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

Date of Decision : July 30, 2018

+ CRL.A. 255/2015

PANKAJ SHARMA

..... Appellant

Through: Mr.Vikram Singh Panwar, Mr.Mirza Hasan Beg and Mr.Vikas Walia, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Rajat Katyal and Ms.Aasha Tiwari, APP for the State with SI Manish Tyagi, PS Gandhi Nagar.

Mr.S.S. Gandhi, Senior Advocate with Mr.Gagan Minocha and Mr.Bhavook Chauhan, Advocates for the complainant.

WITH

+ CRL.A. 270/2015

MANOJ KUMAR & ANR

..... Appellant

Through: Mr.A.K. Choudhary, Ms.Puja Shrivastava and Mr.Anil Choudhary, Advocates for appellant no.1.

Mr.Rajeshwar Singh, Advocate for appellant no.2.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Rajat Katyal and Ms.Aasha Tiwari, APP for the State with SI Manish Tyagi, PS Gandhi Nagar.

Mr.S.S. Gandhi, Senior Advocate with Mr.Gagan Minocha and Mr.Bhavook Chauhan, Advocates for the complainant.

WITH

+ CRL.A. 302/2015

ASHOK KUMAR SHARMA & ORS

..... Appellant

Through: Mr.K.S. Singh, Mr.A.K. Sharma and Mr.Priyank, Advocates for appellant no.1. Ms.Rajni Singh, Advocate for appellant no.2. Mr. Anurag Jain, Adv for appellant no.3

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Rajat Katyal and Ms.Aasha Tiwari, APP for the State with SI Manish Tyagi, PS Gandhi Nagar.

Mr.S.S. Gandhi, Senior Advocate with Mr.Gagan Minocha and Mr.Bhavook Chauhan, Advocates for the complainant.

WITH

+ CRL.A. 312/2015

SUNIL KUMAR & ANR

..... Appellant

Through: Mr.Sumeet Verma and Ms.Preet,
Advocates.

versus

STATE (THE NCT OF DELHI)

..... Respondent

Through: Mr.Rajat Katyal and Ms.Aasha
Tiwari, APP for the State with SI
Manish Tyagi, PS Gandhi Nagar.

Mr.S.S. Gandhi, Senior Advocate
with Mr.Gagan Minocha and
Mr.Bhavook Chauhan, Advocates for
the complainant.

WITH

+ CRL.A. 329/2015

RAJ KUMAR @ RAJA

..... Appellant

Through: Mr.Anurag Jain and Mr.Ayushi
Sharma, Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr.Rajat Katyal and Ms.Aasha
Tiwari, APP for the State with SI
Manish Tyagi, PS Gandhi Nagar.

Mr.S.S. Gandhi, Senior Advocate
with Mr.Gagan Minocha and
Mr.Bhavook Chauhan, Advocates for
the complainant.

AND

+ CRL.A. 418/2015

KAMAL RAJ SHARMA

..... Appellant

Through: Mr.K.Singhal, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Rajat Katyal and Ms.Aasha Tiwari, APP for the State with SI Manish Tyagi, PS Gandhi Nagar.

Mr.S.S. Gandhi, Senior Advocate with Mr.Gagan Minocha and Mr.Bhavook Chauhan, Advocates for the complainant.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Since all these appeals have been preferred against a common judgment of conviction dated 24.12.2014 and common order on sentence dated 07.01.2015, therefore, all these appeals are disposed of by this common judgment.

2. The present appeals have been filed by the above named appellants, namely, Pankaj Sharma (Crl.A. 255/2015), Manoj Kumar & Rohit Kumar (Crl.A. 270/2015), Ashok Kumar Sharma, Deepak

Sharma & Raj Kumar Nai (Crl.A. 302/2015), Sunil Kumar and Anil Kumar (Crl.A. 312/2015), Raj Kumar @ Raja (Crl.A. 329/2015) and Kamal Raj Sharma (Crl.A. 418/2015) under Section 374(2) Cr.P.C. against the judgment dated 24.12.2014 vide which they have been convicted for the offences punishable under Section 148/452/324/302 read with Section 149 IPC. Appellants Raj Kumar @ Raja and Pankaj have also been convicted for the offence punishable under Section 27 of the Arms Act. Vide order on sentence dated 07.01.2015, all the appellants have been sentenced to undergo life imprisonment and fine of Rs.1 lakh each and in default of fine, the same has been ordered to be recovered under Section 421 Cr.P.C. for the offence under Section 302 IPC; to undergo rigorous imprisonment for three years and fine of Rs.5,000/- each, in default of payment of fine to further undergo simple imprisonment for six months for the offence punishable under Section 148 IPC; to undergo rigorous imprisonment for three years and fine of Rs.10,000/- each, in default of payment of fine to further undergo simple imprisonment for eight months for the offence punishable under Section 324 IPC; to undergo rigorous imprisonment for four years and fine of Rs.10,000/- each, in default of payment of fine to further undergo simple imprisonment for eight months for the offence punishable under Section 452 IPC; appellants Raj Kumar @ Raja and Pankaj Sharma have been sentenced to undergo rigorous imprisonment for five years and fine of Rs.10,000/- each, in default of payment of fine to further undergo simple imprisonment for eight months for the offence punishable under Section 27 of the Arms Act.

3. The factual matrix emerging from the record is that on 19.12.1997 at about 8.25 p.m., an information was received in the police station Gandhi Nagar vide DD No.26A regarding stabbing of a person at Mandir Wali Gali, Gandhi Nagar. On receipt of such information, SI Amrit Raj along with Ct. Mange Ram reached the spot i.e. House No.1357, Mandir Wali Gali, Gandhi Nagar, Delhi but no eye witness of the incident was found. It was revealed that the injured namely Keshav Sharma and Dharmendra had been removed to the hospital. At about 8.45 p.m., an information was received from the GTB hospital (DD No.27A) that injured Keshav Ram was declared brought dead while injured Dharmendra was under treatment. The case FIR was registered under Section 302 IPC. SI Amrit Raj left for the hospital leaving Ct.Mange Ram at the spot. In GTB Hospital, SI Sanjay Sinha handed over MLCs of Keshav Ram, Dharmendra and Raj Kumar to SI Amrit Raj. Injured Dharmendra handed over his blood stained clothes to the police. A pullanda containing clothes of the deceased was seized.

4. SI Amrit Raj recorded statement of injured Dharmendra under Section 161 Cr.P.C. in which he stated that on 19.12.1997 at about 7.30 p.m. he was present at his home. He and his father were watching TV after having dinner. There was a knock on the door, but no one was found when his father went to see. Again, there was a knock on the door upon which his father went to the roof and saw that accused Raja was running away after hitting the door with his leg. When there was another knock on the door for the third time,

Dharmender went to the roof and found five boys namely Pankaj, Rohit, Manoj, Amit and Anil. In the meanwhile, accused Raja inflicted injury on his left buttock with a knife. When Dharmender raised an alarm, he was pounced by the accused persons and was given injuries on his nose and left shoulder. He tried to free himself and on hearing his cries, his father came on the roof. Accused Raja gave a knife blow on the abdomen of his father. Accused Anil, Sunil, Rohit, Manoj, Raj Kumar Nai and Babloo started beating his father. Accused Manoj, Amit and Rohit escaped by climbing down the wall. Accused Ashok, Kamal and Deepak had pounced upon his father, whereas accused Sunil and Anil were giving him beatings. Accused Deepak, Ashok and Pankaj-who were having knives, were inflicting injuries to his father from left side. Accused Raj Kumar and Kamal were beating his father with iron rods. Due to the injuries sustained, his father fell on the roof and the accused persons fled from the adjacent roof. He also stated that Kaushalya, Kamlesh, Saroj and Jile Singh were standing at the door of this house and were creating ruckus. Nobody came to their rescue.

5. Dharmender rushed to the house of his sister Sunita at Geeta Colony, and brought her on his motorcycle. Dharmender and his sisters took their father to GTB Hospital in a TSR, where his father was declared dead. He also stated that the accused persons had quarreled with them for the reason that a complaint case filed by his father was fixed before the court in the morning on the same day, wherein accused persons had appeared. In the court, his father met

Darshan Singh Bahl, Dr. Kaushal, Ashok, Ashu and Saroj and had a talk for a compromise. There was bickering between his father and Saroj, Ashu and Ashok, and; his father was chased by Ashu and Ashok while returning.

6. The IO prepared the site plan and collected exhibits from the spot. Body of the deceased was sent for post mortem on 20.12.1997 at 11.15 AM. As per post mortem report Ex. PW-8/A, there were 15 injuries on the person of the deceased including 5 incise wounds/stab wounds. The injuries found on the body of the deceased by the examining doctor were the following:

“1.Incised wound 4cm x 0.2 x 1 cm present over right side of scalp placed 7cms over right ear and 15cms above right eyebrow.

2.Red linear abrasion 6cm x 0.1cm over left side of forehead placed 7cms to left of midline starting from outer angle of left eye.

3.Red abrasion 1.5cm x 1cm over right side of chin placed 1.5cms to the right of midline and 2cms below lower lip.

4.Incised wound 6.5cm x 0.1cm x 0.1cms present over outer border of right forearm 7cms below elbow joint.

5.Red linear abrasion 7cm x 0.1cms over outer aspect of right forearm starting from elbow joint.

6.Red abrasion 7cm x 1.5cm present over inner aspect of right arm starting from elbow joint.

7. Incised stab wound 4cm x 0.2cm present over outer and posterior aspect of left arm. 14cms below top of shoulder. It is spindle shaped with clean cut margins and one angle of the wound being more acute than the other. On dissection the track of the wound is going anterior, medially and upward entering the axillary region and cutting the axillary blood vessels. Depth of wound is 14cms. Hemorrhages and extravasations of blood present along track of the wound.

8.Red abrasion 0.8cms x 0.8cms over dorsal surface of left thumb on the Inter phalangeal joint.

9.Red abrasion 2cm x 1cm over inner aspect of left forearm placed 6cms above the wrist joint.

10.Incised stab wound 5.5cm x 0.5cms over outer aspect of left thigh placed 16cms below hip bone. It is spindle shaped with clear cut margins, and one angle of the wound being more acute than the other. It has inverted edges. On dissection the track of the wound is going medially, anteriorly and upwards and made exit wound of 1.3cms x 0.5cms over front of left thigh, 2cm below inguinal crease and 13cms to left of sacrotal sac. It has with clean cut everted edges. Depth of wound is 12cms and no major blood vessels have been cut.

11.Red abrasion 1.5cms x 1.5cms over front of left leg placed 12cms below the left knee.

12. Red abrasion 1.5cms x 0.7cms over outer aspect of left leg placed 13cms above ankle joint.

13.Red abrasion 5cm x 4 cm over back of right side of abdomen placed 6cms to the right of midline and just above the hip bone.

14. *Lacerated stab wound 1.5cm x 1cm with irregular margins present over right inguinal area 4cms to the right of penis. On dissection, the track of the wound is going upwards, medially and posterior for a depth of 6cms. It was the soft tissues throughout and no major blood vessels were cut.*

15. *Incised stab wound 4.5cms x 0,3cms present over right buttock placed 5cms to the right of gluteal cleft and 20cms below top of hip bone. On dissection, the track of the wound is going downwards laterally and anteriorly for a depth of 10.5cms. No major blood vessels have been cut."*

The opinion regarding the cause of death of the deceased is recorded as follows:

"The time since death was about 2/3 of a day. The cause of death was haemorrhagic shock due to antemortem stab injuries involving the axillary blood vessels. Injury No.7 was sufficient to independently cause death in the ordinary course of nature."

Further investigation of the case was conducted by Insp. Manmohan Sharma PW-20. Accused Kamal Raj, Deepak Sharma and Raj Kumar @ Raja were arrested on 22.12.1997. At the instance of accused Raja, one dagger was recovered from Thokar No.18, Yamuna Pushta.

Initially the police filed the charge sheet against accused Kamal Raj, Deepak Sharma and Raj Kumar @ Raja on 10.03.1998, but further investigation was conducted in the case by Insp.Satyaveer Singh, DIU. Thereafter, supplementary charge sheet was filed against 7

more accused, namely, Sushil, Anil, Raj Kumar Nai, Ashok Sharma, Rohit Gupta, Manoj and Amit. Thereafter, accused Pankaj was arrested and supplementary charge sheet was filed against him. Charges under Section 147/148/149/324/452/307/302 IPC and 27/54/59 Arms Act were framed to which the accused persons pleaded not guilty and claimed trial.

7. To prove its case, the prosecution had examined 30 witnesses, Dharmender Sharma (PW1), Smt.Saroj Sharma (PW2), Sunita (PW3) being star witnesses of the case.

8. After completion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded in which they claimed innocence and denied the entire case of the prosecution. Accused persons examined defence witnesses in their defence.

9. On appreciation of evidence and material brought on record, the trial court convicted the appellants for the offences charged against them passed the order on sentence. Feeling aggrieved of the same, the appellants have preferred the instant appeals.

Submissions on behalf of the accused Sunil & Anil

10. Learned counsel for the appellants Sunil and Anil have argued that the dispute was between deceased Keshav Ram and his son Kamal who is also a co-convict in the present case. PW1 admitted in his cross-examination that a civil dispute was going on

between his family and family of accused Kamal regarding the house in which he along with his deceased father were staying, and that there was no motive for appellants to murder the deceased. PW1-Dharmender is the alleged eye witness who is also the son of the deceased. PW5-Manoj Kumar is another son of the deceased. It was submitted that as per DD No.26A (Ex.PW21/A), the first information was given to the police at 8.25 p.m. regarding stabbing of a person, whereas as per DD No.25A (Ex.PW6/DA) information was given to the police at 8.20 p.m. by the convict Raj Kumar Sharma @ Raja to the effect that he had a quarrel with deceased Keshav Ram, Dharmender and Manoj due to which he received a head injury. However, this information was not auctioned by the police. In this regard, he refers to the testimony of PW27-Insp.Amrit Raj, who stated during his cross-examination that deceased Keshav Ram was not arrested by him under Section 107/151 Cr.P.C. and he did not take opinion from the doctor about the injuries received by accused Raj Kumar @ Raja. He also did not take the opinion of doctor whether such injuries were self inflicted or caused by someone. He could not say whether any cognizable offence was made out from the MLC of accused Raj Kumar @ Raja. He could not say whether Raja had received 8-9 stitches on his head. He stated that he did not register the case, as he had no statement of accused Raj Kumar @ Raja. Ld. counsel submits that statement of the injured eye witness Dharmender (PW1) was recorded under Section 161 Cr.P.C. vide PW-1/D1 (PW-1/DA-1) which was reproduced in the charge sheet and on comparison of thee two accounts, some improvement can be noticed. Ld. Counsel

submits that in his testimony PW1 deposed that deceased had dinner at about 7.30 p.m. and he died at about 8 p.m. is falsified by the fact that postmortem revealed that only digested food was found in the stomach of the deceased.

11. Ld. Counsel submits that PW1 stated that he had received two knife blows, but his MLC shows that he received only one knife injury. It was further submitted that PW1 had not given the route he had taken to go to his sister's house, and he has not explained why he had gone to pick up his sister rather than rushing to the hospital with the deceased. PW1 further stated that in his statement to the police dated 23.01.1998, that while they were going to the hospital by scooter, SHO Manmohan Sharma came there and he asked that his father be taken to GTB Hospital. It is further argued that PW1 has not explained as to why he had not taken his father to a nearby nursing home, and instead gone to GTB Hospital, which was at a far off place. In his cross examination on behalf of accused Sunil and Anil, PW1 stated that his first statement was recorded in the police station, while the second one was recorded in his house, whereas PW27-Insp.Amrit Raj stated that the statement of PW1-Dharmender was recorded in the hospital. Thus, the recording of the initial statement at the claimed time and place is itself doubtful. It was submitted that as per site plan Ex.PW15/A,(also marked Z-1) accused Sunil was standing with an iron rod, but PW1 had stated that he did not tell the police that accused Sunil was having an iron rod while he was standing at the place "I" as shown in the site plan.

12. Ld. counsel submits that PW27-Insp. Amrit Raj stated that the investigation of the case remained with him till 6.00 p.m. on 20.12.1997, and thereafter it was taken over by Insp. Manmohan Sharma PW-20. Attention of this Court was drawn to the statement of PW27-Insp. Amrit Raj, to the effect that fluid was applied on the statements of Dharmender PW1, Sunita PW3, Manoj PW5 and Saroj PW2 recorded under Section 161 Cr.P.C. It is further submitted that during the testimony of PW1, Court observation was recorded that in the original statement under Section 161 Cr.P.C. of PW1, eraser fluid was used and signatures have been put thereupon. He submits that serious doubt arises whether the statements under Section 161 Cr.P.C. were even in existence on 19.12.1997, and the use of eraser fluid shows that second IO had changed the signatures. PW20-Insp. Manmohan Sharma had stated that he did not record the statement of any witness, nor statement of any witness was recorded in his presence on 22.12.1997. It is further argued that the brief facts of the case were recorded by the IO vide Ex.PW27/B1, but no fact as mentioned in the statement of PW1 recorded under Section 161 Cr.P.C. came in it.

13. It is further submitted that in the death report Ex.PW1/B, no opinion regarding the use of any weapon has been given, with which the injuries were allegedly caused to the deceased. The MLC Ex.PW7/A of the injured Dharmender was prepared by Dr.B.D. Singh (PW7) who stated that there was no injury on the person of the patient on the face and ankle as are described by PW1. PW1 later alleged

that Anil possessed a punch in his hand, whereas no injury on deceased is attributable to a punch. It is further argued that in the statement of Saroj Ex.PW24/DX1, there is no mention of the names of the appellants Sunil and Anil as the assailants.

14. It is further submitted that the appellant Sunil had taken the plea of alibi that on the day of the incident, he along with his father had gone to Village Khatola, District Gurgaon, Haryana to purchase a buffalo. They reached there at about 5 p.m. and stayed in the said village for the whole night. It is further argued that DW4-Luv Kush Aggarwal was examined as defence witness to establish the alibi of accused Anil that on the day of incident, appellant Anil was present with DW4 from 6.00-6.30 p.m. at his house as they were watching a cricket match uptill 10.30-11.00 p.m. DW4 further deposed that on that day father of Anil asked DW4 to take care of Anil as he was going along with Sunil to purchase a buffalo. In between, Anil had gone to his home to sell milk at about 7-7.15 p.m. and came back after about 2-3 minutes. Similarly, DW7-Virender Singh was examined to establish that he purchased the milk from appellant Anil and he stated that on 19.12.1997 at about 7.00-7.15 p.m. He had gone to the house of Anil to purchase milk. At that time, Anil was not present at his house. His mother told him that he was sitting in the house of Babli in the adjacent house. He went to the house of Babli and called Anil. Anil came with him to his house, gave him milk and thereafter, he went back to the house of Babli to watch cricket match.

15. It is further submitted that as per the Scaled site plan i.e., Ex.PW15/A, the only role assigned to appellant Sunil is that he was standing with iron rod. Ld. counsel submits that appellant Anil and Sunil were arrested after about one year without any explanation by prosecution. PW24 I.O. Inspector Satyaveer Singh had deposed that accused Anil and Sunil were not arrested by him immediately after the interrogation done by him on 27-2-1998 and that they were arrested on 07-12-1998. It is submitted that appellants Anil and Sunil were not even arrayed as accused persons in the First Chargesheet dated 10-3-1998 which was filed against only three accused persons i.e. Raj Kumar @ Raja, Kamal and Deepak. It is submitted that none of the three investigating officers believed the statements of PW1 Dharmender, wherein he named as many as 12 assailants and, therefore, the First Chargesheet dated 10-3-1998 was filed against only three accused persons, even though the statement of PW1 Dharmender mentioned all the accused- including the appellants.

16. In the alternate, it is submitted that only the case of commission of culpable homicide not amounting to murder is made out against the main accused Raj Kumar @ Raja, as the injury on the arm of the deceased was the cause of his death. It is further submitted that the appellants Sunil and Anil had no knowledge that their co-accused would cause any fatal injury to the deceased. Therefore, Section 149 IPC has been wrongly invoked in the present case. Ld. Counsel submits that otherwise also, there is no evidence to suggest that the common object of the accused persons was to commit

murder of deceased, or that it was in the knowledge of appellants that one of the accused persons would cause the fatal injury on the left arm of the deceased. It is submitted that the law on Section 149 IPC is settled by various judgments of the Supreme Court of India, including ***Kuldip Yadav Vs. State of Bihar [(2011) 5SCC 324]***, wherein the Supreme Court held as follows:

“ It is not the intention of legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object” (emphasis supplied)

17. Reliance is also placed upon the following judgments of the Supreme Court dealing with Section 149 IPC:-

- i. ***Veeran & Ors. Vs. State of U.P. [AIR 2011 SC 1655]***
- ii. ***Manoj alias Bhau and ors. Vs. State of Maharashtra [AIR 1999 SC 1620]***
- iii. ***Bharat Soni etc. Vs. State of Chhatisgarh [2013(1) JCC 579]***
- iv. ***Najabhai Desurbhai Wagh Vs. Valerabhai Deganbhai Vagh [(2017) 3 SCC 261]***

v. ***Mummidi Hemadri and Ors. Vs. State of Andhra Pradesh [2007(4) SCALE 431]***

Submissions on behalf of the accused Kamal Raj

18. On behalf of the appellant Kamal Raj, it is argued that in his statement Ex.PW1/A regarding identification of the dead body, PW1-Dharmender stated that some persons had killed his father, but he had not named the appellant Kamal Raj in the same. It is submitted that PW27-Insp.Amrit Raj– who had recorded the statement of PW1, PW2 & PW3, had stated that during the course of investigation, it did not come to his knowledge that there was any dispute between the brothers over the house in question. Even the name of Kamal Raj did not figure in the investigation done by PW27.

19. It is submitted that the mother of the deceased, namely, Kasturi Devi had given complaints (Mark X) dated 16.12.1996, and Ex.DX dated 09.01.1997 to various authorities against deceased Keshav Ram and his sons regarding causing trouble in the lives of the applicant, her husband and others. Similarly, complaints Ex.DX1 dated 18.03.1997 and Ex.DX2 were made by the wife of the appellant Kamal against her in-laws i.e. deceased Keshav Ram (father-in-law), Smt.Saroj (mother-in-law) and Dharmender and Manoj (brothers-in-law) with regard to beating and harassment. It is further submitted that two complaints Ex.PW1/X and Ex.PW1/Y were made by the deceased against some of the appellants, but the name of the appellant-Kamal

did not figure in it. Thus, there was motive for the complainant PW-1 to falsely implicate the appellant in the death of his father.

20. He submits that the house in question was given to the appellant Kamal by his grandfather by the virtue of a Will (Mark Y) dated 15.04.1997, and a General Power of Attorney (Mark X) dated 15.04.1997 was executed in favour of the appellant Kamal with regard to property in question. It is submitted that the appellant Kamal had no motive to kill his own father, for the reason, that the owner of the property was his grandfather Nand Kishore Sharma, who had executed a Will and a Power of Attorney in favour of the appellant-Kamal, and deceased was not the owner of the property. It is also submitted that the appellant had instituted a suit for the said property. The appellant had invoked the legal remedy to get his property vacated, and there was no reason to eliminate his own father due to the civil dispute.

21. It is further argued that there are serious contradictions/improvements in the testimony of PW2-Saroj Sharma inasmuch, as, in her statement made before the Court she stated that she saw that the accused Raj Kumar Nai and Kamal were giving beatings to her husband with iron rod, but when she was confronted with her statement Ex.PW2/DB recorded under Section 161 Cr.P.C., it was found that nothing as such was mentioned therein. Rather, it was mentioned that she had not seen anyone on the roof. Even PW24 Inspector Satyabir Singh during his cross examination stated that PW2 stated that she could not see any of the assailants. Similarly, serious

contradictions in the statement of PW3-Smt.Sunita have been pointed out. It is submitted that she had stated that she had heard the accused persons telling accused Kamal that on that day they would kill Keshav Ram (deceased) and his children, but the said fact did not find mention in her statement under Section 161 Cr.P.C. Ex.PW3/DA. She did not react to the said information allegedly desired by her, as any normal human being would. She neither informed PW-1, or the deceased, or the police about the same as soon as she learnt of the so called plan, to avert it being put into action.

22. In similar fashion, it is submitted that the testimony of PW1-Dharmender is not true when his testimony is contrasted with his statement recorded under Section 161 Cr.P.C. Ex.PW1/D1 and his testimony is full of improvements. The statement of PW1 recorded under Section 161 Cr.P.C. allegedly on 19.12.1997- Ex.PW1/D-1 is absolutely silent about the alleged story of gathering of appellant with other person before the incident. However, another statement (without any date) (Ex. PW1/DX1) records everything which was missing in previous statement. Since this statement is undated, it is difficult to presume as to when it would have been recorded. However, a reasonable inference may be drawn that the said statements were recorded with an ulterior motive to falsely implicate the present appellant. Ld. counsel submits that in his testimony PW1 stated that when his sister Sunita was leaving his house, she told 'us' that in front of the shop of Kamal, Raja, Pankaj, Ashok, Deepak, Jile Singh were standing and they were talking to each other and she also

told that they were saying that today they would run after killing Keshav Ram, his wife and children and they further asked Kamal to look thereafter. This statement of PW-1 is unbelievable as there is nothing to show that he, or his other family members i.e., the deceased and his mother reacted to the said information by taking any preventive measures, or informing the police.

23. Ld. Counsel points out that PW-1 in his testimony stated that on the roof he found five persons namely, Pankaj, Rohit, Manoj, Amit and Anil. In the meantime, accused Raja inflicted at his left side buttock with some sharp edged weapon and Anil closed his mouth with one of his hands. Thereafter, accused Pankaj inflicted knife injury above his ankle. Accused Rohit, Manoj and Amit caught hold him (daboch liya). These accused persons caught his hands and hair; and thereafter caused injuries on his forehead, nose, ears, and on right shoulder. He tried his best to get himself released from the clutches of the accused persons. On his crying, his father came at the roof to rescue him. When his father was coming on the roof, (again said) his father had already come on the roof, then, accused Raja inflicted knife injury below the abdomen of his father. Then, accused namely, Anil, Sunil, Raj Kumar, Sudhir, Rohit, Manoj pounced towards his father and they started beating his father. Then, accused Ashok, Deepak and Kamal caught held of his father (daboch liya) and accused Anil, Sunil and Sudhir started inflicting injuries with knives/ khanjars on his father. Accused Deepak and Ashok were inflicting injuries on the left side shoulder of his father. Then, he also noticed that accused Pankaj

also inflicted knife injuries on the hip of his father. Kamal and Raj Kumar also started causing injuries on the head of his father with iron rods. Ld. Counsel submits that these allegations were not stated by him in Ex.PW1/D1.

24. It is further submitted that PW1 has taken contradictory stands with respect to his statements recorded by the police. It is pointed out that in his cross on behalf of accused Ashok and Deepak dated 02.11.2000, PW-1 stated that his first statement was recorded on 19.12.1997 in GTB hospital by the IO. This statement was recorded at about 10.15 PM. SI Amrit Raj recorded his statement at his instance. He also stated that he had signed his statement which was in writing. But, no such document was found on record. However, Ex. PW24/DX2 was brought on record, which was PW-1's signed statement dated 19.12.1997 recorded by PW-27, SI Amrit Raj. Ld. Counsel points to the cross examination of PW-1 on behalf of accused Sunil and Anil dated 05.07.2001, wherein he stated that his first statement was recorded by the police in the police station and the second was recorded in his house on the same date. Ld Counsel refers to the cross examination of PW-1 on behalf of accused Raj Kumar @ Raja dated 05.07.2001, wherein he stated that IO Amrit Raj had written his second statement dated 19.12.17. Insp. Manmohan did not write that statement as suggested. Probably the statement was got written through someone else by Amrit Raj. The court made an observation that in the original statement dated 19.12.1997, after using eraser, signatures have been put thereupon. Ld Counsel points out that

upon cross examination by accused Raj Kumar @Raja on 11.10.2001, PW-1 stated that on 20.12.1997 his statement was not recorded in the inquest proceedings. He further stated that he made a statement on 19.12.1997 naming the assailants to the police and denied the suggestion that he was not aware of the name of the assailants on 20.12.1997; and yet on 11.10.2001, he stated that his statement was recorded after the identification of the dead body and the statement recorded was Ex. PW-1/DA1.

25. Ld. Counsel submits that PW20-Insp. Manmohan Sharma had stated that upon verification of the version of the witness PW1, the same was not corroborated by any person from the locality. It is further argued that the DD entry lodged by accused Raja was not enquired into by the IO, nor were the facts regarding the alleged climbing of the accused persons from the neighbourhood onto the terrace of the house of the deceased got verified. It was not verified whether the neighbours were accomplice in the commission of the crime, since the accused could not have climbed onto the neighbour's terrace without their knowledge and consent.

26. It is further argued that PW1 had not disclosed in his testimony, as to what was the object of the accused in causing injury to him and his father, and if his testimony is to be believed, he could not explain as to why he was left alive when his father was fatally injured.

27. It is further argued that PW1 had the motive to falsely implicate the appellant Kamal in the present case, as he was aware that the GPA/Will of the house in question was in favour of accused Kamal, and in a quarrel, PW1 and Kamal were sent to lock up in the proceedings under Section 107/151 Cr.P.C. In the cross examination on behalf of the accused Amit and Manoj dated 4.05.2001, PW1 had admitted the pendency of civil dispute with regard to house in question between his father and accused Kamal.

28. In support of the above submissions, judgment in the case of **Rajesh @ Kalia v. State** (Crl.A. 285/1998, delivered by this Court on 15.07.2014) has been relied upon and more particularly para 11 and 12 are emphasized, in which it was observed that an accused may adduce the evidence in support of his plea directly, or rely on the prosecution case. It was also observed that the plea taken by the accused can be considered by the court relying on the probabilities and the circumstances of the case.

29. Next judgment relied upon is in the case of **Deny Bora v. State of Assam (2014) 14 SCC 22** in support of the contention that the court is required first to assess the trustworthiness of the witness, and if the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted upon, though, there may be other witnesses available who could also have been examined but were not examined. Reliance is also placed upon **Syed Ibrahim v. State of A.P. (2006) 10 SCC 601**, in which it was observed that it is the duty of the court to separate the grain from the chaff. Where chaff

can be separated from the grain, it would be open to the court to convict an accused, notwithstanding the fact that evidence has been found to be deficient, or to be not wholly credible. It has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well.

30. In ***Rabibul v. State* 2014 SCC OnLine Del 2214** it was observed that where two eye witnesses have spoken half truth, and in view of their conduct and the fact that even the appellant had received an injury which required stitches to be put, the Court gave the benefit of doubt to the appellant with respect to the offence committed. In the case of ***Sahib Singh v. State of Haryana* (1997) 7 SCC 231**, it was observed that enmity has always the potential of making a man stoop to the lowest level of inhumanity. It was further observed that not having seen as to what had happened, and who had killed their father, the three brothers thought of involving the appellant in the case so that he may be removed from the scene and lodged in the jail as they-on account of the enmity, were highly interested in securing his conviction and to achieve the said object, they did not shudder in lying before the Court. In the case of ***Bajwa and others v. State of U.P.* (1973) 1 SCC 714**, it was observed that, no doubt, the prosecution witnesses claiming to have seen the occurrence have named all the appellants and the approver has even named those

acquitted by the High Court, but in the view of the Supreme Court it would be safe only to convict those who are stated to have taken active part and about whose identity there can be no reasonable doubt. In the case of ***Dinesh Kumar @ Kalu v. State Govt. of NCT of Delhi*** (Crl.A. 901/2013 decided by this Court on 24.09.2014) it was observed that the tendency to add fringes and embroidery of untruth to the truth is not uncommon, and thus lies the task with the Court to separate the grain from the chaff.

31. Ld. Counsel, in the alternative, submits that the appellant has been wrongly implicated under section 149 IPC. He submits that the prosecution had failed to prove that the common object of the assembly was to kill the deceased. Ld. Counsel places reliance on ***Allauddin Mian and others v. State of Bihar (1989) 3 SCC 5***, ***Rajendra Shantaram Todankar v. State of Maharashtra and others (2003) 2 SCC 257***, ***Maiyadin and others v. State 1973 Cri.L.J. 1203***, ***Najabhai Desurbhai Wagh v. Valerabhai Duganbhai Vagh and others (2017) 3 SCC 261*** and ***Sarwan Singh and others v. State of Punjab (1978) 4 SCC 111***, wherein it was observed that in order to fasten vicarious responsibility on any member of an unlawful assembly, the prosecution must prove that the act constituting the offence was done in prosecution of the common object of that assembly, or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. However, the prosecution has not discharged this burden.

32. It is submitted that even if this court upholds the conviction of the accused persons under section 149 IPC, no offence whatsoever, punishable under section 302 IPC is made out. It is not the case of the prosecution that the accused persons had gathered and come to the house of the deceased to kill the deceased only. Rather it is the case of the prosecution that PW-1 was given beatings. They did not target the deceased. He got embroiled only when he came up to the terrace. It is apparent that the accused persons did not make sure to kill PW-1. The deceased had come in between, and if the MLC of accused Raj Kumar @Raja is taken into consideration, it would be apparent that some kind of scuffle/fight had taken place. The prosecution has also not come with true story, and there is something more than what was unfolded by the prosecution and, therefore, this court has to consider the possible probabilities. The DD no. 27A (Ex. PW-21/B) and MLC of accused Raj Kumar @Raja are undisputed. The injured witness has not explained the injuries on the body of the accused Raj Kumar @Raja. The injuries on the body of the deceased are a result of a fight. The incident has been committed in the heat of the moment, and no undue advantage has been taken. The offence, at the most, is punishable under section 304 part II of IPC, as the intention to commit the offence of murder is absent. It is thus prayed that the appellant is innocent and he be given the benefit of doubt.

Submissions on behalf of the accused Pankaj Sharma

33. On behalf of the appellant Pankaj Sharma, it is argued that there are several material contradictions in the testimony of PW1,

PW2, PW3 and PW27. Ld. Counsel submits that the presence of PW-1 on the terrace is doubtful, and he is a planted witness. Ld. Counsel submits that the testimony of PW-1 is full of contradictions and improvements. He points towards the examination in chief of PW-1 wherein he had stated that accused Ashok, Deepak and Kamal caught hold of his father (daboch liya) and accused Anil, Sunil and Sudhir started inflicting injuries with knives/ khanjars on his father. Accused Deepak and Ashok were inflicting injuries on the left side shoulder of his father. Then, he also noticed that accused Pankaj also inflicted knife injuries on the hip of his father. Kamal and Raj Kumar Nai also started causing injuries on the head of his father with iron rods. Ld. Counsel points to the cross examination of PW-1 on behalf of Ashok and Deepak dated 12.02.2001, wherein he stated that he told the police that accused Deepak and Ashok were inflicting injuries on the left side of the shoulder of his father in the statement dated 19.12.1997 which was written by the IO. This witness was confronted with his statement, where it was written “Ashok, Kamal, Deepak ne pitaji ko daboch rakha tha Sunil Anil maar rahe the Deepak, Ashok bahi taraf peeche se Pankaj pitaji par waar kar rahe the”. Thereafter again on 07.03.2001, PW1 states that the statement made by him before the district crime cell was correct which he had read ‘surseralee’. He did tell the district crime cell in his statement that his father was given injuries on his left side/shoulder by accused Ashok and Deepak, but the writer of the statement told that he had already told these facts in his earlier statement; and on 03.05.2001, he stated that he saw his father when he was already attacked with the knife. His father did not

fall down the roof as he was grabbed by Deepak Kamal and Ashok from behind. When his father was caught and held up by the accused, he was standing at a distance of 15 feet. The three accused persons namely Deepak, Kamal and Ashok were not having anything in their hands. His father had already sustained injuries before he was caught held of by the three accused persons. All the three accused had caught held of his father from behind. On the left side Ashok was there, in the middle Kamal was catching hold of his father.

34. Ld. Counsel submits that the injury attributed to the appellant Pankaj Sharma is on the ankle of PW1, but the same has not been found in his MLC (Ex. PW-7/A). It is further argued that as per Ex. PW-8/B, which is the opinion of PW-8, Dr. Anil Kohli regarding the weapon of offence, though injury no.15 is attributed to the appellant, but no weapon has been recovered from him. The said injury could be possible by the knife allegedly used and got recovered by the accused Raj Kumar @Raja. It is submitted that there was an injury on the hip of the deceased, but the same could not have been inflicted as the deceased was allegedly held by accused Deepak, Kamal and Ashok from the back. It is further submitted that it has not been explained by the prosecution, as to how, the appellant reached the roof when the height of the balcony was about 15 feet.

35. Ld. Counsel points out that as per DD No. 25A, Ex. PW6/DA, information was received by Police through accused Raj Kumar @Raja regarding the incident. Thereafter, vide DD No. 26A (Ex. PW21/A). the Police was informed at 8:25 PM that one man had

been attacked by a knife. Thereafter, vide Ex. PW 21/B. DD No. 27A, another information was received at 08:45 PM by the police from GTB Hospital regarding the injured being brought to the hospital. He submits that the time of occurrence has been noted by the IO as being about 07:30 PM on 19.12.1997. Ld. Counsel points towards the cross-examination of PW-21, who authored the said exhibits, wherein he has stated that DD No. 25A and DD No. 29A are in different handwritings. It is true that DD No. 5A(DD No. 25A) and DD No. 29A are not signed by me and name of the duty officer is not mentioned in those DDs.

36. To substantiate his plea of alibi, the appellant Pankaj had examined DW5 Rajesh Umare, who had deposed that as per record, on 19.12.1997 one Pankaj Kumar Sharma sold his motorcycle bearing no.DL 4SD 8310 to one Mr.Larry Eastwood. DW6-Ram Niwas stated that in the month of March-April, 1997, Pankaj Sharma went to Mumbai to work in the film industry. DW10-Gauri Charan Bhagwan Das Dubey had deposed that accused Pankaj was known to him as he was working at Centaur Hotel, Juhu Beach, Mumbai as a life guard for three months i.e. between 07.10.1997 to 07.01.1998. DW10 gave a written undertaking to Pankaj Sharma to hand over his bike to Mr.Larry Eastwood under assurance that the remaining amount of 5000 rupees would be paid to him on 19.12.1997. Thus, the appellant claims that he was present at Mumbai at the relevant time.

37. In support of the above contentions raised, judgments in the case of **Jayanti Bhai Bhenkaarbhal v. State of Gujarat (2002) 8**

SCC 165 and *Kamlesh Prabhudas Tanna and another v. State of Gujarat (2013) 15 SCC 263* have been relied upon, in which it was observed that once the prosecution succeeds in discharging its burden, then it is incumbent on the accused-who takes the plea of alibi, to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. If the evidence adduced by the accused is of such a quality, and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the Court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defense of alibi. It was also observed that it is the sacrosanct duty of the appellate court to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper reassessment, re-appreciation and re-scrutiny of the material on record.

Submissions on behalf of the accused Raj Kumar @ Raja

38. On behalf of the appellant Raj Kumar Sharma @ Raja, it is argued that there was a dispute between accused Kamal Sharma and his deceased father regarding the house in question which is of 180 yards and whose owner was Sh.N.K. Sharma, father of the deceased. Sh.N.K. Sharma had prepared a will dated 15.04.1997 (Mark Y) in favour of accused Kamal Sharma vide which the house in question was given to Kamal. One GPA (Mark X) was also prepared by Sh.N.K. Sharma in favour of Kamal and the mother of the deceased made several complaints (Ex.DX, Ex. DX3, Mark 'D') against her

deceased son with regard to harassment meted out to them. The appellant Raja had no interest in the property in question and it was only accused Kamal Sharma who was interested in the property, so there was no motive in causing alleged injury to the deceased. The appellant Raja is living in the neighborhood and was just watching the fight between the deceased and accused Kamal Raj Sharma and there was nothing unusual about it.

39. It is further argued that the recovery of the knife vide Ex. PW-6/E at the behest of the appellant on 23.12.1997 is doubtful. There are contradictions in the testimony of witnesses, more particularly PW20-Insp. Manmohan Sharma who stated that accused Raj Kumar @Raja was arrested on 22.12.1997 based on the disclosure statement of accused Deepak and Kamal. Ld. Counsel submits that this fact was not stated in the disclosure statement of Deepak and Kamal. In his cross examination PW-20 had stated that disclosure statement of accused Kamal and Deepak vide Ex. PW-6/B was recorded on 22.12.1997. He did not recollect if any disclosure statement of accused Kamal and Deepak was recorded on 23.12.1997. Accused Raj Kumar @Raja was arrested prior to recording of Ex. PW-6/B.

40. It is further argued that one DD No.25A (Ex. PW-6/DA) was lodged by accused Raja at 8.20 p.m. on 19.12.1997 to the effect that he had a quarrel with the deceased and his family members, thereafter the appellant was medically examined on 20.12.1997 as admitted by PW-20 Insp. Manmohan Sharma. It is apparent that

appellant was not arrested in the manner alleged by the prosecution and no recovery was effected from him.

41. Ld. Counsel submits that DD No.26A was lodged at 8.25 p.m. regarding stabbing of a person. DD No.27A was lodged at 8:45 PM with regard to the information that the deceased was brought dead to the hospital. Ld. Counsel submits that the time of occurrence is mentioned in DD No. 27A, and there is no explanation as to how the IO found out about the time of occurrence. No name of any of the accused was mentioned in the brief facts prepared by the IO. Even the MLC of the deceased (Ex. PW-9/A) shows that he was brought with the history of stabbing by 'some persons'. It is submitted that the nature of injuries sustained by the deceased were not known initially, and it was only after the receipt of his postmortem report that an anti-dated statement of PW1-Dharmender was recorded in which the specific injuries were attributed to the accused persons. It is submitted that the statement of PW1 under Section 161 Cr.P.C. was recorded subsequently, as is evident from the fact that the statements have been tampered with. Eraser/white fluid had been applied over the name of the police officer who recorded the statement and SI Amrit Raj signed over the fluid/eraser.

42. Ld. Counsel submits that the fatal knife injury is not attributed to the appellant. However, the said injury was primarily in the left arm (shoulder/upper arm) of the deceased and not directed/aimed at any vital part of the body. The intention of the attacker could not have been to cause the death of the deceased

because, had it been so, the attacker would have given a direct knife blow on a vital part of the body. Ld. Counsel submits that even if the case of the prosecution is taken at the highest and accepted as the gospel truth, even then only a case under Section 304 IPC can be pressed against the present appellant, and not under Section 302 IPC as it is amply clear from the facts and circumstances, and nature of injuries received by the deceased, that there was no common object to kill the deceased. Even the Ld. Trial Court has observed that a preplanned intention to murder deceased Kesho Ram was absent. Further, the Ld. Trial Court has observed that it is ready to assume that the accused persons may not be having the intention to kill Kesho Ram.

Submissions on behalf of the accused Raj Kumar Nai

43. On behalf of the appellant Raj Kumar Nai, Ld. Counsel submits that initially police did not find anything against appellant Raj Kumar Nai, and he was not charge sheeted by the police in the main charge sheet. However, he was arrayed as an accused only in the supplementary charge sheet later on. It is argued that there was no allegation against the accused that he was involved in any dispute with the family of the deceased. Ld. Counsel submits that on a perusal of Ex. PW-1/D2, Ex. PW-1/X and Ex. PW-1/Y, which are documents on record produced to highlight the dispute between the deceased and his neighbors; in none of them, the appellant is cited as a rival party. He is not a stake holder in the property occupied by the deceased, regarding which he was having a dispute with his son Kamal Sharma.

There was no motive with the appellant in causing any injury to either the deceased, or the injured. It is alleged against him that he was carrying an iron rod and gave a blow on the head of the deceased, but the post mortem report does not show any head injury, nor any such iron rod was recovered from the appellant. He submits that it was never the case of the prosecution that the appellant was carrying any knife. It is argued that the appellant was not a member of any unlawful assembly on the day of incident, and nothing has come on record to show what the object of the unlawful assembly was. As per the postmortem report (Ex. PW-8/A) of the deceased, there was only one fatal injury, thus, it cannot be said that the common object of the assembly was to cause the death of the deceased.

Submissions on behalf of the accused Deepak

44. On behalf of the appellant Deepak, it is argued that the injury attributed to the appellant is on the hip of the deceased, whereas the fatal injury was injury no.7 as per the postmortem report (Ex. PW-8/A). It is further argued that as per the impugned judgment, the cause of death of the deceased was excessive bleeding. It is submitted that as per the death report (Ex. PW-1/B), postmortem report (Ex. PW-8/A) and testimony of PW-8 Dr. Anil Kohli, the dead body was naked. However, it is not explained where the clothes went. Even, no explanation came on record as to why the dead body of the deceased was brought to the hospital in naked condition.

45. It is submitted that PW-1, PW-3 and PW5 are not credible witnesses inasmuch, as, in his cross-examination but Raj Kumar, Pankaj, Anil & Sunil dated 28.03.2005, PW-5 stated that his grandfather Nand Kishore Sharma died on 20.12.1997, but his death certificate (Mark D1) shows that he died on 30.12.1997. Whereas, PW1 stated that Nand Kishore died on 01.10.1997, and PW3 stated that he died on 30.12.1999. There is contradiction in the testimony of PW5 as he stated that the deceased died in the morning, but as per the prosecution case, the deceased died in the evening at about 7.30 p.m. Two pyjamas were seized by the police and sent to FSL, which show that one pyjama had no reaction for blood, and the other pyjama was having reaction of human blood of 'A' group. It is submitted that the appellant Deepak is the nephew of the deceased, and there was no complaint by the deceased against Deepak that he had threatened him.

46. Ld. Counsel submits that as per the MLC of PW-1, (Ex. PW-7/A) dated 19.12.1997 at 08:30 PM, and testimony of PW-7, there was no injury on the face and ankle of PW-1 and the nature of injuries was simple. Ld. Counsel submits that the version of PW-1, PW-2 and PW-3 with respect to the incident is contradictory, inasmuch, as, PW-1 Dharmender Sharma deposed that on 19.12.1997, he along with his father Sh. Keshav Ram Sharma were present at their house at about 07:30 PM. He stated that they were watching TV after taking their meals. Whereas, PW-2 Saroj Sharma deposed that she was preparing food at 07:30 PM on 19.12.1997. Ld. Counsel submits that the conduct of PW-2 is unnatural inasmuch, as,

she stated that the SHO of Gandhi Nagar was known to her at the time of the incident. LD. Counsel questions as to why then did she not state the names of accused to the SHO, who was known to her. Ld. Counsel submits that PW-1 had already sustained injuries prior to the incident as is evident from the testimony of PW-2 Saroj Sharma and PW-5 Manoj Sharma. Ld. Counsel submits that the appellant has been falsely implicated and the involvement of PW1 in the incident cannot be ruled out. Ld. Counsel submits that PW-1 was already in an injured condition prior to the incident in question. She refers to cross examination of PW-2 on behalf of Amit and Manoj dated 1.03.2002, wherein she stated that Dharmender did not go to his work on the day of incident because he was having injuries on his person because of dispute earlier to the incident. PW-5 Manoj too states similarly.

47. To substantiate his plea of alibi, appellant Deepak examined DW11-Dr.V.K. Chaudhary, S.M.O. under CMO Saharanpur, U.P. who had produced Ex. DW-11/A- the medical certificate of Deepak Sharma. DW11 deposed that as per indoor treatment of Deepak, he came to the hospital on 17.12.1997 at 1.00 p.m. with the complaint of diarrhea, vomiting and dehydration with back pain. He was admitted in the hospital upto 20.12.1997. He proved the treatment slip of Deepak as Ex.DW11/B.

Submissions on behalf of the accused Ashok

48. The appellant Ashok, disputes the place of occurrence. It is submitted that the photographs taken of the spot do not depict the

correct picture. PW-27 Amrit Raj had stated that photographs were taken by the private photographer- PW-4, who failed to give the house no. of the place of occurrence and the crime team did not reach the spot. It is submitted that the blood stained earth was lifted from the spot vide 'Mark Z', but the same has not been relied upon by the prosecution. It is further submitted that the story put forth by the prosecution is highly improbable, for the reason that no footprints were found in the blood found on the terrace, or on the staircase, when it is the case of the prosecution itself that the deceased was brought from the roof through stairs after the alleged incident.

Submissions on behalf of the accused Manoj

49. On behalf of the appellant Manoj, it is argued that the DD No.26A (Ex. PW 21/A) regarding stabbing of a person was got lodged and then DD No.27A was got lodged regarding bringing of the deceased in the hospital who was declared dead. It is argued that in DD No.27A, the time of incident is mentioned as 7.30 p.m., but it has not been explained as to how the time of occurrence was recorded as 7.30 p.m when the IO had not found any eye witness at the spot. It is further submitted that this is a case where the investigation has been done in a shoddy manner. Ld. Counsel submits that the site plan (Ex. PW-1/DB) is wholly inadequate, as no dimensions have been shown therein. The TSR driver- of the vehicle in which the deceased was taken to the hospital, has not been examined by the prosecution. Even the TSR or the motorcycle of PW-1 Dharmender were not examined to draw blood samples from the same. It is further submitted that the

FSL report shows that there is delay of sending samples to the laboratory, as it is the case of the prosecution itself that the incident had taken place on 19.12.1997 and the samples were sent to the FSL on 05.02.1998. The FSL report shows that only blood on the pyjama of PW1-Dharmender matched, but the blood of the deceased did not match. It is further submitted that there is a doubt about the recovery of dagger from accused Raja inasmuch, as, two sketches of the dagger were prepared vide Ex. PW-6/D and PW-8/B and the pullanda was in torn condition as is evident from the testimony of PW-6. It is further argued that undigested food was found in the postmortem report (Ex. P-8/A) of the deceased, which belied the time of death attributed by the prosecution. It is further submitted that PW1 did not disclose the name of any person/ accused in his MLC (Ex. P-7/A), which creates doubt about the involvement of the accused. It is further argued that in the complaint filed by PW1-Dharmender dated 10.01.1998 (Ex. PW-1/Z), name of the appellant Manoj Kumar is not mentioned.

50. It is further submitted that if the version of PW3-Sunita is to be believed-that she had heard the accused persons planning to eliminate the family of the deceased, then her first reaction would be to come back to the house of her father and to inform them, but she had not done so, which creates doubt about the story. It is submitted that the conduct of PW1 is unnatural, as he had not taken his father to the nearby hospital. Rather took him to GTB Hospital which was at a far off place. Ld. Counsel submits that the presence of PW-2 Saroj Sharma at the place of the occurrence is doubtful. He submits that the

police did not find any witness at the home of the deceased as per the DD, and no blood stained clothes of PW-2 have been seized by the police. For his alibi, accused Manoj produced Ex. DW-1/A- copy of letter from Deepak Gupta and examined DW-2 Hari Om Gupta to prove that he was working in Noida from 15.12.1997 to 26.12.1997 and his working hours were from 10:00 AM to 08:30 PM.

Submissions on behalf of the accused Rohit

51. On behalf of the appellant Rohit, it is argued that the name of the appellant was not mentioned in the earlier statement made by PW1 under section 161 Cr.P.C. PW1 in his testimony before the Court attributed the role to the appellant Rohit, as the person who had caught held of the deceased and then given beatings to him. But in his cross-examination, PW-1 has admitted that accused Rohit was unarmed. Ld. Counsel submits that accused Rohit was not present at the spot at the relevant time and he has been falsely implicated by PW-1. Ld. Counsel submits that even in the version of PW-3, that she heard some accused plotting against the deceased and his family, appellant Rohit was not named therein. Ld. Counsel submits that most of the witnesses have not stated anything against accused Rohit, including the main witnesses like PW-3, PW-4 and PW-5.

52. To prove his plea of alibi, the appellant examined DW9- Jitender Kumar Varshney, who deposed that appellant Rohit Gupta is his brother-in-law. On 03.12.1997, first baby boy was born to the wife of DW9 in Malti Bai Hospital, Chitnish at Thane West,

Maharashtra. On 14.12.1997, Rohit Gupta came to his house and brought gift. On 17.12.1997, Namkaran ceremony of son of DW9 was celebrated. On 18.12.1997, Rohit Gupta suffered pain in his stomach. DW9 took Rohit Gupta to civil hospital, Ulhar Nagar, Thane, Maharashtra where he was treated and was advised to come regularly for two days. Appellant produced Ex. DW-12/A, medical records to this effect by DW12-Gopal Pandit Puranik, Junior Clerk at Regional Mental Hospital Thane, Mumbai, Maharashtra. He was again taken to the hospital on 19.12.1997 and 20.12.1997. He proved the OPD card of the hospital as Mark DW9/P2.

Submissions on behalf of the State

53. Mr. Rajat Katyal, Ld.APP for the State argued that DD No.25A Ex.PW6/DA was recorded on 19.12.1997 at 8:20 PM on the information of the accused Raj Kumar @Raja; and his MLC though not exhibited, is on record which shows that he had received injuries on his head. But another information regarding the incident was reported at 8.25 PM vide DD No.26A (Ex.PW21/A) to the effect that a person had been stabbed and it was assigned to PW-27 Amrit Raj. The injured Dharmender PW-1 was medically examined vide MLC Ex.PW7/A at 8.30 PM, and the deceased was examined vide MLC (Ex.PW9/A). They were brought to the hospital by Sunita. Ld. Counsel points that both the MLCs are consecutively numbered (88 and 89).

54. Mr. Katyal submits that the rukka Ex.PW27/A was prepared at 9.30 p.m. by SI Amrit Raj on the basis of which FIR was registered at 10.30 p.m. vide DD No.29A (Ex.PW21/C). He submits that the statements of Dharmender PW-1, Saroj PW-2 and Sunita PW-3 were recorded on 19.12.1997 and Ex.PW24/DX2 is the signed statement of PW1 dated 19.12.1997 which was recorded at about 10.30 p.m. He submits that this injured eye witness has specifically named the 12 accused and detailed their roles in his first statement itself. The statement recorded by SI Amrit Raj dated 19.12.1997 under section 161 Cr.P.C. vide Ex. PW-1/D1 (also Ex. PW-1/DA1) is also on similar lines. It is submitted that the rukka was sent at 9.30 p.m. on 19.12.1997 and by that time the statement of injured Dharmender was not recorded. The statement was recorded later on at about 10.30 PM, but the FIR was already registered on the MLC of the deceased that he had been declared dead. The investigation was done on 19.12.1997 and 20.12.1997. On 21.12.1997, no investigation was done as it was a Sunday and then the investigation was transferred to Insp. Manmohan Sharma PW-20 who arrested the accused Kamal, Deepak, Raj Kumar @ Raja who were searched vide Ex. PW-10/A, Ex. PW10/B and Ex. PW-10/C respectively; and recovery of a dagger was effected at the instance of accused Raja vide Ex. PW-6/E.

55. Ld. Counsel submits that on 31.08.2000, order on charge was passed against 10 accused. Thereafter accused Pankaj was arrested on 2.09.2002 and charge sheet against him dated 27.09.2002 was filed and received on 17.12.2002 by ASJ and order on charge was

passed against him on 22.08.2003. Thereafter, on the complaint of the complainant dated 10.01.1998 vide Ex. PW-1/Z, the investigation of the case was transferred to Crime Cell on 19.01.1998, East Delhi and Insp. Satyaveer PW-24 recorded the statement of Dharmender under Section 161 Cr.P.C. on 23.01.1998 vide Ex.PW1/DX1. Thereafter a fourth statement of Dharmender was recorded under section 161 Cr.P.C. on 27.02.1998. On 19.03.1998 charge sheet was filed against accused Raj Kumar @ Raja, Kamal and Deepak. On 7.12.1998 seven more accused- Rajkumar Nai, Rohit, Manoj, Anil, Sunil, Ashok, Pankaj were arrested. One Sudhir was declared a proclaimed offender.

56. Ld. APP submits that different statements of PW-1 were recorded at different times, but PW-1 has consistently stated with regard to the incident, and minor contradictions/ exaggerations do not go to the root of the matter. Ld. APP submits that PW-1 has taken different stands with respect to where his first statement was recorded by the police, but he has consistently stated that the first statement was recorded on 19.12.1997.

57. Ld. APP thereafter points towards the testimony of PW-27 Insp. Amrit Raj on the issue of the first statement of PW-1, wherein he has stated that he recorded the statement of PW-1 u/s 161 Cr.P.C. and also of Ct. Devender and SI Sanjay Sinha. He further stated that he recorded the supplementary statement of PW-1 Dharmender and also the statements of PW-2 Saroj, PW-3 Sunita, PW-11 Ct. Charan Singh and PW-13 HC. Mange Ram. In his cross for accused Deepak and Kamal dated 18.03.2010, PW-27 stated that

he reached the hospital at 9.45-10 PM. He recorded the statement of Dharmendra at about 10.15 PM. In the cross for accused Raja, Pankaj, Sunil, Anil, Amit and Manoj dated 1.11.2010, he denied the suggestion that the statement of PW-1 was not recorded by him in the hospital. Ld. Counsel submits that PW-21 was questioned on the same date of cross examination with respect to the eraser fluid, wherein he stated that he had not applied the same, nor was it done in his presence. He then voluntarily stated that someone else had signed by mistake on point 'A' where he had to sign, and after the fluid was applied, he signed at point 'A'. He further stated that he had asked somebody to apply fluid at point 'A', but he could not remember the name of the person. No note was given for applying the fluid in the statements. He further stated that the signatures have been put by him with pen in original, and not as carbon copy. Likewise, PW-27 gave evasive answers for other questions regarding the application of eraser fluid. In his cross on 3.02.2011, he stated that Dharmendra PW-1 had given one signed statement in writing to him in the hospital which was not written by this witness. He further stated that he had applied eraser fluid on the statement of PW-2 Saroj and PW-3 Sunita in the house at the time of recording their statement at about 11.30 PM which were written on his dictation by SI Ram Sewak. Further, again he stated that the statement of PW-2 and PW-3 were not recorded by him but the same were produced before him by Insp. Manmohan Sharma SHO, at the place of incident at about 11.30 PM on 19.12.1997. In his cross on 18.04.2011, he stated that the statement of PW-1 was handed over to him by SI Sanjay and he had handed over all relevant papers

on the next day to Insp. Manmohan Sharma, but he did not know specifically whether statement of PW-1 was also included in those papers. He further stated that he had not kept the said statement with him. PW-1 had also signed on the same. SI Sanjay had completed the statement of PW-1 between 10.15 to 10.30 PM.

58. Ld. APP submits that SHO was present at the hospital and at the spot at the time of conducting investigation as per the testimony of PW-1, PW-6, PW-11, PW-20, PW-27 and PW-28. Ld. APP further submits that although, apparently, the fluid was applied on the statements recorded on 19.12.1997, yet they have been applied only on the signatures and not on the date recorded in the document which is clearly 19.12.1997.

59. It is submitted that the investigation conducted was fair- as suggested by the accused during the cross-examination of PW3- Sunita dated 31.03.2004, wherein a suggestion was put to her, and she denied the suggestion that she or her brother lodged false complaints even against the fair investigation being conducted by the investigating agency when the same was not going in their favour. Similar was the stand taken by PW1-Dharmender, who got the investigation transferred. Ld. Counsel submits that the conduct of the subsequent IO is suspect, since PW2-Saroj Sharma claimed herself to be the eye witness of the incident, but in her testimony she did not claim to be eye witness to the stabbing. Ld Counsel submits that PW- 2 is a natural eye witness at the said place, and nothing has come in

the cross examination to doubt the testimony this witness with respect to the incident in question.

60. Ld. APP submits that the accused had motive to commit the offence as the deceased had already made complaints against some of the accused, who used to trespass into their house and threaten the family to vacate the property. One such complaint was dated 13.06.1997 Ex.PW1/X against some of the accused persons and they were summoned in the court for 19.12.1997. Ex.PW1/Y is also a complaint dated 2.11.1996 against the accused Raj Kumar @ Raja, Pankaj and Kaushalya Devi by the deceased in which they were summoned for 06.12.1997. Ld. APP submits that Nand Kishore Sharma (father of deceased) executed a will (Mark Y) dated 15.04.1997 in which he stated that the said property in dispute was his self acquired property, to be devolved upon accused Kamal Sharma. PW-1 in his testimony has, however, stated that he was not aware of the will in favour of Kamal till 6.06.1998, when a case was filed by Kamal. Ld. APP submits that the report of the Local Commissioner Ex. PW-1/D2 (Mark Z) in the case filed by accused Kamal against PW1-Dharmender, shows that Dharmender had stated that the property was the deceased's self acquired property.

61. Ld. APP submits that PW-1 in his cross examination has stated that his family had altercations with the family of accused Raj Kumar @ Nai since they used to throw empty bottles and objectionable items in the deceased's house. He points out that most accused also stated in their statements under section 313 Cr.P.C. that

the main dispute was between the deceased and accused Kamal regarding the property in question.

62. Ld. APP further submits that PW-1 during his testimony had stated that deceased was having a property dispute with the accused persons, and he had given several complaints against them in the Court and on the day of the incident, he met some of the accused in the court complex also, where a quarrel between them had taken place. It is submitted that the conduct of accused Kamal is not natural as, being son of the deceased Keshav Ram, he had not gone to hospital to see his father after his death.

63. Ld. APP further submits that the place of incident has been proved by the testimony of PW-21 HC Khushi Ram, in whose handwriting DD No. 25A, DD No. 26A, DD No. 27A and DD No. 29A were noted; and PW-27 Insp. Amrit Raj, to whom the case was initially assigned; both of whom stated the place of incident to be in Mandir Wali Gali. PW-11 Ct. Charan Singh and PW-13 HC Mange Ram also deposed on similar lines.

64. Mr. Katyal further submits that PW1, PW2 and PW3 are reliable witnesses and their testimony along with postmortem report of the deceased is sufficient to convict the appellants. In support of this contention, reliance has been placed on ***Tahsildar Singh and Another v. State of U.P. AIR 1959 SC 1012, Appabhai and Another v. State of Gujarat 1988 (Supp) SCC 241, Babasaheb Apparao Patil v. State of Maharashtra (2008) 17 SCC 425*** and ***Bharwada***

Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217. Ld. APP further argued that PW3-Sunita deposed about the stabbing of her father on the basis of information derived contemporaneously from her brother PW1. Therefore, by virtue of Section 6, 7 and 8 of the Evidence Act, her statement is relevant regarding the statement of PW3, to the effect that she heard the accused saying that they would finish the deceased that day, Mr. Katyal submits that the said statement of PW3 has not been relied upon by the prosecution or by the Trial Court.

65. So far the plea of alibi taken by accused Raja is concerned, it is argued that there was no DD entry by 8.15 p.m. Even there was no question of picking up of DW3, or accused Raja by the police, at 8.15 p.m. DW3 had not stated anything about sustaining injury by accused Raja. Thus, the plea taken is totally false. In support of this contention, reliance has been placed on ***Rajesh Kumar v. Dharamvir (1974) 4 SCC 493.*** It is further submitted that the plea of alibi taken by the other accused persons were false and the same have duly been rejected by the trial court. The prosecution has successfully established its case against the accused persons and there is no infirmity or illegality in the judgment of conviction. In support of the contentions raised, reliance has been placed on ***State of Madhya Pradesh v. Ramesh and Another (2011) 4 SCC 786, Ramachandran and other v. State of Kerala (2011) 9 SCC 257, Yunis alias Kariya v. State of M.P. (2003) 1 SCC 425, Gangabhavani v. Rayapati Venkat Reddy and others (2013) 15 SCC***

298, Sanjeev Kumar Gupta v. State of Uttar Pradesh (2015) 11 SCC 69 and State of Gujarat v. Naginbhai Dhulabhai Patel and others (1983) 3 SCC 316.

66. We now proceed to take note of the statements of the material witnesses in the case.

67. PW1-Dharmender Sharma had deposed that on 19.12.1997, he along with his father Keshav Ram Sharma was present at his house at about 7.30 p.m. They were watching TV after taking meals. His father was telling him about the complaint case filed by his father against Kaushalya Devi, Raj Kumar @ Raja, Pankaj, Jile Singh, Anil and Sunil S/o Jile Singh which was pending in the Court. On that day, the said case was fixed for hearing. Raj Kumar @ Raja, Ashok, Sunil, Anil, Jile Singh and Kaushalya Devi were present in the Court on that day. His father also told PW1 that MLA Darshan Kumar Behl and Dr.Kaushal had a talk with him for compromise on behalf of the accused persons. He also told PW1 that Saroj, Ashok and Ashu had a verbal altercation with him outside the court on that day. Ashok, Ashu, Smt.Saroj etc. threatened his father and asked him to tender apology in writing as well as to withdraw the complaint case. Those persons asked the father of PW1 to vacate the house and to shift somewhere else. His father came back to house along with Sunita, sister of PW1 at about 6.20 p.m. When his sister was leaving the house, she told them that in front of the shop of Kamal- Raja, Pankaj, Ashok, Deepak and Jile Singh were standing and they were saying that they would kill Keshav Ram, his wife and children that

day. Kamal was the real brother of PW1. The shop of Kamal was got closed by those persons who were standing in front of the shop. After about 20 minutes, PW1 heard the knocking “khat khat” at the door of his house. His father went to see who was there but there was no response. After sometime, again, sound of “khat khat” at the door was heard. His father went to the roof to see who was knocking at the door. His father saw the accused Raja was running away after hitting the door. His father wanted to call the police but realized that the telephone line was out of order. After one and a half minute, again sound of “khat khat” at the door was heard and it was like being hit with solid object. PW1 went to the roof where he found five persons namely Pankaj, Rohit, Manoj, Anil and Amit. Accused Raja inflicted injury at his left side buttock with some sharp edged weapon. Accused Anil closed the mouth of PW1 with one of his hands; accused Pankaj inflicted knife injury above his ankle; accused Rohit, Manoj and Amit caught held of him with hands and hair, and caused injuries on his forehead, nose, ears and right shoulders. On hearing the cries of PW1, his father came at the roof to save him. Accused Raja inflicted knife injury below the abdomen of his father; accused Anil, Sunil, Raj Kumar Nai, Sudhir, Rohit and Manoj Nai pounced towards the father and started beating him; accused Ashok, Deepak and Kamal caught held of his father; accused Sunil and Sudhir started inflicting injuries with knives on his father; accused Deepak and Ashok inflicted injuries on the left shoulder of his father; accused Pankaj inflicted knife injury on the hip of his father; accused Kamal and Raj Kumar Nai caused injury on the head of his father with iron rods. Due to the injuries

sustained, his father fell down. Accused persons ran away by jumping from adjacent roof. His mother Saroj Sharma also came at the roof. PW1 cried for help but nobody came as Kaushalya, Smt. Saroj, Jile Singh, Kamlesh and Sri Kishan Gupta were present at the door of his house. Kaushalya was the mother of the accused Raja and Pankaj. Saroj was the mother of the accused Sudhir. PW1 left his mother at the spot and went to the house of his sister and came along with her. PW1 and Sunita removed their father Keshav Ram to GTB Hospital, where his father was declared dead. PW1 was medically examined in the hospital. The motive for killing his father and causing injuries to PW1 was to grab their house. Police met him in the hospital and his statement was recorded. Police seized his T-Shirt, one Pajami and one half pant alongwith clothes of his father. He identified his Pajami as Ex. P1, his half Pant as Ex. P2 and T-Shirt as Ex.P3 in the Court. He also identified Shirt Ex. P4, Pyjama Ex. P5 and Underwear Ex. P6 as that of his father. He also stated that he identified the dead body of his father in the mortuary on 20.12.1997 vide Ex.PW1/A and identified Death Report Ex.PW1/B.

68. PW2 Smt. Saroj Sharma has deposed that on 19.12.1997 at about 07:30 PM she was preparing food in the kitchen. There was a sound of knocking on the main gate and when again the knocking sound came, her husband went upstairs and saw the accused Raja give a leg blow on the door and ran away. For the third time again, there was a sound of knocking on the door, her son went upstairs and on the roof, he was caught held by accused Manoj Nai, Rohit, Amit, Anil,

Pankaj and Raja. They started beating Dharmender. Her husband went upstairs and PW2 also followed him to the roof where she saw accused Manoj Nai, Amit, and Rohit beating Dharmender. Accused Raja, Pankaj, Anil, Sunil, Ashok, Deepak and Sudhir were giving knife blows to her husband. Accused Raj Kumar Nai and Kamal were beating her husband with iron rods. She became nervous and shouted for help. Accused persons went down from the side of the nearby roof of her house. In the street, Kamlesh, Kaushalya, Saroj, Jile Singh and Sri Krishan were shouting and making noise. Thereafter, Dharmender went to call his sister on motor-cycle. Her husband became unconscious. Dharmender brought a three wheeler scooter alongwith Sunita and took their father to the hospital. His daughter came back and told that her father had been declared dead in the hospital. PW2 called her younger son from the shop who left for hospital. Police recorded her statement twice.

69. PW3-Sunita had deposed that on 19.12.1997, she came at the residence of her parents along with her father at about 6.20 p.m. When she was going to her residence at about 8 p.m., she saw some persons talking with one Kamal at the right corner of the main gate. Accused Raja, Pankaj, Deepak, Ashok and Zile Singh were telling Kamal Singh that on that day they would kill Keshav Ram and his children. On hearing the same, PW3 went inside the house and told the same to her father and brother. After sometime, the shop of Kamal was closed. PW3 went to her residence Geeta Colony at about 7 p.m. She reached at her residence at 7.45 p.m. At that time, her

brother Dharmender came to her house and told that he and his father had been stabbed with knife. PW3 was called to come downstairs. Dharmender came on his bike and was bleeding from his left foot. PW3 sat on the bike and immediately reached at the residence of her father. She saw her father in injured condition and removed her father and brother in TSR to GTB Hospital. On the way, her brother Dharmender told her that accused persons had stabbed his father with a knife. Her father was declared dead in the hospital. PW3 further deposed that her father was always apprehending danger to his life and that is why he had got private security guard. On 19.12.1997, there was a hearing in the Court regarding the complaint lodged by her father.

70. The deceased was declared dead by Dr.B.D. Singh (PW9) who medically examined the deceased on 19.12.1997 at about 8.30 p.m. The alleged history given was stabbing by someone and on examination, PW9 found four injuries on the person of the deceased and he was declared dead vide MLC Ex.PW9/A. The postmortem on the dead body of the deceased was conducted by PW8 Dr.Anil Kohli. 15 ante mortem injuries were found on the body of the deceased and the cause of the death was hemorrhagic shock due to antemortem stab injuries involving the axillary blood vessels. PW8 gave the opinion that injury no.7 i.e. incised stab wound measuring 4 cm X 0.2 cm over outer and posterior aspect of left arm, 14 cm below the top of shoulder was sufficient independently to cause death in ordinary course of

nature. The depth of the wound was 14 cms. The postmortem report was proved as Ex.PW8/A.

71. As per the MLC Ex.PW9/A and the postmortem report Ex.PW8/A, it stands duly established that the death of the deceased was due to stab wound and it was a homicidal death.

72. PW2, wife of the deceased corroborated the testimony of PW1 while deposing that her son Dharmender (PW1) was caught hold by accused Manoj Nai, Rohit, Amit, Anil, Pankaj and Raja on the roof and they gave beatings to him. Her husband went upstairs and PW2 also followed him to the roof where she saw accused Raja, Pankaj, Anil, Sunil, Ashok, Deepak and Sudhir giving knife blows to her husband. Accused Raj Kumar Nai and Kamal were beating her husband with iron rods. In the street, Kamlesh, Kaushalya, Saroj, Zile Singh and Sri Krishan were shouting and making noise thereafter, Dharmender went to call his sister on motor-cycle. Her husband became unconscious. Dharmender brought a three wheeler scooter and alongwith Sunita took their father to the hospital.

73. A perusal of DD No.26A Ex.PW21/A shows that the information regarding stabbing of a person in Mandir Wali Gali, Gandhi Nagar was given to the police which was marked to PW27-SI Amrit Raj. PW27 deposed that on receipt of said DD, he along with Ct.Mange Ram (PW-13) reached the spot and in the meanwhile DD No.27A was received with the information that the deceased was declared dead in the hospital and injured Dharmender was admitted to

the hospital. PW27 reached GTB hospital and then came back to the spot where the photographs of the spot were taken and exhibits were lifted.

74. The testimony of PW1 has been challenged by the appellants on various counts— that the same is not trustworthy and his conduct was not natural. It is argued on behalf of the appellants that PW1 stated that he had received two knife blows, but his MLC shows that he received only one knife injury; PW1 had not given the route he had taken to go his sister's house; PW1 admitted that a civil dispute was going on between his family and family of accused Kamal; PW1 had not explained as to why he had not taken his father to a nearby nursing home instead of GTB Hospital which was at a far off place; PW1 stated that his first statement was recorded in the police station while the second one was recorded in his house, whereas PW27-Insp.Amrit Raj stated that the statement of PW1 was recorded in the hospital; PW1 had stated that he did not tell the police that accused Sunil was having iron rod; PW1-Dharmender is untrue when his testimony is confronted with his statement recorded under Section 161 Cr.P.C.; PW1 could not explain as to why he was left alive when the deceased was fatally injured; PW1 stated that his statement recorded by the police was unsigned, but this fact has been negated by statement Ex.PW24/DX1 which is his signed statement; PW1 had motive to falsely implicate appellant Kamal in the present case, as he was aware that GPA of the house in question was in favour of accused Kamal and that in a quarrel, PW1 and Kamal were sent to lock up in

the proceedings under Section 107/151 Cr.P.C.; only injury attributed to appellant Pankaj Sharma is on the ankle of PW1 but the same has not been found in his MLC; there was an injury on the hip of the deceased, but the same could not have been inflicted as the deceased was held by accused Deepak, Kamal and Ashok from the back; DD No.25A was got lodged by accused Raja at 8.20 p.m. on 19.12.1997 to the effect that he was having a quarrel with the deceased and his family members but the said fact has not been investigated by the IO and the possibility of false implication cannot be ruled out; TSR driver was not examined nor the TSR was examined to draw blood samples from the same; motorcycle of PW1-Dharmender had also not been examined; in the initial statement PW1 did not disclose the name of any of the accused which creates doubt about the story of the prosecution and false implication of the appellants.

75. We have carefully scrutinized the testimony of PW1-Dharmender. Though it is apparent that there are certain contradictions and discrepancies in his statement, but in our considered opinion the same are not material and cannot be made the basis to discard the entire testimony of the witness. PW1 has admitted that a complaint case was filed by his deceased father against some of the accused persons and the same was fixed before the Court in the morning of the date of the incident. It has also come in the evidence that accused Kamal Raj Sharma was having a Will and a GPA in his favour executed by his grandfather with regard to the house where the deceased and his family were residing. Apparently, there was a

dispute with regard to possession of the house in question which was in possession of the deceased, and Kamal Raj Sharma was seeking its possession. It is also apparent that PW1 deposed that he received two knife blows, but his MLC shows that he received only a single knife blow near his thigh portion. Though it is apparent from his testimony that a nursing home was situated near the house of the deceased but still he was taken to GTB Hospital by PW1 and his sister PW3, but the said fact cannot be said to be doubtful, as it is quite natural that in view of the gravity of the injuries that the deceased received, he was taken to a bigger and better hospital, rather than a nursing home.

76. So far as the contention of the accused Raj Kumar @ Raja with regard to lodging of DD No.25A recorded at 8.20 p.m. and failure to carry out investigation on the allegations of accused Raja is concerned, the IO had stated that though it came to his knowledge that accused Raja had sustained injuries, but since his statement was not available with him, he did not inquire into the facts of him sustaining injuries. However, this information given by Raj Kumar @ Raja leaves no room for doubt that he was very much present when the incident took place.

77. The other contention raised by the learned counsel for the appellants is that there is a doubt about the recording of statements of Dharmender, Sunita, Manoj and Saroj, Ex.PW27/DA1 to Ex.PW27/DA4, as it has come in the statement of the IO that eraser fluid at point 'A' was applied on all these statements. It is argued that the said statements are ante-dated and the same have been prepared at

a later stage at the instructions of the complainant to use the same against the appellants. The IO (PW27) had clarified that he had not applied the eraser fluid at point 'A' on the statements, nor it was applied in his presence. He further stated that somebody else had signed by mistake on point 'A' where PW27 had to sign, and after the eraser fluid was applied, PW27 signed at point 'A'. He had stated that he had somebody to apply the eraser fluid at point 'A' but he did not remember his name.

78. We have gone through the statements of Sunita, Saroj, Dharmender Kumar and Manoj Kumar Ex.PW27/DA1 to Ex.PW27/DA4 respectively, on which– as per the defence, at point 'A' fluid was applied and then PW27 had signed on it. The clarification regarding applying of fluid has been given by the IO himself– that it was earlier signed by somebody else by mistake, and then eraser fluid was applied and then PW27 signed on the same. This explanation in our view is just and sufficient and no doubt can be cast upon the same. Even otherwise, there was nothing new or different recorded in the statements from what was recorded earlier by PW-1 in his statement recorded under Section 161 Cr.P.C. Thus, there is no basis to claim that by recording these statements i.e., Ex.PW27/DA1 to Ex. PW27/DA4, the complainant and his family members sought to falsely implicate the accused as an afterthought. In our view, this submission of the appellants is merely a red hearing.

79. The appellant Raj Kumar @ Raja to prove his plea of alibi, had examined DW3-Pramod Sharma who deposed that on

19.12.1997 at about 08.15 p.m., he came out of his house and met accused Raja in the street. In the meantime, police came there and asked them to come to police station. On the next day morning, DW3 and other persons were allowed to leave the police station, but accused Raja was detained. He knew about the murder of Keshav Ram, resident of the same street.

80. The plea of defence taken by the accused Raj Kumar @ Raja is that on the day of incident he himself visited the police station and got lodged a DD No.25A at about 08.20 p.m. against the deceased and his sons (PW1 & PW5) and then he was taken to hospital for medical examination. The said plea taken by the accused Raja falsifies the testimony of DW3-Pramod Sharma. DW3 had stated that on the day of incident at about 8.15 p.m., when he and accused Raja were present in the street, they were asked by the police to come to the police station. They reached the police station and on the next morning DW3 was allowed to leave, but accused Raja was detained by the police. If the statement of DW3 is believed to be correct, then the plea taken by the accused Raja is contradicted that he himself went to the police station to lodge the DD No.25A at about 8.20 p.m. Thus, there is no truth in the plea of alibi taken by the accused Raj Kumar @ Raja.

81. To prove his plea of alibi, accused Manoj had examined DW1-Deepak Kumar, and DW2-Hari Om Gupta. DW1 had deposed that he knew accused Manoj as he used to learn electric work under him. Manoj worked with DW1 from 15.12.1997 to 26.12.1997 and

the time of work was from 10 AM to 8.30 p.m. Two other boys were working for DW1, namely, Hari Om and Vijay. DW1 further stated that father of Manoj obtained signature of DW1 on a document stating that it was written in it that Manoj had worked under DW1. Similarly, DW2-Hari Om Gupta stated that he knew Manoj since the year 1995-96. Manoj used to do the work of electrician and was residing in the same gali. He also knew Deepak Gupta, who used to be his contractor. Accused Manoj worked with him from 1996 to 2000 under Deepak Gupta. They used to work under Deepak Gupta at Noida from 10 a.m. to 8.30 p.m.

82. The accused Manoj has taken the plea that on the day of the incident, he was not present at the spot. This plea of the accused Manoj has been falsified by the eye witnesses PW1 and PW2 to the effect, that accused Manoj was present at the roof and caused injuries to PW1 and the deceased. It is apparent from the record that the accused Manoj had not taken such a plea of alibi during the examination of prosecution witnesses and this plea was taken for the first time during the recording of his statement under Section 313 Cr.P.C. Even otherwise, no record was produced by the alleged contractor DW1-Deepak to show that either accused Manoj, or DW2-Hari Om Gupta, ever worked under him or that the accused was present at his work place on the day of incident. Thus, the accused Manoj has failed to substantiate his plea of alibi in the absence of any convincing evidence.

83. To prove his plea of alibi, accused Rohit Gupta examined DW9-Jitender Varshney and DW12-Gopal Pandit. DW9 deposed that he was the brother-in-law (jija) of accused Rohit. Wife of DW9 delivered a baby boy on 03.12.1997 in Thane and Rohit came to his house on 14.12.1997 with gifts. On 18.12.1997, Rohit had a pain in his stomach and was taken to hospital. He was treated in OPD and he again visited hospital on 19.12.1997 and 20.12.1997 to take medicines. DW9 came to know about the arrest of accused Rohit after 4-5 days.

84. The conduct of DW9 does not inspire confidence of this Court, for the reasons that had it been so— that accused Rohit had taken medical treatment from the hospital at Thane during the relevant period, it would be quite natural for DW9 to come to Delhi to inform the police and concerned authorities regarding the presence of accused Rohit during the relevant time at Thane.

85. DW12-Gopal Pandit, Junior Clerk, Regional Mental Hospital, Thane brought OPD register and medicine distribution register. He proved the OPD card of Rohit as Ex.DW12/A. It is worthwhile to mention that the address of Rohit is not mentioned in Ex.DW12/A. Even the name of the patient had been mentioned as Rohit Kr S Gupta. It is not pleaded by the accused Rohit Gupta he is also known by the name of Rohit Kr S Gupta. Even such a plea had not been raised by the accused in his statement under Section 313 Cr.P.C. It appears that the plea of alibi taken by the accused Rohit

Gupta is an afterthought, just to raise the plea, and there is no convincing or concrete proof to believe the same.

86. Accused Anil, to prove his plea of alibi, had examined DW4-Luv Kush Aggarwal and DW7-Virender Singh. DW4 had deposed that on 19.12.1997, he and Anil were watching a cricket match in his house and Anil went to his house at about 7-7.15 p.m. to give milk to someone and he came back within 2-3 minutes. Father of Anil asked DW4 to take care of Anil as he was going to purchase a buffalo along with accused Sunil. DW7 had deposed that he was also a neighbor of the accused Anil, and on 19.12.1997 at 7.15 p.m., he visited the house of accused Anil to purchase milk and came to know that Anil was in the house of DW4. Anil came and gave milk and then went back. DW7 was also told that accused Sunil had gone to purchase a Buffalo. Accused Sunil had taken the plea of alibi that on the day of incident, he was at Village Khatoli, District Gurgaon to purchase a buffalo.

87. After going through the evidence of DW4 and DW7, we are not convinced with the plea of alibi taken by the accused Anil and Sunil, for the reasons that there is no sufficient or cogent evidence to believe the same. This defence was not taken by these accused till the recording of the statements under Section 313 Cr.P.C. and not put to the material prosecution witness. Secondly, the prosecution witnesses PW1 and PW2 have specifically deposed that accused Anil and Sunil were present at their roof on the date and time of the incident and they caused injuries to PW1 and the deceased. The presence of accused

Anil and Sunil at the spot at the time of incident has duly been established and the plea of alibi taken by the accused persons does not inspire confidence of this Court.

88. The accused Pankaj Sharma had taken the plea of alibi that on the day of incident he was present at Mumbai regarding the sale of his motorcycle. To prove the same, he had examined DW5-Rajesh Umare who had produced the sale and purchase register of vehicles from RTO, Mumbai (West) as Ex.DW5/A. As per Ex.DW5/A, accused Pankaj Sharma sold his motorcycle to one Mr.Larry Eastwood. But DW5 demolished the defence of the accused by stating that a transferor may send his signature on a slip of transfer of vehicle, and presence of transferor was not mandatory. He could not say with certainty that accused Pankaj put his signature while being personally present in the office. It is also apparent from the record that the signature of Pankaj appeared on a slip. It is highly improbable that a person, present in person, would sign on a slip rather than in the register itself, which creates doubt about the presence of accused Pankaj Sharma at Mumbai on the day of the incident. Other witnesses examined by the accused i.e. DW6-Ram Niwas and DW10-Gauri Charan are also of no consequence, for the reasons that DW6 had not given the specific dates when Pankaj remained in Mumbai as he simply stated that Pankaj went to Mumbai in March-April, 1997. DW10 had not proved on record any document to show that accused Pankaj was working in the Club of Centaur Hotel, Juhu, Mumbai on the day of the incident. In the absence of any

convincing evidence, we are unable to accept the plea of alibi raised by the accused Pankaj Sharma.

89. It is argued on behalf of the appellants that there is no scope to invoke the provision of Section 149 IPC in the present case. It is submitted that the appellants, except the appellant Kamal Raj Sharma, had no reason to commit any offence as only the appellant Kamal Raj was having a dispute with his deceased father with regard to house in question in which the deceased along with his family was residing.

90. It is submitted on behalf of the appellant Kamal Raj that his grandfather had executed a Will and General Power of Attorney in his favour with regard to the house in question, but his father i.e. deceased Keshav Ram was not handing over the possession of the same to the appellant Kamal Raj. The appellant had already availed of his legal remedy, and there was no reason for the appellant Kamal Raj to take the law in his own hands, much less to fatally attack his father or injure his brother. In support of these contentions reliance has been placed on *Allauddin Mian and others v. State of Bihar (1989) 3 SCC 5*, *Rajendra Shantaram Todankar v. State of Maharashtra and others (2003) 2 SCC 257*, *Maiyadin and others v. State 1973 Cri.L.J. 1203*, *Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Vagh and others (2017) 3 SCC 261* and *Sarwan Singh and others v. State of Punjab (1978) 4 SCC 111* in which it was observed that in order to fasten vicarious responsibility on any member of an unlawful assembly, the prosecution must prove that the

act constituting an offence was done in prosecution of the common object of that assembly, or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly.

91. We have gone through the prosecution evidence in the form of testimony of PW1-Dharmender Sharma (injured as well as son of the deceased), PW-2 Smt.Saroj Sharma (wife of the deceased), PW-3 Sunita (daughter of the deceased) and PW5-Manoj Sharma (another son of the deceased). The testimony of PW1 has duly been corroborated by PW2-Smt.Saroj Sharma. PW3-Sunita also corroborated that on the day of incident, at about 7.45 p.m., her brother Dharmender came to her house and told that he and his father were stabbed with knife. PW3 sat on the bike of Dharmender and reached at the residence of her father. She saw her father in a critically injured condition and removed her father and brother to GTB Hospital in a TSR. On the way, Dharmender told PW3 that accused persons had stabbed her father with knife.

92. From the testimony of above prosecution witnesses (PW1 & PW2) who are either the injured or the eye witnesses to the incident, it is established beyond reasonable doubt that on the day of incident, all the appellants were present on the roof of the house of the deceased. It is not in dispute that the house in which the incident had taken place was in possession of the deceased and his family members on the day of incident. It has come in the evidence of PW1 and PW2 that the door of their house was knocked three times on the day of

incident. On the second knocking of the door, deceased went upstairs and saw accused Raja hitting the same. When door was hit for the third time, PW1-Dharmender went to the roof where he was firstly caught hold by five accused persons Pankaj, Rohit, Manoj, Amit and Anil and then he was physically assaulted by accused Raja, Anil, Pankaj, Rohit, Manoj and Amit. When his father came on the roof, he was also assaulted by the all the accused persons/appellants. Similar statement has been made by PW2-Smt.Saroj Sharma that when her son (PW1) went upstairs, he was caught hold by the accused persons and was assaulted and when her deceased husband went upstairs, he was also assaulted by the accused persons. So, from the testimony of PW1 and PW2, it has duly been proved that on the day of the incident, all the appellants committed the offence of criminal trespass into the house of the deceased after preparation to assault the deceased and his son, PW1-Dharmender. It has also come in evidence of PW1 and PW2 that all the accused persons were present at the roof of the house of the deceased and at that time they were armed with knives/daggers and iron rods, which clearly makes out a case of the prosecution under Section 149 of the IPC as the ingredients of Section 141 IPC have duly been fulfilled against the appellants.

93. The MLC Ex.PW7/A of the injured Dharmender (PW1) shows that he was assaulted by a sharp edged weapon on his gluteal region. It is further apparent from the MLC that the nature of injury was opined to be simple in nature. As it has already been observed that an unlawful assembly was formed by the appellants while

entering into the house of the deceased and causing injuries to him and PW1, it is imperative to hold every member of such an unlawful assembly guilty for causing hurt to PW1-Dharmender with dangerous weapon (as reflected in the MLC Ex.PW7/A that injury was caused by a sharp edged weapon) as it is punishable under Section 324 IPC. Therefore, in our considered opinion, the conviction of the appellants under Section 148, 452 and 324 with the aid of Section 149 IPC deserves to be upheld.

94. Next point of consideration is whether all the appellants are guilty of committing the death or murder of the deceased with the aid of Section 149 IPC, or any one of them- or some of them, are guilty for the said offence. It is argued on behalf of the appellants that though no case is made out against them, but if for the sake of arguments the case of the prosecution is accepted to be true, all the appellants-except accused Raja, were not armed with any deadly weapon so as to support the charge under Section 302 read with 149 IPC.

95. It has come in the evidence of PW1, PW2, PW3 and PW5 that a dispute between the deceased and accused persons was in existence and, on the day of the incident, in the morning a case was fixed before the Court where hot exchange of words between the accused side and deceased had taken place. PW1 has specifically stated that his deceased father had lodged a complaint case against Kaushalya Devi, Raj Kumar @ Raja, Pankaj, Jile Singh, Anil and Sunil which was fixed on 19.12.1997 in Karkardooma Courts where

some of the accused persons were present. His father told him that Saroj, Ashok and Ashu had heated arguments with him outside the Court on that day and they threatened his father to withdraw the complaint case. Those persons also asked his father to vacate the house and to shift somewhere else along with his family.

96. From the testimony of PW1 and PW3, it is apparent that some dispute was pending between the deceased and the accused side. It has also come on record that a Will (Ex.DX5 or Mark Y) and General Power of Attorney (Ex.DX4 or MARK X) was executed by late Sh.Nand Kishore in favour of accused Kamal Raj Sharma with regard to the property in question.

97. As discussed above, we are of the view that the object of the unlawful assembly was to commit house trespass, and not to commit the murder of the deceased. It is apparent from the record that the accused persons— except accused Raja and Pankaj, are not claimed to have been armed with any deadly weapon. The eye witnesses have stated that accused Raja and Pankaj were armed with knives. The recovery of knife was effected at the instance of accused Raja vide pointing out-cum-seizure memo Ex.PW6/E. Accused Raja has claimed that no such knife was recovered at his instance, and that it was a planted one. To prove the recovery of knife Ex.P1, PW6-Insp. Ram Sewak deposed that on 22.12.1998, he joined the investigation with Insp. Manmohan Sharma. On that day, accused Raj Kumar @ Raja was arrested at about 7.30 p.m. Accused Raja made his disclosure statement Ex.PW6/A and in pursuance of the same, on

23.12.1998, he led the police party to Thokar no.18, Yamuna Pushta and from there he got recovered one dagger. Its sketch Ex.PW6/D was prepared and the same was seized vide memo Ex.PW6/E. PW6 identified the said knife as Ex.P1. The statement of PW6 has duly been corroborated by PW20-Insp. Manmohan Sharma. There is nothing to disbelieve the testimony of PW6 and PW20 with regard to arrest of the accused Raja, recovery of knife at his instance, and the documents prepared in this regard. The appellant has thus failed to put any dent to the testimony of PW6 and PW20 with regard to recovery of knife at the instance of accused Raja.

98. In so far as other contentions raised by the learned counsels for the appellants are concerned— with regard to flaw in the investigation and the contradictions/discrepancies in the testimony of witnesses, we are of the view that the same are immaterial and do not go to the root of the case. Though there are some minor defects in the investigation, but the same are not material and in no way affect the credibility of the witnesses and the case of the prosecution cannot be discarded only on the basis of such flaws. In similar circumstances, the Supreme Court in the case of ***State of U.P. vs. Naresh and Ors.*** **MANU/SC/0228/2011** observed that :

“25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the

omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility."

99. So far as the use of knives by both the accused Raj Kumar @ Raja and Pankaj is concerned, it has come in the testimony of PW1 that at that time both these accused were armed with knives. PW1 specifically deposed that he was hit with a sharp edged weapon on his buttock by accused Raj Kumar @ Raja, whereas accused Pankaj inflicted knife injury above his ankle. He also deposed that when his father came on the roof, he was given a knife blow below his abdomen and accused Pankaj also inflicted knife injuries on the hip of his father. The postmortem report Ex.PW8/A further corroborates the testimony of PW1 that his father had received stab wound on his buttock region. Thus, the testimony of PW1 duly corroborated by

post mortem report Ex.PW8/A of the deceased clearly proves that both accused Raj Kumar @ Raja and Pankaj were armed with knives at the time of incident with which PW1 and deceased were assaulted.

100. Though, it is apparent that there was a series of litigation between the deceased and accused persons, but there is no evidence on record that on the day of the incident, the appellants trespassed into the house of the deceased with the object to commit his murder. The evidence brought on record by the prosecution clearly makes out a case against the appellants for unlawful assembly for trespassing into the house of the appellants with weapons and to assault the deceased and PW1, but there is no evidence to connect any of the appellants with the object of unlawful assembly to commit the murder of the deceased.

101. So far as the injuries caused to the deceased is concerned, his post mortem report Ex.PW8/A shows that he had received as many as 15 injuries on his person. The injury no.7 was incised stab wound measuring 4 cm x 0.2 cm over left arm. As per the opinion of the doctor, cause of death was haemorrhagic shock due to antemortem stab injury involving the axillary blood vessels. Injury no.7 was opined to be sufficient to independently cause death in ordinary course of nature. Perusal of postmortem report of the deceased clearly shows that injury no.7 was the main injury which was opined by the doctor to be the cause of death of the deceased.

102. In similar circumstances, the Supreme Court in the case of ***Litta Singh and Anr. Vs. State of Rajasthan*** AIR 2013 SC 2554 observed that :

“20. After analyzing the entire evidence, it is evidently clear that the occurrence took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted deceased in such a manner that the deceased suffered grievous injuries which were sufficient to cause death, but we are convinced that the injury was not intended by the appellants to kill the deceased.

21. In the facts and circumstances of the case, in our considered opinion, the instant case falls Under Section 304 Part II Indian Penal Code as stated above. Although the appellants had no intention to cause death but it can safely be inferred that the appellants knew that such bodily injury was likely to cause death, hence the appellants are guilty of culpable homicide not amounting to murder and are liable to be punished Under Section 304 Part II Indian Penal Code.”

103. Further in ***Vijay Pandurang Thakre and Ors. Vs. State of Maharashtra*** AIR 2017 SC 897, it was observed that :

“18. No doubt, in the scuffle that took place, one blow came to be inflicted on the head of Ashok which injury proved fatal. However,

this by itself cannot be the reason to conclude that there was any intention to commit his murder. If 30 persons had attacked the members of Deshmukh Group, there are no injuries on the vital parts of other persons who got injured in the said episode. Ashok also suffered only one injury on his head and no other injury is on vital part of his body. Had there been any common objective to cause murder of the members of Deshmukh Group, there would have been many injuries on deceased Ashok as well as other injured persons on the vital parts of their body. On the contrary, it has come on record that the injuries suffered by other persons are on their back or lower limbs i.e. legs etc.

19. We, thus, hold that there was no preconceived common object of eliminating the members of Deshmukh family and group and the assembly was not acquired with any deadly weapons either, as held by the High Court. Even the High Court has not pointed out any such evidence. These findings are hereby set aside. The conviction of the Appellants Under Section 302 Indian Penal Code is converted into Section 304-II Indian Penal Code for which the Appellants are sentenced for rigorous imprisonment of seven years each. We were informed that all the Appellants have already undergone sentence of seven years or more. If that is correct, these Appellants shall be released forthwith, if not required in any other case.”

104. In view of the aforementioned discussion, facts and circumstances of the present case, we are of the considered view that

the act of the accused Raj Kumar @ Raja does not fall within the scope of Section 302 IPC. Rather, it is apparent that he was having knowledge that causing such an injury might result into death of the deceased. So, the appellant Raj Kumar @ Raja is convicted for the commission of offence under Section 304 Part-II IPC for commission of culpable homicide not amounting to murder, as the prosecution has failed to show that he had any intention to cause death of the deceased. Thus, we are not in agreement with the trial Court that the appellants are liable to be convicted under Section 302 IPC read with Section 149 IPC, and they deserve acquittal for the said offence.

105. Consequently, the conviction of all the appellants under Section 148, 324 and 452 IPC is upheld. Conviction of the appellants Raj Kumar @ Raja and Pankaj under Section 27 of the Arms Act is also upheld.

106. The appellants are acquitted for the offence under Section 302 IPC. However, the appellant Raj Kumar @ Raja is convicted under Section 304 Part-II IPC.

107. The sentences awarded to the appellants under Section 148 and 324 IPC are upheld. The sentence awarded to the appellants Raj Kumar @ Raja and Pankaj for the offence under Section 27 of the Arms Act is also upheld. The sentence of the appellants for the offence punishable under Section 452 IPC is modified to the extent of rigorous imprisonment for seven years with fine of Rs.10,000/- each and in default of payment of fine to further undergo simple

imprisonment for one year. The appellant Raj Kumar @ Raja is sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.1 lakh for the offence under Section 304 Part-II IPC, and in default of payment of fine to further undergo imprisonment for one year. The appellants would be entitled for benefit under Section 428 Cr.P.C.

108. The instant appeals are disposed of accordingly.

P.S. TEJI, J

VIPIN SANGHI, J

JULY 30, 2018

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