborate the testimony of the aforementioned prosecution witnesses.

35. On a conjoint reading of the testimonies of PW-9 and PW-1, it is manifestly clear that the motive of the commission of crime can be attributed to the past animosity between the Appellant and the deceased as is evinced on various occasions, including a quarrel on the same evening preceding the occurrence of the fateful incident, around 7:30 PM.

36. In view of the factual background, the evidence of PW-1, the eye witness narrating the incident and confirming the Appellant's involvement; as well as, PW-9 to whom an extra judicial confession was made by the Appellant; coupled with the medical evidence on record, as well as, the opinion of PW-15 that the ultimate cause of death was cranio cerebral

damage (Head Injury) owing to Injuries No. 1 and 2 which were sustained on the deceased's head, a vital part of the body, with an iron rod recovered at the instance of the Appellant; as also the establishment of prior enmity between the Appellant and the deceased as the motive behind the commission of the said offence; the same cumulatively and unerringly brings home the guilt of the Appellant beyond any reasonable doubt.

37. In view of the above-stated facts and circumstances, we see no infirmity in the finding of the learned Trial Court based upon just appreciation of the evidence in the present appeal and therefore the same does not warrant any interference.

38. Consequently, the conviction of the Appellant as recorded in the impugned judgment, as well as, the sentence awarded to him by way of the order on sentence, is upheld.

39. Copy of the judgment be supplied to the Appellant through the Superintendent, Central Jail, Tihar and also be sent for updation of the records.

40. In view of the foregoing the present appeal lacks merit and is dismissed with no order as to costs.

41. The Trial Court record be sent back.

**SIDDHARTH MRIDUL
(JUDGE)**

**SANGITA DHINGRA SEHGAL
(JUDGE)**

DECEMBER 20, 2018/ns/rs

