

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

+ CRL.A. 482/2003

Reserved on: 21.1.2019

Date of decision: 11.3.2019

IN THE MATTER OF:

HIMMAT SINGH & ORS

..... Appellants

Through: Pradeep Chowdhary and Mr. Vikrant
Chowdhary, Advocates.

versus

STATE (GOVT OF NCT)

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State.
SI Suresh Kumar, P.S. Inderpuri.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

HIMA KOHLI, J.

1. The three appellants, who are related to each other, being brothers, have challenged the judgment dated 4.7.2003, passed by the learned Additional Sessions Judge in case FIR No.33/2002 registered against them at P.S. Inderpuri under Section 302/34 IPC whereunder appellant No.1, Himmat Singh @ Mangal has been convicted under Section 302 IPC and the appellant No.2, Rajesh and appellant No.3, Vinod have been convicted under Section 302/34 IPC. The appellants are also aggrieved by the order on sentence dated 4.7.2003 whereunder they have been sentenced to undergo rigorous imprisonment for life and pay a fine of Rs.5,000/-. In default of payment of fine, each of the appellants have been directed to undergo Simple Imprisonment for three months.

2. Briefly stated, the facts of the case are that on 28.2.2002, a call was received from a PCR van at 7.20 AM about the murder of a boy near C-Block, Mother Dairy Booth No.327, Inderpuri, recorded at P.S. Inderpuri as DD No.10A (Ex.PW1/B) and handed over to SI Rajesh Kumar. SI Rajesh Kumar alongwith Ct. Rajkumar reached the spot and found that the injured had been removed by the PCR van to RML Hospital. On going to the Hospital, SI Rajesh Kumar was told that the injured, Satbir had been declared as brought dead. Munna Lal, father of Satbir was present in the hospital and his statement was recorded. Thereafter, SI Rajesh Kumar returned to the scene of crime and sent a *rukka* to P.S. Inderpuri based whereon, FIR No.33/2002 (Ex.PW1/A) was recorded and the investigation proceedings set into motion. The Crime Team was called at the spot. Blood samples and earth control samples were lifted and photographs taken. After conclusion of the investigation, a challan was filed against four accused persons, namely, appellant No.1, Himmat Singh, appellant No.2, Rajesh and appellant No.3, Vinod. The fourth accused, S was a juvenile and his case was sent to the Juvenile Justice Board for further proceedings. Vide order dated 24.8.2002, charge was framed against the appellant No.1 for inflicting knife blows on the person of the deceased under Section 302 IPC and against the appellants No.2 and 3 for acting in furtherance to their common intention with the appellant No.1 and S (JCL) of committing the murder of Satbir by holding him to the ground along with S, while the appellant No.1 inflicted knife blows on his person thus committed an offence under Sections 302/34 IPC. All the three accused persons pleaded innocence and claimed trial.

Prosecution Witnesses

3. To bring home the guilt of the appellants, the prosecution examined 16 witnesses. The prime ocular witness is PW-2, Munna Lal, father of the deceased, who was an eye witness to the crime. PW-3, Suraj Bhan was cited as another eye witness, but he had subsequently turned hostile. The medical and forensic evidence was proved by PW-5, Dr. Arvind from Safdarjung Hospital, who had proved the postmortem report, Ex.PW5/A and his subsequent opinion in respect of the weapon of offence, a dagger (Ex.P-1) vide his report, Ex.PW5/B. PW-7, Dr. M. Kaushik from RML Hospital proved the MLC, Ex.PW7/A. The FSL reports were proved by the Investigating Officer PW-16, Inspector M.L. Chander, vide Ex.PW16/L, 16/M and 16/N.

4. Besides PW-15, SI Rajesh to whom DD No.10A was initially marked for investigation and PW-16, Inspector M.L. Chander, the IO in the case, the other mostly formal police witnesses are HC Munni Devi (PW-1), HC Ram Niwas (PW-4), HC Dharampal Singh (PW-6), Ct. Parveer Singh (PW-8), ASI Rama Saroha (PW-9), SI Manohar Lal (PW-10), ASI Prem Lal (PW-11), Ct. Raj Kumar (PW-12), HC Sewa Ram (PW-13) and Ct. Sanjay Kumar (PW-14). PW-1, HC Munni Devi proved the FIR (Ex.PW1/A) and DD No.10A (Ex.PW1/B). PW-4, HC Ram Niwas, the Store Room Keeper (Malkhana Mohrar) proved the entries of the case material including the weapon of offence in the Store Room Register, vide Ex.PW4/A, Ex.PW4/B and Ex.PW4/C.

5. PW-6, HC Dharampal Singh, posted at the PCR van on the date of the incident, deposed that he had received a call at about 7:20 A.M. regarding a quarrel and had reached the spot where the injured was found with knife injuries. He had taken the injured to the hospital, where the doctors had declared him as brought dead. PW-8, Ct. Parveer Singh was the photographer, who took photographs of the bloodstains on the earth from the spot (negatives exhibited as PW8/A to C and the photographs as Ex.PW8/D to F). PW-9, ASI Rama Saroha proved the PCR Form as Ex.PW-9/A. PW-10, SI Manohar Lal, the Draftsman prepared the scaled site plan (Ex.PW10/A). PW-11, ASI Prem Lal proved DD No.10A as Ex.PW1/B. PW-12, Ct. Raj Kumar who had accompanied PW-15, SI Rajesh to the scene of the crime, had lifted blood from the spot vide memo, vide Ex.PW12/A and had prepared the seizure memo, vide Ex.PW12/B. The soil lifted from the spot vide seizure memo, Ex.PW12/C was also proved by the said witness. PW-13, HC Sewa Ram had brought the records of FIR No.115/99 (Ex.PW13/A), lodged by Smt. Santosh, wife of the deceased against appellant No.3, Vinod and Omwati, mother of the three appellants. He deposed that the said case was compromised between the parties before the learned MM on 29.3.2001. PW-14, Ct. Sanjay Kumar proved delivery of a copy of the FIR to the concerned MM at her residence.

Ocular Evidence

6. The crucial witness in the instant case is PW-2, Munna Lal, father of the deceased, employed as a *Safai Karamchari* in the MCD, who was an eye witness and narrated the incident of 28.2.2002. He stated that on

the said date, at about 7.15 A.M., when he was working in his beat area, near a dispensary of the MCD in C-Block, J.J. Colony, Inderpuri alongwith his son, Satbir, who was sweeping at a distance of about 20 steps away from him, he heard a noise. On turning back towards his son, PW-2 saw that the three appellants alongwith a fourth accused, S (JCL) were hitting Satbir on his head with an iron rod. Appellants No.1 to 3 were wielding knives and stabbing Satbir. Accused No.4, S (JCL) who had a rod in his hand, had held his son down on the ground, while the rest of the accused were stabbing him and hitting him; that someone called the police and a PCR van arrived at the spot and removed Satbir to RML hospital. The statement of PW-2 (Ex.PW2/A) was recorded by the police at the hospital. He identified the dead body of his son vide Ex.PW2/B and received the same vide Ex.PW2/C. He specifically stated that he knew the accused persons who lived in the neighbourhood and that he had told the police about the place of the incident. He also stated that he was a witness to the recovery of the knife from the possession of the accused persons. PW-2 was extensively cross-examined on behalf of the appellants.

7. The second public witness, namely, PW-3, Suraj Bhan, a neighbour of PW-2, was cited by the prosecution as an eye witness but at the time of testifying in Court, he turned hostile and denied having stated to the police under Section 161 Cr.PC that on 28.2.2002, at about 7.45 A.M., he had reached near MCD Dispensary at C-Block, J.J. Colony, Inderpuri and had seen PW-2 coming, followed by his son, Satbir; that all the four accused came running and pinned Satbir to the ground; that the appellant No.3, Vinod had held Satbir with his hands, accused No.4,

S (JCL) had caught hold of his legs while the appellant No.1, Himmat Singh @ Mangal had attacked him with a knife and appellant No.2, Rajesh had hit him with an iron rod. PW-3 also denied that he along with PW-2 had tried to save Satbir from the accused persons, who fled away from the spot.

8. While testifying in the Court, PW-3 simply stated that on the date of the crime at about 7.45 A.M., he was present at his house; that he had left his house for going to work and while going via Narina Vihar, saw some people talking loudly that a person had been killed. On following the public, he reached near a dispensary, but did not find any dead body there; that a crowd of 200-250 had gathered there and PW-2 had come and told him that his son had been murdered and his dead body thrown. As PW-3 had resiled from his earlier statement, he was declared hostile and the learned APP was permitted to cross-examine him. During his cross-examination, PW-3 admitted to the fact that he had identified the dead body of Satbir vide his statement proved as Ex.PW3/C and that being a neighbour, he knew the accused persons, who were present in the Court. He also did not deny the fact that he along with PW-2 and his relative had gone to Safdarjung Hospital on 1.3.2002, to collect the dead body of Satbir.

Postmortem Report and FSL Report

9. PW-7, Dr. M. Kaushik, CMO, RML Hospital deposed that on 28.2.2002 at about 7.50 A.M., one person named, Satbir, aged 25 years was brought injured to the casualty by PW-6, H.C. Dharampal Singh. On examining Satbir, he was declared as brought dead on arrival. PW-7

observed seven incise wounds on the body of the deceased and proved the MLC prepared by him as Ex.PW-7/A. He stated that he had sealed three articles, a white shirt with stripes, a red T-Shirt and a black *baniyan*. The white shirt had blood stains and coinciding cut marks. During the cross-examination, it was suggested to PW-7 as to whether the cut marks on the shirt were by a single or double edged weapon, but he stated that he could not say so and nor could he comment as to whether the injuries present on the body of the deceased were possible with one kind of weapon or different kinds of weapon.

10. PW-5, Dr. Arvind, Chief Medical Officer, Safdarjung Hospital had conducted the postmortem on the body of the deceased and proved the postmortem report as Ex.PW5/A. The said report records the time of starting the autopsy on 1.3.2002, as 3 P.M. and concluding the same at 4 P.M. PW-5 recorded that there were 13 stab wounds on the body of the deceased, mostly on the chest region and no defence wounds were found on the hands, arms etc. The depth of the stab wounds ranged between 2 cms. to 10 cms. Time since death was mentioned as about 34 hours. The final opinion given by PW-5 was that *“the cause of death is hemorrhagic shock consequent upon multiple stab wounds caused by single edged sharp weapon like Dagger/Knife”*. PW-5 also proved his subsequent opinion obtained by the police vide application dated 10.5.2002, in respect of the weapon of offence submitted to him, namely, a dagger. The report regarding the said weapon (Ex.P-1), was proved as Ex.PW5/B. The rough sketch of the dagger drawn in the subsequent report dated 10th May, 2002, describes one side of the dagger as a ‘sharp edge’ and the other as an ‘unsharp edge’. In his report, PW-5 opined that

“the injuries described in the said postmortem report could be caused by the weapon submitted”.

Important Police Witnesses

11. PW-15, SI Rajesh was handed over DD No.10A. He deposed that on 28.2.2002, he, along with PW-12/Constable Raj Kumar were the first ones to reach the scene of crime. He was informed that a PCR van had removed the injured to RML Hospital. He along with PW-12, proceeded to the hospital and met PW-2 Munna Lal there. The endorsement made by PW-15 on the statement of PW-2 (Ex.PW2/A) recorded by him was proved as Ex.PW-15/A. He returned to the scene of crime and lifted the blood samples, blood control earth and soil from the spot, vide seizure memos, marked as Ex.PW12A/12B and 12/C. PW-15 handed over the *rukka* to PW-12, for registering an FIR. He also called the Crime Team and the photographer to the spot and handed over the file to PW-16, the main I.O., Inspector M.L. Chander for further investigation.

12. PW-15 was a part of the police party that arrested the appellants No.1 and 2 from Krishan Ganj Park on 01.03.2002. On the disclosure statement made by the appellant No.1, Himmat Singh (Ex.PW-15/B) one knife (Ex.P-1) lying under a heap of dry leaves at a vacant plot of land in Block C-1 was sized, vide Ex.PW-15/C. The seizure memo in respect of the pullanda in which the said knife was placed, was proved as Ex.PW-15/D. A pipe was recovered on the disclosure statement made by the appellant No.2 Rajesh, who led the police party to a vacant plot at the MCD Dispensary and it was taken into possession, vide seizure memo, Ex.PW-15/E. The clothes of the deceased collected from RML Hospital

were taken into possession by PW-15, vide seizure memo, Ex.PW-15/F. The clothes of the appellant No.1, Himmat Singh were taken into possession, vide seizure memo, Ex.PW-15/G. PW-15 was extensively cross-examined by the defence counsel as to the manner in which the sequence of events had unfolded on 28.2.2002 from the early hours, i.e., from 7.30 AM onwards when he had reached the scene of crime, till the evening hours of 1.3.2002, when the appellants No.1 and 2 were arrested from Krishan Ganj Park. He deposed that he was also present with PW-16 when the inquest proceedings were conducted on 01.3.2002 and they had remained at RML Hospital till the postmortem was over.

13. The Investigating Officer in the present case PW-16, M.L. Chander deposed that on receiving information on 28.02.2002, he had reached the scene of crime and was told that the injured had been taken to the hospital; that he had reached RML Hospital and was informed that the injured Satbir had been brought dead. The inquest proceedings were conducted by him and on conclusion of the postmortem, the dead body of Satbir handed over to the family members. PW-16 prepared a rough site plan of the scene of the crime (Ex.PW16/D); he had called the Crime Team and directed PW-12 to lift blood samples, blood stained soil, etc., from the spot. The said witness also deposed about the arrest of the appellant No.1, Himmat Singh and the appellant No.2, Rajesh from Krishan Ganj Park on 1.3.2002 and the recovery of the weapons of offence, namely, a knife and pipe at their pointing out. He stated that the co-accused, S (JCL) was also arrested on 1.3.2002 and he had made a disclosure statement, (Ex.PW16/H). Appellant No.3, Vinod was arrested after a month, on 5.4.2002, from Block C-9, J.J. Colony, Inderpuri and

PW-16 had conducted his personal search (Ex.PW16/J). He proved the seizure memo in respect of the underwear of the deceased and the blood gauze taken into possession on 11.5.2002, vide seizure memo (Ex.PW16/K). The reports submitted by the FSL, Delhi regarding the case material were proved by the IO as Ex.PW16/L, PW16/M and PW16N. PW-16 was also extensively cross-examined by the defence counsel with regard to the sequence of events that had unfolded on 28.2.2002 and 1.3.2002, on the same lines as PW-15 in an attempt to bring out the contradictions in his deposition vis-à-vis PW-15 and to assert that the said witness did not mention the presence of PW-2, father of the deceased at RML Hospital on 28.2.2002.

14. On conclusion of the prosecution evidence, the statement of all the three appellants were recorded under Section 313 Cr.PC, but they denied their involvement in the case. None of the appellants produced any evidence in their defence.

ARGUMENTS

15. Mr. Chowdhary, learned counsel for the appellants has assailed the impugned judgment, primarily on the following grounds:-

(i) PW-2 (father of the deceased) was not an eye witness- That PW-2's presence at the spot is doubtful in the absence of any corroborative ocular or documentary evidence produced by the prosecutor, like the attendance register of the MCD etc.; that there is nothing to prove that he had accompanied Satbir to the hospital and in fact it was the PCR van that had taken the injured to the hospital; that if

PW-2 was actually present at the spot and had accompanied his son to the hospital, his clothes should have been seized to show that they were bloodstained; that his presence has not been mentioned in the MLC report; that the rough site plan was not prepared at his pointing out; that there were material improvements in his statement, which can be seen from the fact that in his statement recorded under Section 164 Cr.PC, he had stated that the appellant No.1, Himmat Singh had a knife but during his testimony, he claimed that all the three accused persons possessed knives and had stabbed his son.

(ii) The Weapon of offence- That there are contradictions in the description of the weapon of offence, the dagger inasmuch as PW-15 has described it as a double-edged weapon whereas, PW-5, the PMR doctor has opined that the injuries on the body of the deceased were caused by a single-edged weapon; that the subsequent opinion in respect of the weapon given by PW-5 includes the sketch of the weapon which states that one end is a sharp edge.

(iii) Contradictions in the testimony of PW-2, Munna Lal, PW-15, SI Rajesh and PW-16, Inspector M.L. Chander- That there are inconsistencies in the *inter se* statements of PW-2 and PW-15. While PW-15 has deposed that PW-2 was present at the hospital when Satbir was taken there, PW-2 stated that his statement was recorded at the Police Station at 12 noon; that the time of the arrest of the appellants No.1 and 2 is also doubtful as the arrest memos record that they were arrested on 1.3.2002, at 4.00 P.M. whereas PW-15 and PW-16 claim that at that time, they were present at the hospital where the autopsy on the

body of the deceased had commenced at 3.00 P.M. and concluded at 4.00 P.M.

(iv) No public witnesses were associated for the recovery of the weapons of offence- That no public witness was joined at the time of arresting the accused and at the time of recovering the weapons of offence i.e., dagger and iron rod, except for police witnesses, making the said recoveries doubtful.

(v) PCR Form- That PW-9 was a witness only to Part-I of the PCR Form (EX.PW9/A) and having failed to summon an officer from the Communications Department of Delhi Police to prove Part-II of the said Form, the same was wrongly exhibited as Ex.PW9/B.

(vi) FIR- That there is a doubt as to the time of the registration of the FIR on 28.02.2002, recorded as 9.20 A.M., when the time of receiving the information of the crime was 7.25 A.M., more so when a copy of the FIR was delivered to the MM at 7.35 P.M.

(vii) FSL report- That the FSL report is in favour of the appellant No.1 as the serological analysis of his jeans records that human blood was detected, but there was no reaction to a particular blood group. That there is an unexplained delay of 3 months in sending the knife to the FSL for obtaining a report, which records that human blood was detected on it, but with no reaction as to the grouping of blood.

16. Per contra, Ms. Aashaa Tiwari, learned APP supported the impugned judgment and order on sentence. She vehemently denied the plea taken by the defence that PW-2 was a planted witness or that he was

not an eye witness to the crime or that his testimony was full of contradictions. Explaining the sequence of events that had occurred on the date of the incident, she asserted that it was on the disclosure statements made by the appellants No.1 and 2 that the weapons of offence were seized. Stating that as the conviction of the appellants is based upon the stellar testimony of an eye witness, PW-2, which stands duly supported by the medical evidence brought on record, the impugned judgment and order on sentence do not warrant any interference.

DISCUSSION

17. We have examined the trial court record, scrutinized the evidence, both ocular and documentary and given our careful consideration to the arguments advanced by the learned defence counsel and the learned APP. We shall now proceed to deal with each of the grounds taken by learned counsel for the appellants to assail the impugned judgment.

18. The first argument advanced by learned defence counsel is that the incident in question had not occurred at the spot and even if it did occur, it was a blind murder and there was actually no eye witness and further, that the sole eye witness, PW-2, father of the deceased, Satbir has been introduced in the FIR, which was prepared subsequently.

19. We do not find any merit in the aforesaid plea. The presence of PW-2 at the scene of the crime is found to be in normal course of business and his testimony is cogent, consistent and inspires confidence. Being a *safai karamchari* employed with the MCD, it was natural for him to go to work in the early hours, which he did on 28.2.2002,

alongwith his son, Satbir. Non-production of the attendance register of the MCD by the prosecution does not dent the testimony of the said witness. Nor does it lead to a conclusion that he was not present at the scene of the crime. The plea of the learned defence counsel that there were several shops at the scene of the crime, but no public witness had stepped forward, must be seen in the context of the timing of the incident that had taken place during the early morning, at 7.15AM. It is not expected that shops in the neighbourhood would have opened at such early hours. Even otherwise, judicial notice can be taken of the fact that mostly public witnesses are reluctant to get embroiled in such cases to avoid harassment and subsequent court appearances. Moreover, no effective cross-examination was conducted by the defence to prove that PW-2 or his son were not present at the spot. On the contrary, a simple suggestion was made to him by the defence counsel that the accused persons were not present at the scene of the crime. If the accused were raising the plea of alibi, then the same should have come out in their statements recorded under Section 313 Cr.P.C. and they ought to have proved their absence from the scene of crime. But that is not so. It is also noteworthy that though PW-3, cited by the prosecution as an eye witness to the incident, had turned hostile, no specific question was put to him by the defence with regard to the alleged absence of PW-2 at the scene of the crime.

20. As for the MLC report, no doubt it records that the injured was brought to RML Hospital by PW-6, HC Dharampal and does not mention the name of PW-2, but that by itself cannot be a ground to assert that PW-2 was not present at the scene of the crime. In this context, it is

relevant to refer to the PCR form that records in Part II that the PCR van had picked up the injured who was duly accompanied his father and had taken them to the hospital. The PCR record clearly notes the presence of PW-2 with his son while being transported to the hospital. The argument advanced by the learned defence counsel that PW-9, posted at the Police Control Room had only proved Part-I of the form as Ex.PW9/A and Part II of the Form has been wrongly exhibited as Ex.PW9/B, without it being formally proved, is meritless. There is no justification for disregarding Part-II of the PCR form that records the presence of PW-2 with the injured in the PCR van that had taken them to the hospital. PCR form is a part of the official record maintained by the Department in ordinary course of business and there is a presumption as to its correctness. There is no reason to doubt the said document particularly when it was not in the custody of the I.O., but maintained as a part of the record at the PHQ. Even the overwritings pointed out by the defence in the PCR Form, are in Part-I and not in Part-II. Further, learned APP has drawn our attention to the *rukka*, (Ex.PW1/A) that records the statement of PW-2 to the effect that he had accompanied his injured son in the PCR van to RML Hospital where the doctor had declared him as brought dead. PW-6, who was posted at the PCR van and had taken the injured to the hospital, may have missed stating so during his examination-in-chief, but in the *tehrir* (Ex.PW15/A), it was clearly recorded that PW-2 had accompanied the injured in the PCR van to the hospital.

21. In any event, if the appellants had an objection to the mode of proof of Part II of the PCR Form, they ought to have taken the same before the said document was tendered in the evidence but once it stood admitted in the evidence and was marked as an exhibit, a later plea that the mode adopted for proving the document was irregular, cannot be allowed at a subsequent stage. Part II of the PCR Form having been exhibited before the trial court without any objection being taken on behalf of the accused, it is not open to them at such a belated stage to object to the admissibility of the said document. In this context, learned APP has rightly relied on para 20 of the decision of the Supreme Court in the case of R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple and Anr. reported as **2003(8) SCALE 474**, which is reproduced hereinbelow for ready reference:-

*“20. The learned counsel for the defendant-respondent has relied on **The Roman Catholic Mission v. The State of Madras and Anr. (AIR 1966 SC 1457)** in support of his submission that a document not admissible in evidence, though-brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. **Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not***

excluded and is available to be raised even at a later stage or even in appeal or revision. ***In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.***” (emphasis added)

22. The next plea of the learned counsel for the appellants that the spot of the crime itself is doubtful as DD No.10A recorded a message received from the PCR van that the incident had taken place near Mother Dairy Booth No.320, C Block, Inderpuri whereas, the prosecution version is that it had taken place near the MCD Dispensary, is not reason enough to doubt the testimony of PW-2, who had specifically deposed that he was working in his beat area near the MCD Dispensary in C Block, J.J. Colony, Inderpuri, when the assailants had attacked his son. The scaled site plan of the spot (Ex.PW10/A), prepared on the pointing out of PW-2, records the distance between the spot on the road where Satbir had been assaulted and the spot where his body was found, to be 23 meters and his body was lying opposite the MCD Dispensary, which is just round the corner from the Mother Dairy Booth. Thus it cannot be said that the place of incident is in doubt.

23. It has also been urged that PW-2's testimony is unreliable, suffers from material contradictions, inconsistencies and improvements and he is an interested witness. The law on the difference between “*interested and related*” witness is well settled by now. In the cases of Laltu Ghose vs. State of West Bengal, **Crl.A.312/2010** and Md. Rojali Ali & Ors. vs. The State of Assam, **Crl.A.1839/2010**, both decided as recently as on 19.2.2019, the Supreme Court has held that merely because a witness is related to the deceased, cannot be a ground to describe him as an ‘*interested witness*’. We may profitably refer to the following

observations made by the Supreme Court in the case of Laltu Ghose (supra) :-

*“12. As regards the contention that the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an ‘interested’ witness merely by virtue of being a relative of the victim. **This Court has elucidated the difference between ‘interested’ and ‘related’ witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused** (for instance, see *State of Rajasthan v. Kalki*, (1981) 2 SCC 752; *Amit v. State of Uttar Pradesh*, (2012) 4 SCC 107; and *Gangabhavani v. Rayapati Venkat Reddy*, (2013) 15 SCC 298). Recently, this difference was reiterated in *Ganapathi v. State of Tamil Nadu*, (2018) 5 SCC 549, in the following terms, by referring to the three Judge bench decision in *State of Rajasthan v. Kalki* (supra):*

“14. “Related” is not equivalent to “interested”. A witness may be called “interested” only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be “interested”...”

*13. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh v. State of Punjab*, 1954 SCR 145, wherein this Court observed:*

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person...”

14. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan v. Union Territory of Pondicherry*, (2010) 1 SCC 199:

*“23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. **The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.**”*
(emphasis added)

24. More than the attempt to categorize witnesses, is the need to evaluate their evidence in the correct perspective, keeping in mind ordinary human conduct. In our opinion, having gone through his testimony carefully, PW-2, Munna Lal emerges as a trustworthy and credible witness, who had witnessed the accused persons assaulting his son, Satbir. Nothing material has been brought on record by the appellants for this court to discard his testimony simply because he is the

father of the deceased. He had nothing to gain by implicating the appellants. Nor has any motive, overt or covert been attributed to him for being inimically disposed towards the appellants. Even if the alleged improvements made by him in his testimony vis-à-vis his statement recorded under Section 161 Cr.P.C. are disregarded, it clearly emerges that the assailants had grabbed Satbir, held him down and given him multiple stab injuries with a knife, resulting in his death.

25. Coming to the argument advanced by the learned defence counsel that no public witness was joined by the prosecution at the time of arresting the appellants or seizing the weapons of offence, a reference is made to the case of Rohtash Kumar vs. State of Haryana reported as (2013) 14 SCC 434, wherein the Supreme Court has observed that the evidence of police officials cannot be discarded merely on the ground that they belong to the police force and are interested in the investigating or the prosecuting agency. Unless and until a witness springs from a source that is likely to be tainted, as for example, he bears an enmity against the accused so as to falsely implicate him, there can be no prohibition to a policeman being a witness or a conclusion drawn that his deposition cannot be relied upon.

26. On the appreciation of the evidence of police witnesses, in Baldev Singh vs. State of Haryana reported as (2015) 17 SCC 554, the Supreme Court held as follows:-

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however

*requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. **Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.***

*11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in **Girja Prasad v. State of M.P., (2007) 7 SCC 625**, it was held as under:-*

*“25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. **No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.***

*26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in **Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217**, Venkatarama Ayyar, J. stated:*

'40. ... The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.'

27. *In Tahir v. State (Delhi) (1996) 3 SCC 338, dealing with a similar question, Dr A.S. Anand, J. (as His Lordship then was) stated:*

'6. ... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.' (emphasis added)

[Also refer: Pala Singh and Anr. vs. State of Punjab AIR 1972 SC 2679; Paras Ram vs. State of Haryana AIR 1993 SC 1212; Pradeep Narayan Madgaonkar and Ors. vs. State of Maharashtra AIR 1995 SC 1930; Balbir Singh vs. State (1996) 11 SCC 139; Kalp Nath Rai vs. State (Through CBI) AIR 1998 SC 201 and M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence AIR 2003 SC 4311].

27. We are thus of the opinion that in the instant case, non-joining of any public witness at the time of arresting the appellants or at the time of recovering the weapons of offence is not sufficient ground to doubt the truthfulness of the testimony of the police witnesses on the above aspect or discard their evidence. Their testimony inspires confidence. Even otherwise, the conviction of the appellants is not based solely on the

testimony of police witnesses and finds corroboration from other independent sources as well.

28. Another objection taken by the learned defence counsel is on the delay on the part of the police in lodging the FIR. In Shanmugam and Ors. vs. State rep. by Inspector of Police, T. Nadu reported as **(2013) 12 SCC 765**, the Supreme Court has observed that the delay in lodging the FIR is not by itself fatal to the case of the prosecution and nor can the delay create a suspicion about the truthfulness of the version given by the informant, just as a prompt lodging of the report may not be a guarantee about its being wholly truthful. In the case of Kamal Kishore vs. State of Delhi reported as **214 (2014) DLT 167**, a co-ordinate Bench of this Court had reiterated the above principle and observed that just as promptitude in lodging the FIR cannot carry a presumption of truth with it, the converse can also not be true in every case.

29. In the case before us, the time of the incident was recorded in the FIR as 7:25 AM and the time of registering the FIR as 9:20 AM. In our opinion, the delay of two hours would not be fatal to the case of the prosecution. In his testimony, PW-15, SI Rajesh has explained that after DD No.10A was handed over to him regarding the incident, he had left Police Station: Inderpuri for C-Block, J.J. Colony and reached there at 7:30/7:45 AM where he was informed that the injured had been removed by a PCR vehicle to RML Hospital. Thereafter, he had proceeded to the Hospital on his scooter and reached there in about 15-20 minutes, where he met the complainant, PW-2 and recorded his statement and stayed there for about half an hour. PW-15 again returned to the spot at 8:45 AM, where he had left Ct. Raj Kumar (PW-12) and handed over the

rukka to him for registration of the FIR and he had remained there for one hour. Ct. Raj Kumar (PW-12) had then proceeded to the Police Station for getting the FIR registered and returned to the scene of crime and handed over the *rukka* and the copy of the FIR to PW-15. The above version of PW-15 regarding registration of the FIR also stands corroborated by the testimony of PW-12. In that view, there is no reason for this Court to disbelieve the prosecution case only because registration of the FIR was delayed by a couple of hours when the delay has been explained to our satisfaction. In our view, the case of the prosecution cannot be doubted on the ground of delay in registration of the FIR.

30. In Jafel Biswas and Ors. vs. State of West Bengal reported as **2018(11) SCALE 341**, reiterating the view that delay in lodging the FIR does not vitiate the trial or be a ground to acquit the accused, it was observed that some prejudice has to be proved by the accused on the delayed dispatch of the FIR to the Magistrate or its receipt by the Magistrate. In the instant case, no such prejudice has been demonstrated more so when the names of all the three appellants were mentioned in the FIR. Therefore, delay in forwarding the same to the Magistrate would not be detrimental to the prosecution case.

31. Another plea taken by learned defence counsel is that material inconsistencies and contradictions in the testimonies *inter se* PW-2, PW-15 and PW-16, make them unreliable witnesses.

32. It is trite that contradictions in matters of detail cannot be a ground to disbelieve the witness once his testimony stands corroborated in material particulars. On the aspect of contradictions in the deposition of witnesses, following was the view of the Supreme Court in State (Delhi

Administration) and Ors. vs. Laxman Kumar and Ors. reported as **AIR 1986 SC 250:-**

“43.It is common human experience that different persons admittedly seeing an event, give varying accounts of the same. That is because the perceptiveness varies and a recount of the same incident is usually at variance to a considerable extent. Ordinarily, if several persons give the same account of an event, even with reference to minor details, the evidence is branded as parrot like and is considered to be the outcome of tutoring. Having read the evidence of these witnesses with great care, we are of the view that the same has the touch of intrinsic truth and the variations are within reasonable limits and the variations instead of providing the ground for rejection, add to the quality of being near to truth.” (emphasis added)

33. It has also been held by courts that identical testimonies without any contradictions, can in fact be suspect. In Shivaji Sahabrao Bobade vs. State of Maharashtra reported as **AIR 1973 SC 2622**, the Supreme Court had made the following observations on the evaluation of evidence of a witness, who may not be found to be completely credible, which holds good even after four decades:-

“19. We must observe that even if a witness is not reliable, he need not be false and even if the Police have trumped up one witness or two or has embroidered the story to give a credible look to their case that cannot defeat justice if there is clear and unimpeachable evidence making out the guilt of the accused. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” (emphasis added)

34. In Balvir Singh vs. State of Madhya Pradesh, **Crl. Appeal No.1115/2010** decided on 19.02.2019, the Supreme Court has again emphasized that minor discrepancies in the evidence of the eye-witnesses do not shake their trustworthiness. The aforesaid view is a reinforcement of the legal proposition laid down in Appabhai and Another v. State of Gujarat reported as **1988 Supp SCC 241**, where it was held as under:-

“13. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.” (emphasis added)

To the same effect are the decisions in Rammi alias Rameshwar v. State of M.P. **(1999) 8 SCC 649** and Annareddy Sambasiva Reddy and Others v. State of Andhra Pradesh **(2009) 12 SCC 546**.

35. The discrepancies pointed out by learned counsel for the appellants primarily relate to the mismatch in the time when the statement of PW-2 was recorded by the police and the time when the appellants No.1 and 2 were arrested. In our view, such contradictions relating to the time when the statement of PW-2 was recorded or the time

of the arrest of the accused or the time when the postmortem stood concluded on 01.03.2002, whereafter PW-15 and PW-16 had deposed that they left for the Police Station and from there, proceeded to the spot where the accused were arrested, are trivial in nature. Such variances in their testimony are not considered enough to shake their credibility. Nor are the minor contradictions/improvements in the statement of the said witnesses, as sought to be highlighted by learned counsel for the appellants, so material as to dilute the entire prosecution case. Had there been perfect consistency in their testimony, perhaps the Court would have been inclined to assume that it was a result of concerted tutoring. But that is not the case here. We are therefore of the view that the variations between the version of the PW-2 and PW-15 on one aspect and between PW-15 and PW-16 on the other aspect, are not so critical as to shake the prosecution case.

36. It has also been argued on behalf of the appellants that the trial court failed to consider the fact that the FSL report is in favour of the appellant No.1. It is a matter of record that on a serological analysis of the jeans of the appellant No.1, though human blood was detected, but the blood grouping could not be established. In other words, due to 'no reaction', the human blood of group 'B' found on the clothes of the deceased, could not match with the blood on the jeans of the appellant No.1. Similarly, though human blood was found on the weapon of offence, i.e., knife, there was 'no reaction' as to the blood group. However, the forensic evidence cannot be examined in isolation. The medical evidence is also of great significance. In the instant case, PW-5, the doctor, who had proved the postmortem report, has opined that the

death was homicidal, caused by the following injuries on the person of the deceased:-

“EXTERNAL EXMN.

Injuries. Incised wound was present on left parietal region of scalp size was 5 cm x 0.5 cm bone deep, situated 9.5 cm above and middle to left ear margin and 9 cm lateral to mid skull line.

2. Incise wound 5 cm x 0.5 cm present on left parietal region 8 cm medial and above left pinna.

3. Stab wound 0.5 cm x 0.5 cm x 2 cm deep present on anterior axillary fold.

4. Spindle shape stab wound 9 cm above and one right lateral margin of iliac criss on abdomen, laterally, 0.5 x 0.5 x 0.6 cm deep, one angle is acute and other is obtuse.

5. Spindle shape wound on left side of chest at the level between 6th and 7th rib, obliquely placed, situated 5 cm below left nipple and 11 cm lateral to middle line, size was 3 cm x 0.5 cm x 10 cm deep. One angle is acute, the track was directed downwards medially and backward.

6. Stab wound spindle shape at left side of chest 0.5 x 0.5 x 6 cm deep, located 0.5 cm below the injury No.5. One angle was acute and other angle was obtuse, the track was directed downwards and medial.

7. Incise wound on left side of chest 0.5 cm below injury No.5 size was 0.5 x 0.3 cms.

8. Spindle shape stab wound on left side of chest 0.5 cm x 0.5 cm x 3 cm deep, 5 cm lateral to middle line. One angle was acute and other was obtuse.

9. Stab wound on chest 0.5 cm x 0.5 cm x 4 cm deep located 1 cm below injury No.8.

10. Stab wound 0.5 cm x 0.5 cm x 4 cm deep located 5 cm below left axilla transversely placed.

11. Stab wound 0.5 cm x 0.5 cm x 2.5 cm deep situated below injury No.10.

12. Stab wound on back 0.8 cm x 0.5 cm x 2 cm deep transversely placed located 11 cm below the angle of

acapila on left side, the track was directed upwards and forwards.

13. Stab wound 1.2 cm x 0.5 cm x 2 cm deep transversely placed on the back 2 cm below injury No.12. No defence wound were found on hands arms etc.

INTERNAL EXMN.

Scalp, skull and brain. Slight effusion of blood was seen in scalp. Skull vault and base were normal. Brain was pale on section.

NECK AND THYROID

Tracheas/neck structures all were intact. Chest wall showed multiple stab wound on chest involving left lung shows five no. of stab wounds corresponds with injury No.8, 9, 10, 11 & 12 with about 1.5 litre of blood in left chest cavity. Right lung was pale and intact. Heart was normal.

ABDOMEN AND PALLVIES

Stomach was empty. Liver showed puncture of right lobe of liver. In abdomen cavity corresponds to injury No.4. Liver was pale and about 800 milliliter of blood was seen in abdomen cavity. Spleen and kidneys were pale. Bladder/pallvies were normal.”

37. A total of 13 stab wounds were found on the upper part of the body of the deceased and no defence wounds were found on his hand and arms etc. PW-5 concluded in his report by stating that “*the cause of death was hemorrhage shock consequent upon multiple stab wounds caused by single edged sharp weapon like dagger/knife*” and that “*Injuries No.5, 8, 9, 10, 11 and 12 were sufficient to cause death in ordinary course of nature, individually as well as collectively.*” The severe injuries on the body of the deceased as recorded in the medical evidence lends credence to the testimony of PW-2, the eye witness, as to the ruthless manner in which the deceased was done to death by the accused persons. In our opinion, the prosecution case is not weakened by

the delay on the part of the prosecution in taking steps to forward the knife recovered on the disclosure made by the appellant No.1 to the FSL for obtaining a report, as contended on behalf of the appellants.

38. Learned defence counsel has also sought to raise a doubt on the weapon of offence on the plea that there are contradictions as to its description. While, PW-15, SI Rajesh described the knife as a double edged weapon, PW-5, the PMR doctor opined that the injuries on the body of the deceased were caused by a single edged weapon. In his testimony, PW-15 has described the weapon of offence as a double edged knife on the basis of the seizure memo (Ex.PW15/D) prepared by him, which is how the said weapon has also been described in the FSL Report (Ex.PW16/N). In his subsequent opinion given in respect of the weapon of offence, (Ex.PW5/B), the PMR doctor, PW-5 has drawn an un-scaled sketch of the knife and recorded that it had a “*sharp edge*” on one side and an ‘*unsharp edge*’ on the other side. The report, concludes by noting that “*the injuries described in the postmortem report could have been caused by the weapon that was submitted*”. In his cross-examination on the subsequent opinion given on the knife, PW-5 clearly stated that the injuries present on the body of the deceased were possible by the weapon shown to him.

39. What appears from the above is that the weapon of offence referred to by PW-5 and PW-15 and mentioned in the FSL report is one and same, though described in different terms and the stab injuries sustained by the deceased were caused by the very same weapon. The FSL report confirms that the cut marks on the shirt, T-Shirt and *Baniyan* of the deceased (Exhibits 4-a, 4-b and 4-c) could have been caused by the

weapon, described as a dagger (Ex.5). Similarly, PW-5, the Doctor who had prepared the postmortem report as also given a subsequent opinion on the weapon of offence, has opined that the injuries described in the postmortem report could have been caused by the weapon examined by him. We do not find any inconsistency in the evidence relating to the weapon of offence, for coming to a different conclusion. Given the fact that PW-5 was shown the weapon in court and he clearly stated that the injuries present on the body of the deceased could have been caused by the same, we are of the opinion that not much would turn on the description of the weapon as a double-edged one by PW-15, SI Rajesh or in the FSL Report. Being an expert witness who had not only prepared the postmortem report but also given an opinion on the weapon of offence, the testimony of PW-5 would have to be given primacy over the testimony of PW-15 and the opinion given by the FSL.

40. Even otherwise, had the defence suspected any tampering of the weapon in question after it was seized on 1.3.2002, then they ought to have cross-examined PW-4, the Store Room Keeper on this angle, particularly when he had produced the relevant extract of the Storeroom Register in the court and adequately demonstrated the movement of the pullanda containing the knife from time to time, for obtaining medical and forensic reports. Though an opportunity was granted to them in this regard, PW-4 was not cross-examined at all.

CONCLUSION

41. In the instant case, the incident in question had occurred at 7:20 AM when the appellants, armed with knife and iron rod were present at the spot and had pounced on Satbir, pinned him to the ground thereby

disabling him from saving himself and gave 13 stab injuries on the vital parts of his body, mostly in the chest region. In the absence of any evidence of a sudden quarrel, it can be safely presumed that the appellants came to the spot and participated in the joint act with prior concert and common intention. We are of the firm view that the testimony of PW-2, father of the deceased, who was an eye witness to the crime, is truthful and reliable. The said testimony read together with the clinching evidence in the shape of the post mortem report, is sufficient to inculcate the appellants.

42. In view of the above elucidation of the facts and circumstances of the case and the discussion on the pleas of the appellants, each of which have been turned down as meritless, we are of the opinion that the prosecution has successfully proved its case. The impugned judgment of conviction dated 04.07.2003, in respect of all the three appellants is upheld. Resultantly, appellant No.1, Himmat Singh @ Mangal is convicted under Section 302 IPC. Appellant No.2, Rajesh and appellant No.3, Vinod are convicted under Section 302 read with Section 34 IPC. The order of sentence dated 04.07.2003, is maintained while increasing the quantum of fine imposed on each of the appellants from Rs.500/- to Rs.5,000/-. In the event of default in payment of fine, the appellants shall undergo simple imprisonment for a period of three months each, as ordered by the trial court.

43. The appeal is dismissed. Since the appellants are presently on bail, their bail bonds are cancelled. They shall surrender before the trial court within one week to suffer the remaining sentence inflicted upon them.

Trial court record be released forthwith alongwith a copy of the judgment.

(HIMA KOHLI)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

MARCH 11, 2019
NA/sk/ap/rkb

