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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: _____ 26th July, 2019

Judgment Pronounced on: ____8____ August, 2019

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CRL.A. 782/2001

DINESH SINGH PANWAR

..... Appellant

Through:

Mr. K.B. Andley, Senior Advocate
with Mr. Mohd Shamik, Mr. Anurag
K. Andley and Mr. Kshitij Arora,
Advocates

versus

STATE N.C.T. OF DELHI

..... Respondent

Through:

Mr. Rajat Katyal, APP

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CRL.A. 788/2001

DIWAKAR GUPTA

..... Appellant

Through:

Mr. Ravinder Narayan and Mr.
Raghav Narayan, Advocates

versus

STATE N.C.T. OF DELHI

..... Respondent

Through:

Mr. Rajat Katyal, APP

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CRL.A. 793/2001

NARENDER AGARWAL

..... Appellant

Through:

Ms. Saahila Lamba, Advocate

versus

STATE OF DELHI

..... Respondent

Through:

Mr. Rajat Katyal, APP

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CRL.A. 812/2001

SUNIL

..... Appellant

Through:

Mr. Anurag Jain, Advocate

versus

STATE (N.C.T. OF DELHI)

..... Respondent

Through:

Mr. Rajat Katyal, APP

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J.

1. The present appeals have been filed under Section 374 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') assailing the judgment dated 06.09.2001 passed by the learned Additional Sessions Judge, Delhi, in Sessions Case No.89/2001, arising out of FIR No.179/97, registered under Sections 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC') at the Police Station Trilok Puri, whereby all the appellants have been held guilty under Section 302 read with Section 34 of IPC and Section 307 read with Section 34 of IPC. Arguments have been addressed in all the appeals together, the same are being disposed of by a common judgment.
2. The appellants vide the order on sentence dated 07.09.2001 have been sentenced to rigorous imprisonment for life with a fine of Rs. 15,000/- each, in default of payment of fine to further undergo simple imprisonment for a period of one year under Section 302 read with Section 34 of IPC. The appellants were also sentenced to rigorous imprisonment for a period of 10 years with a fine of Rs.5,000/- each, in default, to further undergo simple imprisonment for a period of four months under Section 307 read with Section 34 of IPC. Both the sentences were ordered to run concurrently.
3. Before the rival submissions of learned counsels for the parties can be considered, we deem it appropriate to outline the case of the prosecution which reads as under:

“1. Tersely, the facts as alleged against the accused persons are that on 6.3.97 DD entry No.31 was recorded in Police Post Mandawali, P.S. Trilokpuri on wireless message that at Chander Vihar, Mandawali Fazalpur, accused Diwakar has fired at Jitender. On this information, SHO, who was on patrolling duty in the area went at the spot alongwith the staff

where SI H.R. Meena alongwith his staff met him and near a block of bricks, in front of H.No.401, Chander Vihar blood was found lying and the bricks were also having blood stains alongwith one chappal as well as two empty cartridges which were also found lying there. In the meantime, information from DD No.32 was received by the SHO that injured has been admitted as 'brought dead' in GTB Hospital. Inspector Vinod Kapoor alongwith his staff went to the GTB Hospital in a government vehicle leaving behind SI H.R. Meena and other staff at the spot and collected the MLC of Yatinder Kumar Sharma s/o Hari Chand Sharma, r/o 244/8, School Block, Mandawali, Delhi and the dead body was inspected by the SHO Inspector Vinod Kapoor, which was found having one big wound and four other small wounds nearby on the chest. In the mortuary, Dharminder Kumar Sharma son of Hari Chand Sharma, r/o K-551, Kalyan Marg, Mandawali made a statement recorded by the SHO."

4. The statement of PW5, Complainant Dharmender Kumar Sharma was recorded by PW28 Insp. Vinod Kapoor (SHO, P.S. Trilok Puri) whereby it was stated by him that on the day of occurrence, he was working as vice-President for the East District Congress Committee. As MCD elections were to be held in the Mandawali Zone, Sarla Chaudhary (wife of Chaudhary Jeet Singh, Joint Secretary of Delhi Pradesh Congress Committee) was also contesting as an independent candidate. The complainant PW5 Dharmender further stated that being a worker for the Congress party, he was supporting Radha Sharma who was also a contesting candidate in the MCD elections for Mandawali Zone. PW5 was asked by Chaudhary Jeet Singh to support his wife to which PW5 refused. Thereafter, Chaudhary Jeet Singh threatened PW5 that within a month of elections, he would face the consequences. All the appellants i.e. Diwakar Gupta, Dinesh Singh, Narender Agarwal and Sunil who were supporting Sarla

Chaudhary had threatened to kill him, in case he would not support her candidature.

5. It was further stated by PW5 Dharmender Sharma that on the day of the incident, at about 6.15 PM, he and his younger brother Yatinder @ Yati (deceased) while returning from his in-laws house, they crossed Indira Marg and upon reaching in front of the house of the appellant Diwakar Gupta, all the appellants Dinesh, Diwakar, Sunil and Narender Agarwal exhorted “AAJ TUMHARA KAAM TAMAM KAR DETE HAI KYOKI TUMNE CHUNAV ME HAMARE UMMIDWAR KA VIROD KIYA. AAJ HUM TUMHE ISKA MAJA CHAKHATE HAIN”. In the meanwhile, the appellant Narender Agarwal exhorted the appellants Sunil, Dinesh and Diwakar by saying “DEKHTE KAYA HO? MAARO SALO KO GOLI” to which the appellants Diwakar and Dinesh opened fire from their respective weapons towards the complainant Dharmender and the deceased. The appellant Sunil started giving *danda* blows to the deceased. The complainant further stated that he remained unhurt but his brother (deceased) sustained bullet injuries on his chest and palm. The deceased fell down at the spot and was bleeding profusely. The complainant cried for help “BACHAO-BACHAO”. PW7 Ram Kishore, PW6 Devender and PW8 Bijender who were present at the spot, tried to save them while all the four appellants fled from the spot while firing from their respective weapons. The complainant took his brother in a Maruti Car to the GTB Hospital with the help of his neighbours namely PW10 Parmanand Tyagi and PW9 Manender Pal where he was declared dead. The complainant further stated that his brother was killed on account of enmity and an attempt was also made to kill him.

6. In the present case, *rukka* was sent on the same day i.e. 06.03.1997 at 10.20 PM by the SHO, Trilok Puri and the FIR was registered at 11.05 PM. On 01.10.1997, charge under Sections 302/307/34 of IPC was framed against all the appellants whereby they pleaded innocence and claimed to be tried.
7. To bring home the guilt of the appellants, the prosecution examined as many as 36 witnesses in all. The statement of the appellants was recorded under Section 313 of Cr.P.C. whereby they denied all the incriminating material against them. It was stated by the appellant Dinesh Singh in his statement under Section 313 of Cr.P.C. that he was running a business under the name and style of Panwar Automobiles authorised LML Vespa and Panwar Fin-lease Pvt. Ltd. On 06.03.1997, he was present at his shop and had nothing to do with the present case. In his statement, the appellant Diwakar Gupta stated that the elections of the Residents Welfare Association were held on 02.10.1996 wherein Devender Sharma was opposing his candidature in the election and implicated him due to enmity. The appellant Diwakar further stated that he was a part of a chit fund and Bijender Sharma owed Rs. 21 Lacs to him due to which he had deposed against him to avoid the payment and falsely implicated him. It was further stated by the appellant Diwakar that similarly, Ram Kishore deposed against him as he had arranged a plot for Ram Kishore, for which the appellant Diwakar demanded Rs.10,000/-, to which Ram Kishore refused and threatened him that he would implicate him in a false case. Parmanand Tyagi was brother of Ram Kishore. Other public witnesses were brothers of Dharmender Kumar Sharma. The appellant Diwakar further stated that his rifle was bearing licence which remained at the Police Station Hasanpur

for two months in an unsealed condition, when it was transferred to Delhi. There might be a chance for the Police to fire the bullets from his rifle and plant empty fired cartridges on him. Similar empty fired cartridges might be available at his home. On 06.03.1997, he was out of Delhi and was in possession of his rifle and no shot was fired from the same. The appellant Diwakar claimed to be falsely implicated in the present case.

8. In their defence, the appellants examined five witnesses to rebut the case of the prosecution.

Common arguments made on behalf of all the appellants:

9. Learned counsels submit that all the appellants have been falsely implicated in the present case. As per the case of the prosecution, the incident took place on 06.03.1997 at about 6.15 PM. The counsels contend that on the fateful day, the deceased alongwith his brother PW5 were returning after a visit from the house of the in-laws of PW5 and it was by chance that they met all the appellants, on reaching outside the house of the appellant Diwakar. The counsels further submit that the entire story of the prosecution is unbelievable for the reason that according to the prosecution, the appellant Diwakar had fired from his rifle while the appellant Dinesh had fired from his *katta*, which resulted in the death of the deceased. It is also the case of the prosecution that the appellant Narender had exhorted the other appellants while the appellant Sunil had inflicted *danda* blows on the deceased. The counsels submit that the entire incident took place when the appellants were standing at the house of the appellant Diwakar and the deceased alongwith his brother (PW5) were crossing the spot. In effect, the deceased and his brother crossed the house of the appellant Diwakar on the fateful day by

chance and an attempt was made by other three appellants who were standing and were armed with a rifle, *danda* and *katta*, would be highly improbable. In this background, the case of the prosecution is challenged on two grounds; *firstly* the meeting of all the appellants with the deceased and PW5 was a chance meeting and *secondly*, all the witnesses who had been examined by the prosecution are blood relations of the deceased or distantly related and the common factor amongst all the eye witnesses is that they were interested witnesses. It was further contended that the case of the prosecution is primarily based on the eye witness account of PW5 Dharmender Kumar (brother of the deceased) who was present with the deceased at the time of the incident. It has been highlighted by the learned counsels for the appellants that the conduct of PW5 is highly improbable as after having seen his brother murdered, he would have either taken his brother to the hospital immediately after the incident or he would have had at least made a call at number 100. The counsels submit that the incident took place at 06:15 PM and the information about the incident was given to the brother of PW5 i.e. PW9 Manender Pal Sharma at 6:30 PM who was residing at a distance of about 300 mtrs from the spot but the evidence shows that it was only at 06:45 PM, PW9 reached the spot. Thus, it was contended that had PW5 been an eye witness, he would have immediately informed his brother. It was claimed by PW5 that he took his deceased brother to the hospital in a maruti car along with PW9 Manender and PW10 Parmanand. However, the name of PW5 Dharmender does not find mention in the MLC which also raises doubt about his presence at the spot or if he had accompanied the deceased to the hospital. Thus, if PW5 was in the car and had taken his deceased brother to the hospital, his

name should have been mentioned in the MLC and not the name of Manender.

10. The counsels submit that as per the evidence of PW5 Dharmender, the injured person was sitting with PW5 while PW9 Manender Pal was driving the car in which he was taken to the hospital. However, nothing was seized either from PW5 or PW9, not even the blood-stained clothes of PW10 Parmanand Tyagi who accompanied the injured to the hospital. This makes their presence at the spot highly doubtful. It is also contended that there is no explanation as to why the injured was not taken to the nearest hospital i.e. Lal Bahadur Shastri Hospital which was at a distance of about one and a half kms from the spot, however, the injured was taken to GTB Hospital, Shahdara, which was about 12-15 kms from the spot. This resulted in delay in reaching the hospital and they reached the hospital at 7:50 PM.
11. Learned counsels for all the appellants contended that the prosecution has failed to establish the motive in the present case. Attention of this Court has been drawn to the cross examination of PW5 whereby it was admitted by PW5 Dharmender that he had not given any documentary proof to the Police officials showing that on the day of the incident, he was working as a vice- President for the Congress party. PW5 also did not give any documentary evidence supporting that the appellants Dinesh, Diwakar and Narender were working as the workers for the Congress party and were supporting the rebel candidate namely Sarla Chaudhary for the post of Councillor in the MCD elections for the seat of Mandawali Fazalpur. It has been further admitted by PW5 that he had not given any pamphlet supporting the motive alleged by him and thus, it cannot be

inferred that all the appellants were supporting the rebel candidate Sarla Chaudhary in the MCD election.

12. It is also submitted that the scientific evidence does not establish the case of the prosecution because as per the scientific experts, it was impossible to connect injuries with the bullets fired.

Submissions made on behalf of the appellant Dinesh:

13. Learned counsel appearing on behalf of the appellant Dinesh submits that the only role ascribed to the appellant Dinesh by the prosecution while relying upon the testimonies of PW5 Dharmender, PW6 Devender Kumar, PW7 Ram Kishore and PW8 Bijender was that the appellant Dinesh was found at the spot armed with *katta* in his hand who had fired from his *katta* but PW5 was not hit by the bullets fired from the said *katta*. It was further submitted by the counsel that PW10 Parmanand Tyagi was not an eye witness to the incident who had testified only to the extent that the appellant Dinesh alongwith other appellants were found running from the spot and also testified that he had seen a *katta* in the hands of the appellant Dinesh. Learned counsel has highlighted the fact that no injury was caused by the appellant Dinesh to the deceased by the *katta* carried by him and also the same was not recovered at the instance of the appellant Dinesh.
14. To rebut the case of the prosecution, it was contended by the counsel that the appellant Dinesh had surrendered at the Police Station on 08.03.1997 and he had also handed over his licence for double barrel gun to the Police officials. He submits that the memo of arrest is a fabricated document which shows that the appellant Dinesh was arrested at the bus stand Jagat Puri at 08:00 PM. To substantiate this argument, attention of this Court has been drawn to Ex.PW20/DA showing that an application was made by the mother of the appellant

Dinesh with regard to the surrender of the appellant Dinesh alongwith his double barrel gun before the Police officials. He also relies on the testimony of DW4 HC Ram Charan, who was working as MHCM on 08.03.1997 to show that after the double barrel gun was surrendered in the Police Station, DW4 had deposited the same in the *Malkhana*.

15. It is also submitted that the testimony of PW5 who claimed to be an eye witness is not believable; *firstly* if the firing had been done from the said *katta*, the empty cartridges of the bullet would have been found at the spot; *secondly* the signatures of PW5 Dharmender on the *rukka* do not match to his signatures on the other documents which bears his signature i.e. identification memo of the dead body of the deceased Yatinder and the personal search memo of the appellant Dinesh Singh. It is also submitted that the statement of PW5 was recorded after a gap of at least two hours from the incident and time was taken to manipulate the records and to implicate the appellant herein.
16. It is also submitted by the counsel for the appellant Dinesh that in the first DD entry bearing No.31 which was recorded at 06:45 PM, only the name of the appellant Diwakar has been mentioned and the same did not bear the name of the appellant Dinesh.
17. Learned counsel also submits that the testimony of PW7 has been discarded by the Trial Court and PW9, PW10 and PW11 are not eye witnesses to the incident. He also contends that the absence of the names of the assailants in the MLC show that the case of the prosecution is not trustworthy.
18. Lastly, an alternate prayer was made by the counsel that the case of the appellant Dinesh does not fall under Section 300 of IPC and may

fall under Section 304 of IPC. In support of his argument, learned counsel has relied upon the case of *Ajay Bind v. State NCT of Delhi* reported at *2017 SCC Online Del 9033*, whereby another Division Bench of this Court, of which one of us (G. S. Sistani, J.) was also a member, modified the order of conviction of the accused persons from Section 302 to Section 304 Part II by giving them the benefit of Exception IV of Section 300 of IPC and sentenced them to rigorous imprisonment for a period of five years.

Submissions made on behalf of the appellant Diwakar Gupta:

19. Mr. Ravinder Narayan, learned counsel appearing on behalf of the appellant Diwakar Gupta contended that although DD entry had been made at 6:55 PM on the same day of occurrence, wherein the name of the appellant Diwakar has been named, but there is no evidence on record to suggest as to how and who made the telephone call. It is contended that as per the case of the prosecution, no phone call was made by any of the family members of the deceased to the Police, which is highly unusual and would make the presence of PW's 5, 9 and 10 highly doubtful.
20. Mr. Narayan has laboured hard to submit that the injuries on the body of the deceased do not confirm with the ocular evidence. As per the eye witness account of PW5, there were two injuries on the body of the deceased i.e. one at the palm of the right hand and the other at the chest of the deceased. However, the post-mortem report shows that the injury on the chest was from the top to the bottom, which could not have been inflicted by a rifle especially when the deceased was taller than the appellant Diwakar. He submits that this submission gains importance in view of the testimonies of the witnesses who had deposed that the appellant Diwakar had fired on

the deceased at a close range, which is not correct upon reading of the post-mortem report.

21. Learned counsel has also highlighted the post-mortem report of the deceased which would show that the pellets found in the body of the deceased did not match with the pellets fired from the pistol nor did it match with the licensed rifle of the appellant Diwakar. He further submits that to falsely implicate the appellant Diwakar, two empty cartridges were allegedly seized from the place of the incident. It is further submitted that the rifle of the appellant Diwakar was brought from the Police Station Hasanpur, Palwal to Delhi on 13.05.1997 in an unsealed condition and thus, the seizure memo dated 06.03.1997 is a forged and fabricated document.

Submissions made on behalf of the appellant Sunil:

22. Mr. Anurag Jain, learned counsel appearing on behalf of the appellant Sunil adopts the arguments of the counsel for the other appellants and submits that the case of the prosecution is highly improbable and unbelievable.
23. The counsel for the appellant Sunil contended that the role ascribed to the appellant Sunil is that he was found present at the spot armed with a *danda* and had inflicted injuries to the deceased during the incident. In this background, it was submitted by the counsel for the appellant Sunil that it is highly improbable that during the incident of firing, the appellant Sunil would stand with a *danda* and inflict *danda* blows to the deceased. To disprove the application of Section 34 of IPC, it was submitted by the counsel that there was no meeting of mind between the appellant Sunil and the other appellants. The counsel further submitted that it is not the case of the prosecution

that the appellant Sunil visited the house of the deceased armed with a *danda* and shared common intention to kill the deceased.

24. It is also submitted by the counsel for the appellant Sunil that in the present case, the medical evidence runs contrary to the eye witnesses account. As per the case of the prosecution, the appellant Sunil gave one blow on the shoulder of the deceased; however, the post-mortem report shows that abrasion found on the dead body of the deceased could not have been caused by the *danda*. Thus, if the case of the prosecution is to be believed, the appellant Dinesh had fired from *katta* and Diwakar gave two shots from his rifle. It is impossible that the appellant Sunil attacked the deceased with *danda* during the incident of firing as there is a good possibility that he could have been shot as well. Mr. Jain further submits that so called weapon of offence i.e. *danda* was neither recovered at the instance of the appellant Sunil nor was it recovered from the spot. As an alternate argument Mr. Jain submits that the prosecution has failed to show that there was any motive as the case of the prosecution is that it was merely a chance meeting. Lastly, it was prayed that the appellant Sunil has already undergone more than five years of imprisonment, thus, Section 307 of IPC would not be applicable to the appellant Sunil's case.

Submissions made on behalf of the appellant Narender:

25. Ms. Saahila Lamba, learned counsel for the appellant Narender Agarwal, while adopting the arguments of the counsel for the other appellants submits that the only role ascribed to this appellant was that of exhortation. She submits that the motive is a double edged weapon and in case motive as established by the prosecution is to be relied upon then it would show that the appellant Narender has been

falsely implicated in the present case. The counsel contended that there was no meeting of mind between the appellant Narender and other appellants, thus, in the absence thereof, it would be highly unsafe to convict the appellant Narender on the basis of the common intention. Lastly, it was contended that the appellant Narender did not carry any weapon of offence nor caused any injury. The appellant Narender has undergone more than five years of imprisonment.

26. *Per contra*, Mr. Rajat Katyal, learned counsel for the State submits that the State has been able to prove its case beyond any shadow of doubt. He submits that the prosecution has relied upon the evidence of three eye-witnesses, out of which PW6 Devender Kumar and PW8 Bijender are independent witnesses. He submits that the presence of these witnesses stands duly established on record. The counsel further submits that the evidence of PW5 Dharmender, being the brother of the deceased deposed each and every fact detailing the entire sequence of event. Mr. Katyal also relies on the PCR call, which was received by PW36 Lady Const. Hariyat vide DD. No 31 to show that even in the PCR call the police was informed that one Diwakar had shot one Yatinder at Chander Vihar, Mandawali, Fazil Pur. This call was made by some unknown person immediately after the incident i.e. at 6.55 PM and there was no reason for the caller to implicate the appellant Diwakar herein. The name of all the appellants had appeared in the *rukka* which was sent at 10.20 PM on the same day and shows that the case of the prosecution was immediately registered within four hours after the incident. The counsel also submits that a reading of the *rukka* further shows that PW6 Devender Kumar and PW8 Bijender were present at the spot

and extended help to PW5 Dharmender who cried for help. Thereafter, PW9 Manender, PW10 Parmanand Tyagi and PW5 Dharmender accompanied the injured to the hospital in a maruti-800 car. However, the absence of the name of PW5 Dharmender in the MLC of the deceased does not affect the case of the prosecution in the presence of other evidence available on record.

27. It was further submitted by the counsel for the State that as far as the argument regarding failure to recover the country made pistol (*katta*) is concerned, no benefit can accrue to the appellant Dinesh on the ground that no injuries had been caused by the said *katta* and the failure to recover the said *katta* nullifies the case of the prosecution with regard to the appellant Dinesh. He further submits that the absence of the empty cartridges of the bullet fired from the said *katta* only point towards faulty investigation and merely because the weapon of offence was not found, that cannot be a ground to acquit the appellant Dinesh.
28. Counsel for the State further submits that the reaction of an individual would vary from person to person. He relies upon a judgment of the Hon'ble Supreme Court in the case of *State of U.P. v. Devendra Singh*, reported at (2004) 10 SCC 616, wherein it has been held that different persons may behave differently at the same time, while one person may run; the other may sit in the same area and cry. He further submits that the reaction of PW5 Dharmender was understandable in the sense that he accompanied the injured to the hospital alongwith PW10 and PW11. To answer the argument regarding non-appearance of the name of the assailants in the MLC of the deceased, the counsel urged that the prime duty of the attending doctor is to provide treatment to the injured person rather

than noting down the name of the assailants and enquiring about the details of the incident, thus, the absence of the names of the assailants in the MLC does not affect the case of the prosecution in the presence of other material available on record.

29. It was further submitted by the counsel that a reading of the post-mortem report would show that the injuries sustained by the deceased matched with the eye witnesses account of PW5, PW6 and PW8 which would show that the eye witnesses had rightly described the manner in which the injury was caused to the deceased.
30. We have heard learned counsels for both the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court.
31. At the outset, it would be useful to discuss the testimony of PW5 Dharmender Kumar Sharma who was examined as an eye witnesses to the incident and was star witness of the prosecution.
32. PW5 Dharmender Kumar Sharma (brother of the deceased) deposed in his examination-in-chief that on 06.03.1997 at about 6.15 PM, while he was returning home alongwith his younger brother Yatender (deceased) from his in-laws house via Indira Marg, on reaching in front of the house of the appellant Diwakar Gupta, they met all the appellants Sunil, Diwakar, Dinesh and Narender Agarwal who had exhorted amongst themselves as PW5 and his brother did not help their candidate in the previous MCD election and they would be killed for the same. On the fateful day, he was working as a Vice-President for the East Delhi Congress Committee. As MCD elections were to be held in the Mandawali Zone, Radha Sharma was a candidate of the Congress for the MCD elections while Sarla

Chaudhary (wife of Chaudhary Jeet Singh, Joint Secretary of Delhi Pradesh Congress Committee) was also contesting as an independent candidate. PW5 was requested by Chaudhary Jeet Singh to support his wife in the election, to which PW5 refused. PW5 Dharmender further deposed that being a worker for the Congress party, he was supporting Radha Sharma who was contesting MCD elections from Mandawali Zone. On refusing to support Radha Sharma, Chaudhary Jeet Singh threatened PW5 that he would face the consequences within a month of elections. All the appellants Diwakar Gupta, Dinesh Singh, Narender Kumar Agarwal and Sunil who were supporting Sarla Chaudhary had threatened to kill him.

33. It was further deposed by PW5 that on 06.03.1997, at about 6.15 PM, all the appellants met him and the appellant Narender exhorted other appellants Dinesh, Diwakar and Sunil by saying “DEKHITE KAYA HO MAARO GOLI SALO KO” to which the appellants Diwakar and Dinesh opened fire from their weapons which hit his brother on the palm of right hand and on the left side of his chest. The appellant Sunil who was carrying a *danda* started beating the deceased. The appellant Diwakar Gupta was armed with a rifle and the appellant Dinesh was having a *katta* from which they opened fire. PW5 further deposed that the bullets did not hit him while his brother (deceased) sustained bullet injuries due to which he had fallen down and started bleeding profusely. PW5 cried for help “BACHAO-BACHAO”. Thereafter, PW7 Ram Kishore, PW8 Bijender, PW6 Devender and others reached the spot and tried to save them. All the appellants fled from the spot. In the meantime, PW10 Parmanand, PW9 Manender, PW7 Ram Kishore took the deceased to GTB Hospital in a Maruti Car where the deceased was declared as brought dead. After

sometime, the Police reached the Hospital and his statement was recorded which was proved by him as Ex. PW5/A. PW5 identified all the appellants in the Trial Court as the persons who had fired on the deceased and attempted to kill him on account of enmity. PW5 further deposed that the appellant Dinesh was arrested on 08.03.1997. PW5 identified the rifle used in the offence as Ex. P1.

34. In his cross-examination, PW5 stated that it might have taken 15-20 minutes before taking the deceased to the hospital and he did not remember as to whether PW7 Ram Kishore had accompanied him in taking the deceased to the hospital. PW5 further stated that he did not remember as to who had helped him in lifting the deceased from the spot to the vehicle. It might have taken 45 minutes to reach the hospital from the place of the incident. PW5 further stated that MLC of the deceased was prepared at the emergency ward in his presence. PW5 again reiterated that PW9 Manender, PW7 Ram Kishore and PW10 Parmanand accompanied him in the vehicle when the deceased was being taken to the hospital. It was further admitted by PW5 that he had not given any documentary proof to the Police officials showing that on the day of the incident, he was working as a vice- President for the Congress party. PW5 also did not give any documentary evidence supporting that the appellants Dinesh, Diwakar and Narender were working as workers for the Congress party and were supporting the rebel candidate namely Sarla Chaudhary for the post of Councillor in the MCD elections for the seat of Mandawali Fazalpur. PW5 also did not give any pamphlet as evidence to show that all the appellants were supporting the rebel candidate Sarla Chaudhary in the election.

35. The next eye witness who was an independent witness and was relied upon by the prosecution was PW6 Devender Kumar who deposed in his examination-in-chief that on 06.03.1997, while he was coming from Railway Colony and was going towards Madhu Vihar via Indira Gandhi Marg, at about 6.00 or 6.15 PM, when he reached near the house of the appellant Diwakar Gupta, he found all the appellants Diwakar Gupta, Dinesh, Sunil and Narender Aggarwal present there. The appellant Diwakar was armed with a rifle and the appellant Dinesh was having a *katta* while the appellant Sunil was having a *danda* in his hand. At that time, PW5 Dharmender and his brother Yatinder (deceased) were crossing the place of occurrence whereupon the appellant Narinder exhorted to the other appellants '*Maaro Salo ko*'. To which the appellants Diwakar and Dinesh opened fire, however, PW5 Dharmender in order to save himself dodged the shots and remained unhurt, while the deceased got hit in his chest and right hand palm. As a result of the injuries, the deceased fell down. The appellant Sunil who was correctly identified in the Trial Court, gave *danda* blows on the arms of the deceased. The appellant Narinder also instigated the other appellants that PW5 and the deceased must not be left alive and must be killed. At the same time, PW7 Ram Kishore was crossing the place of occurrence. PW5 Dharmender and PW8 Bijender cried for help. All the appellants fled away the spot while firing. PW6 correctly identified all the appellants in the Trial Court. Thereafter, the deceased was taken to the hospital by PW5 Dharminder, PW9 Manender, PW7 Ram Kishore and PW10 Parmanand where the deceased succumbed to his injuries. In his cross-examination, PW6 stated that he witnessed the incident from a distance of about 8 to 10 feet and the

distance between the deceased and the appellant Diwakar must be about 5 to 6 feet. It was further stated that the shot from the rifle was fired without the support of the shoulder. The barrel of the rifle was straight and pointing towards the chest of the deceased. It was further stated by PW6 that when the deceased had fallen, he was given *lathi* blows on his left shoulder.

36. The last eye witness relied upon by the prosecution was PW8 Bijender, being the independent witness deposed on similar lines as deposed by PW5 and PW6 and corroborated the entire sequence of events regarding the incident.
37. It is evident from the record that PW10 Parmanand Tyagi and PW11 Sham Kumar were witnesses who had seen all the appellants running away from the spot. In this background, it would be useful to discuss their testimonies in detail.
38. PW10 Parmanand Tyagi deposed in his examination-in-chief that on 06.03.1997, at about 6.30 or 6.35 PM, when he was returning from his shop and was going home via Indira Marg, he saw the appellant Dinesh armed with a *katta*, the appellant Diwakar armed with a rifle and the appellant Sunil having a *danda* in his hand alongwith the appellant Narender Aggarwal. They all were running towards Mayfair Apartments. On reaching in front of the house of the appellant Diwakar Gupta, PW10 found a crowd and saw the deceased Yatinder lying on the ground. The blood was oozing out from his body. In the meantime, PW9 Manender reached the spot with his Maruti Car in which deceased Yatinder was taken to the hospital. It was further deposed by PW10 that he was accompanied by PW7 Ram Kishore, PW9 Manender and PW5 Dharmender to GTB hospital where Yatinder was declared as brought dead.

Thereafter, police reached the hospital and recorded the statement of PW5 Dharmender.

39. PW11 Sham Kumar deposed in his examination-in-chief that on 06.03.1997, at about 6.35 or 6.40 PM, while he was coming from the side of Mayfair Apartments and was going towards Indira Marg, he saw that the appellants Diwakar, Dinesh, Sunil and Narinder running away. The appellant Diwakar was armed with a rifle. The appellant Dinesh was armed with a *katta* in his hand and the appellant Sunil was having a *danda* in his hand but the appellant Narender was unarmed. On enquiry, all the appellants told him '*HAT JA HAT JA*'. Thereafter, PW11 saw a crowd in front of the house of the appellant Diwakar and found deceased Yatinder @ Yatti in an injured condition lying at the spot. The deceased was bleeding from his hand and chest. It was further deposed by PW11 that he was informed by PW5 Dharmender that the appellants Diwakar and Dinesh fired shots at Yatinder due to political rivalry. Thereafter, a Maruti car was brought by PW9 Manender and the deceased was taken to the hospital where it is declared that Yatinder had succumbed to his injuries. All the appellants were duly identified by PW11 in the Trial Court.
40. On a careful reading of the MLC of the deceased (Ex.PW1/A), it shows that he was brought to the hospital by PW9 Manender Pal Sharma on 06.03.1997, at 7.50 PM. In the light of this fact, the testimony of PW9 assumes importance. It was deposed by PW9 that upon receiving the information regarding firing on his brother Yatinder, he rushed to the spot and reached at about 6.45 PM and found the deceased lying near a heap of bricks. The deceased was bleeding profusely from his chest as well as right hand. Upon

enquiry, his brother PW5 Dharmender informed him about the incident explaining role of each appellant. Thereafter, PW9 immediately rushed to his friend namely Narender Wadhwa to get his vehicle in which the deceased was taken to GTB Hospital. It was further deposed that he alongwith PW5 Dharmender, PW7 Ram Kishore and PW10 Parmanand Tyagi accompanied the deceased to the hospital. In his cross-examination, it was admitted by PW9 that he was not a witness to the occurrence and the entire incident was told to him by his brother (PW5). It was also stated by PW9 that the blood of the deceased had fallen in the vehicle but it was not noticed or lifted by the Police officials. PW9 had reached the hospital at 7.40 or 7.45 PM and met the doctor.

41. The criminal machinery was set into motion after receipt of the information with regard to the killing of Yatinder at Chander Vihar, Mandawali, Fazil Pur which was recorded by PW36 Lady Constable Hariyat who deposed in her examination-in-chief that on 06.03.1997, she was posted as a Lady Constable at Police Control Room and at around 6.55 PM in the evening, someone informed her at the Control Room on telephone that one Diwakar had shot one Yatinder at Chander Vihar, Mandawali, Fazil Pur. PW36 conveyed the same information to the Police Post, Mandawali, Police Station Trilok Puri. PW36 prepared the PCR form and conveyed the said information to the local police. The said PCR form was destroyed vide order No. 21929-32/Gen. (II)/PCR dated 16.09.1999 and was not produced in Court. A certificate issued in this regard by the Incharge-Record PCR was proved as Ex. PW36/A. After reading the copy of DD report (Ex. PW24/A), it was deposed by PW36 that it

contained the same information which was conveyed by her to the Police Post Mandawali, Police Station Trilok Puri.

42. PW24 Const. Khurshid Ahmed who was posted as DD writer at Police Post, Mandawali under Police Station Trilok Puri on 06.03.1997 deposed that he had recorded the wireless message received from PCR with regard to firing by a worker on the deceased Yatinder at Chander Vihar, Mandawali. The information was recorded by him vide DD No.31 and proved the same as Ex.PW24/A. Thereafter, DD No.32 was recorded by him regarding the deceased 'brought dead' to the GTB Hospital and was proved by him as Ex.PW24/B.
43. PW12 SI H.R. Meena deposed in his examination-in-chief that on 06.03.1997, he was posted at Police Post Mandawli as Incharge. On that day, at about 6.55 PM, on receipt of a wireless message, he went outside House No. 40/2 (40/1), Indira Marg, Chander Vihar where he met HC Shailender and a Constable whose name he could not remember. In the meantime, the SHO of the area also reached the spot. PW12 found blood lying at the spot. Besides this, two empty cartridges and a *hawai chappal* were also found lying near the spot. On receiving DD No. 32, the SHO left for the hospital, leaving PW12 at the spot. On return from the hospital, the SHO inspected the spot and lifted the blood-sample, earth sample which were kept in *pulandas* and sealed with the seal of 'VK' and were seized vide memo Ex. PW12/A. Two empty cartridges measuring .88 mm and on which 95 KF was engraved seized from the spot and the same were kept in *pulanda* and sealed with the seal of 'VK' and seized vide memo Ex. PW12/B. The sketch of the empty cartridges was prepared by PW12 and was proved by him as Ex. PW12/C. In his cross-

examination, it was denied by PW12 that cartridges, blood stained earth and the earth control were not deposited in his presence nor the sketch of the cartridges was prepared in his presence.

44. PW17 Const. Deep Chand deposed in his examination-in-chief that on 06.03.1997, at about 8.00 PM, DD No. 32-A was assigned to him by the duty officer of the *chowki*. Upon receiving the said DD, PW17 went to Indira Marg, Chander Vihar and handed over to the SHO present there. Thereafter, PW17 was accompanied by the SHO in his jeep to GTB Hospital alongwith the driver and the wireless operator. When we came out of the hospital, brothers of the deceased Yatinder i.e. PW5 Dharmender and Tyagi met them. Thereafter, the statement of PW5 Dharmender was recorded by the SHO. PW17 took *rukka* to the Police Station for registration of the instant case. The copy of *rukka* as well as the FIR was delivered by him to the SHO.
45. PW28 Insp. Vinod Kapoor was the Investigating Officer in the present case who had testified in his examination-in-chief that on 06.03.1997, he was serving as SHO PS Trilokpuri. At about 6.55 PM, when he was on patrolling duty, he received a wireless message that an incident of firing had taken place at Chander Vihar, Mandawali Fazalpur. He visited the spot alongwith Const. Mahavir and Const. Sant Ram at about 7.20 PM and saw blood lying at the spot with two blank cartridges and one chappal. SI H. R. Meena was also present at the spot. It was further deposed that upon enquiry, he got to know that the injured had already been removed to the hospital. In the meantime, DD No.32 was received from Police Post Mandawli by Const.Deep Chand. Thereafter, he along with Const. Mahavir, Const. Deep Chand and wireless operator Sant Ram went to GTB Hospital leaving SI H. R. Meena, HC Shailender to guard the

spot. At the hospital, he met PW5 Dharmender and recorded his statement which was proved as Ex.PW5/A. On the basis of the statement of PW5, rukka was sent through Const. Deep Chand and FIR No.179/97 under Section 302/34 of IPC was registered at PS Trilokpuri. PW28 collected MLC (Ex.PW1/A) of the deceased who was declared as brought dead at the hospital. Thereafter, PW28 returned at the spot and inspected the same where a site plan (Ex.PW23/DA) was prepared at the instance of PW5 Dharmender. Two empty fired cartridges of 8 mm, 95KF, measuring 5 cm in height were seized vide memo Ex.PW12/B. A sketch of the empty cartridges was prepared by PW28 which was proved as Ex.PW12/C. A rukka was prepared by him as Ex.PW3/A. The blood sample and the earth control was collected from the spot and were kept in two *pulandas* and sealed with the seal of VK and seized vide memo Ex.PW12/A, the empty cartridges Ex.PW2 (1-2) were kept in a cloth piece and the *pulanda* was seized vide memo Ex.PW12/B. A *chappal* was also found at the spot which was also seized. In his cross-examination, it was stated by PW28 that upon reaching the spot, no eye witness was found. PW28 admitted that he had reached the hospital at about 8.45 PM. It was further admitted by PW28 that all the four memos i.e. Ex.PW12/A, Ex.PW12/B, Ex.PW12/C and Ex.PW22/C were not in his handwriting and did not bear his signatures, however, it bears the name of Vinod Kumar.

46. The attention of this Court has also been drawn to the seizure of empty cartridges from the spot which were made in the presence of PW15 Harish Kumar (brother of the deceased). At this stage, we deem fit to discuss the testimony of PW15 Harish Kumar who deposed in his examination-in-chief that on 06.03.1997, he was

sleeping at his house, where he was informed about the incident. Thereafter, PW15 went to the spot i.e. in front of the house of the appellant Diwakar Gupta, Chander Vihar, Indra Marg and saw a crowd gathered at the spot. The Police Officials were also standing at the spot. PW15 was told that his brother Yatender Sharma had been taken to the hospital by PW5 Dharmender, PW10 Parmanand Tyagi, PW7 Ram Kishore and PW9 Manender. PW15 found two empty cartridges lying at the spot which were taken into possession by the Police vide memo Ex.PW7/B. PW15 remained at the spot up to 10.30 PM. In the meantime, Dharmender (PW5), Manender (PW9), Parmanand Tyagi (PW10) returned to the spot from the hospital and were interrogated.

47. The counsel for the appellants urged that all the witnesses who had been examined by the prosecution are in blood relations of the deceased or distantly related and the common factor amongst all the eye witnesses is that they were interested witnesses.
48. It is well settled that the evidence of interested witnesses is not necessarily to be discarded. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and must be accepted with caution. If on such scrutiny, the testimony is found to be reliable and trustworthy, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.
49. On a careful analysis of the entire evidence discussed hereinabove, we have found the evidence of PW5 as trustworthy which remained consistent on all material aspects with the testimonies of the other independent witnesses i.e. PW6 Devender Kumar and PW8 Bijender and thus is fully reliable. The case of the prosecution has been

further corroborated by the evidence of PW10 Parmanand Tyagi and PW11 Sham Kumar who had seen all the appellants armed with weapons and also found them running away from the spot. Thus, the plea of the interested witnesses raised by the counsel for the appellants stands rejected.

Medical Evidence:

50. PW4 Dr. Anil Kohli conducted post-mortem of the deceased on 07.03.1997, at 11.30 AM. His detailed report was proved by him as Ex.PW4/A wherein the following ante-mortem injuries were mentioned:

“1. Lacerated firearm entry wound measuring 6 cm x 2 cm with irregular contused and inverted margin present over ventral aspect of right wrist joint. On dissection, fracture of underlying metacarpal bone and carpal bones of hands with haemorrhages in intervening soft tissues. The track of the wound is existing out dorsal aspects of right hand just behind the thumb making an exit wound of 7 cm x 2 cm with irregular contused and inverted margin. Depth of track in hand is 5.5 cm and its direction is going outwards backwards and downwards.

2. Lacerated firearm entry wound measuring 3.5 cm x 4 cm. present over lower front of chest placed 16 cm below the sternal notch and just to the left of midline. On dissection, the track of the wound is passing to the soft tissues below the xiphoid process grasing the rib-cage passing through and through the stomach lacerating the left kidney and renal vessel and exited out of the body making an exit wound of 3 cm x 3.2 cm placed over left side that of abdomen placed 3 cm. to the left of midline and 7 cm. above top of hip bone. Tatting seen in an area of 12 cm. x 12 cm. over front of chest around the entry wound. Deep tattooing seen measuring:

- a) 0.5 x 0.5 x 0.2 in middle midline 17.5 cm below the sternal notch.*
- b) 0.5 x 0.5 x 0.3 x 1.5 cm. to right of midline 18 cm. below the sternal notch.*

- c) 0.9 x 0.8 x 0.4 cm, 13.5 below sternal notch in midline.
- d) 0.5 x 0.5 x 0.3 cm, 14 cm below sternal notch and 0.5 cm. to right of midline.
- e) 0.5 x 0.5 x 0.3 cm, 14.5 cm below the sternal notch and 2 cm to right of midline.
- f) 1 cm x 1 x 0.5 cm, 19.5 cm below sternal notch in midline.

The entry wound is inverted with contused irregular margins and exit wound is inverted with irregular margin. Fragment of jacket of bullet found alongwith the track of the wound in the soft tissues of anterior chest wall and back of abdomen. Small pieces of lead also found in the track of the wound near exit wound of the back of the abdomen.

Direction of the track of wound is going outwards, backwards and downwards and depth is 25 cm. Haemorrhages and extravasation of blood present along the track of wound.

3. *Red abrasion 1.5 x 1 cm. over front of outer tip of left shoulder.*

4. *Red abrasion of 1 x 0.5 cm. over front of left forearm 2 cm. below the elbow joint."*

51. During the post-mortem examination, PW4 also found blackening over the front part of the *kurta* worn by the deceased at the time of the incident, which was also torn in front and back part corresponding to the fire-arm wounds. The cause of death was opined by PW4 as haemorrhagic shock due to ante-mortem injuries to the left kidney and renal vessels produced by the projectile of firearm. Time since death was opined as 18 hours prior to the examination. In his cross-examination, it was stated by PW4 that the injuries sustained by the deceased were rifle fire-arm injuries, however, PW4 could not specify regarding the type of weapon used i.e. as to whether it was a country made pistol, rifle or revolver.
52. Before dealing with the arguments of the counsels for the parties regarding 'common intention' shared by all the appellants while

committing the murder of Yatinder and also during attempt made by all the appellants to kill PW5 Dharmender, we deem it appropriate to re-visit the law regarding Section 34 of IPC.

53. In the case of ***State of U.P. v. Iftikhar Khan*** reported at (1973) 1 SCC 512, the facts of the case were that out of four accused persons, two were armed with pistols and the other two were armed with *lathis* and all the four together walked towards the deceased and after firing the pistols at the deceased all the four together left the spot. A plea was made on behalf of the two persons who were armed with *lathis* that they have not done any overt act. It was claimed by the two *lathi* holders that the deceased was killed by a pistol shot and there was no act on behalf of them. It was observed by the Hon'ble Supreme Court that to attract Section 34 of IPC, it is not necessary that any overt act should have been done by the co-accused and the criminal act was done by all the accused persons in furtherance of the common intention to kill the deceased. In the case of ***Ramaswami Ayyangar vs. State of T.N.*** reported at (1976) 3 SCC 779, wherein it was held by the Apex Court that the presence of those who in one way or the other facilitate the execution of the common design itself tantamount to actual participation in the 'criminal act'. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result.
54. In the case of ***Suresh and Anr. vs. State of Uttar Pradesh*** reported at (2001) 3 SCC 673, the Hon'ble Supreme Court discussed the scope of common intention and also dealt as to when the accused can be fastened with liability on the strength of Section 34 of IPC. The relevant para 24 and 25 read as under:

“24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32 IPC. So the act mentioned in Section 34 IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act, e.g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34 IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC.

25. There may be other provisions in the IPC like Section 120-B or Section 109 which could then be invoked to catch such non-participating accused. Thus participation in the crime in furtherance of the common intention is a sine qua non for Section 34 IPC. Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act.”

(Emphasis Supplied)

55. Applying the law discussed in the afore discussed judgments in the facts and circumstances of the case in hand, we find the testimonies of PW5 Dharmender, PW6 Devender and PW8 Bijender as trustworthy and also find it consistent with the medical evidence. Thus, a conjoint reading of the testimonies discussed above, the medical evidence and FSL results placed on record, it stands established that all the appellants in furtherance of their common intention were involved in the commission of murder of the deceased Yatinder. In our view, contradictions if any are not material in nature and do not go to the root of the matter.
56. The next submission made by the counsel for the appellants was that in case PW5 was an eye witness to the incident and had taken the deceased to the hospital in a maruti car driven by PW9 Manender, there would have been blood on his clothes. However, his clothes were not taken into possession by the police and not sent for examination.
57. This submission of the learned counsel for the appellants is also liable to be rejected. Even though the blood stained clothes of PW5 and 9 were not seized but their evidence establishes their presence at the place of the incident. It is settled law that faulty investigation cannot come in the way of dispensing justice. Investigating Officer may have faulted in not collecting the blood stained clothes of the eyewitnesses, but the benefit of defective investigation cannot accrue to the accused persons. We need not burden this opinion with judicial pronouncements in this regard; suffice to mention that one may usefully refer to *Sathi Prasad vs. The State of U.P.* reported at *AIR 1973 SC 448*, *State of U.P. v. Anil Singh* reported at *1988 Supp SCC 686* (paragraph 17), *Mohan Singh v. State of Madhya*

Pradesh, reported at (1999) 2 SCC 428 (paragraph 11), *Dhanaj Singh alias Shera & Ors. Vs. State of Punjab* reported at (2004) 3 SCC 654 (paragraphs 5 and 8), *State of UP v Krishna Master*, reported at (2010) 12 SCC 324 (paragraph 15).

58. We may also notice a judgment of a co-ordinate bench of this Court, of which one of us (G. S. Sistani, J.) was a member in *Babu and Others vs. State of Delhi* reported at MANU/DE/1550/2017, held that if any defect is found in the investigation, benefit of the same could not be extended to the accused persons and they could not get any benefit of the defective investigation until and unless they prove other cogent evidence in their favour and belie the case of the prosecution. It was further held that in the case of defective investigation, the court has to circumspect in evaluating the evidence, but it would not be right in acquitting the accused persons solely on account of the defect by the Investigation Agency.
59. In light of the judgments mentioned in foregoing para, even if we assume that the clothes of PW5 and 9 were blood stained and the Investigating Officer did not seize them, it amounts to a lapse on the part of the Investigating Agency. It reflects the casual and callous attitude of the Investigating Agency in carrying out its most solemn duty of conducting fair, honest, flawless and scientific investigation into the crime. The discrepancy pointed out by the appellants cannot be said to be significant enough to create a reasonable doubt in the case of the prosecution. Any procedural lapse does not dilute the evidence available on record in the form of the depositions of the eye witnesses which adequately bring home the guilt of the appellants beyond all reasonable doubt.

60. Taking into consideration the law as laid down by the Apex Court and circumstances of the present case, we are of the view that the learned Trial Court has rightly appreciated the evidence on record. The prosecution has successfully proved the charges levelled against all the four appellants. For the reasons stated above, we find no infirmity in the judgment passed by the learned Trial Court and we see no reason to interfere with the same. The conviction of the appellants under Sections 302 read with Section 34 of IPC and under Section 307 of IPC read with Section 34 of IPC is upheld.
61. The case of *Ajay Bind (supra)* relied upon by the counsel for the appellant Dinesh is not applicable to the facts of the case on hand, as in the peculiar facts of the relied case a sudden quarrel ensued between the accused persons and the deceased's family which resulted in the death of the deceased by fatal blow to his head and injuries were also sustained by his wife. In our view, the benefit of the relied case cannot be extended to the appellant Dinesh as there is no application of Exception IV in the present case.
62. It is reflected from the order dated 12.07.2013 passed by this Court that bailable warrants have been issued against the appellant Narender Aggarwal to secure his presence, however, it remained unexecuted. On 01.09.2017, fresh bailable warrants were issued against the appellant Narender and also notice to the surety was directed by this Court. The State has submitted a status report dated 07.09.2017 which was filed under the signature of SHO Police Station Madhu Vihar. Reading of the status report would show that the bailable warrants could not be executed as the appellant Narender was not residing at the given address. The current address as well as his contact number could not be traced. On local enquiry, there was

no relative found at the concerned address. Counsel for the State has also submitted that the appellant Narender has undergone a period of 4 years and 7 months in custody. In the peculiar facts of the given case, we direct that a copy of this judgment be sent to SHO, PS Trilok Puri for the necessary compliance.

63. All the four appeals therefore fail and are dismissed. The appellants are on bail. The appellants shall serve the sentence as imposed by the learned Trial Court and surrender before the Central Jail, Tihar within three weeks from today. They shall be taken into custody to serve out the sentence.
64. The copy of this judgment be sent to the Superintendent Jail.
65. Trial Court record be sent back.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

AUGUST 8, 2019

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