

\$-R-26 & R-27

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

*% Judgment reserved on: 24th September, 2019
Judgment pronounced on: 14th November, 2019*

+ CRL.A. 88/2019

NEERAJ Alias NAGAR Appellant

Through: Mr. Sunil Upadhyay, Advocate.

Versus

STATE NCT OF DELHI

..... Respondent

Through: Ms.Aashaa Tiwari, APP for the State with
Insp. Shishu Pal, PS Neb Sarai.

AND

+ CRL.A. 700/2019

STATE

..... Appellant

Through: Ms.Aashaa Tiwari, APP for the State with
Insp. Shishu Pal, PS Neb Sarai.

versus

NEERAJ Alias NAGAR & ORS.

..... Respondent

Through: Mr. Sunil Upadhyay, Advocate for
respondents No.1 and 2. Mr. Ravi Ranjan,
Advocate for respondent No.4.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL,J

1. Vide this common order, we shall dispose of the CRL. Appeal Nos. 88/2019 and 700/2019 arising out of common judgment dated 26.05.2018 and order on sentence dated 07.06.2018 passed by the Additional Sessions Judge-02, South District, Saket Courts, Delhi

wherein the accused persons were acquitted for the offences punishable under Sections 302/307/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and were convicted for the offence punishable under Section 326/34 IPC and were sentenced to undergo Rigorous Imprisonment for a period of eight years with a fine of Rs.5,000/, in default to undergo simple imprisonment for three months. We may also add that as per the report received from the Superintendent, Central Jail No. 1, Tihar, New Delhi and as per order dated 14.03.2019 of this court, one of the co-convicts, namely Vishal (respondent no.3 in Crl.A. 700/2019) had expired on 07.09.2018, at DDU Hospital during the pendency of the aforesaid appeals.

2. The brief facts of the case, as mentioned by the learned Trial Court are reproduced as under:-

“1. Prosecution story as per charge sheet in brief is that on receiving the intimation regarding stab injury on 07.09.2012, SI Surender Singh alongwith Ct. Anil went to spot i.e. A-134, JJ Colony, Tigdi where they found blood scattered outside the house and injured shifted to Max hospital. SI Surender at Max hospital found one Jagat Singh brought dead and his wife Prakasho Devi unfit for statement. Injured Kamla Devi is admitted at AIIMS trauma centre also found unfit for statement. Doctors handed over blood stained clothes of injured, thereafter at spot SI Surender Singh recorded statement of eye witness Barkha who alleged that she studies in 11th class and accused Nagar @ Neeraj used to tease her while on the way to school or tuition, and today at 5.30 pm when she was going with her friend Mohsin for tuition, accused Nagar alongwith his friend Sanjay, Irfan and Sandeep quarreled with Mohsin and also threatened him to leave her company, thereafter when she resisted then after threatening left the place. She further alleged that at around 6.30 pm when she was sitting with her mother in

front of her house, all these four accused came with danda, knives and after abusing started attacking her mother with knives and dandas and on hearing shouts, Jagat Singh and Prakasho Devi residing in the neighborhood came, and thereafter they also inflicted knife and danda injuries over them. Pursuant to her statement, FIR was registered.

2. During investigation, site plan was prepared, crime team was called, exhibits were lifted. The postmortem of deceased Jagat Singh was conducted. Statement of Jai Lal brother of the deceased was also recorded who alleged he had seen the accused persons running away after the incident and at that time, accused Vishal was carrying knife.

3. On 09.09.2012 at around 2 pm, a secret information was received, consequent to which raiding party was prepared and accused Neeraj @ Nagar, Irfan @ Lucky, Vishal, Sandeep @ Sindhi and one JCL Sanjay was apprehended. Thereafter, police recorded the disclosure statement of accused persons. Accused Neeraj stated that he wants to have friendship with Barkha, However she used to talk to Mohsin, thus he told Barkha number of times not to do the same but despite they used to meet, thereafter on 07.09.2012 Mohsin came with some boys to beat him, and thereafter he alongwith his associates Vishal, Irfan@ Lucky, Sandeep, Sanjay decided to take revenge. Thereafter, Vishal brought one buttondar knife for him, then they went to house of Barkha for knowing the address of Mohsin where mother of Barkha started abusing them, then Irfan and Sandeep hit her mother with danda and he inflicted knife injuries on her mother, in the meanwhile one lady and gent came and tried to catch him, Irfan and Sandeep then Sanjay managed to released them thereafter he inflicted knife injuries on the said lady and gent. Vishal at that time was doing reiki outside and while running he had handed over knife to Vishal and thereafter, Irfan and Sandeep thrown the dandas after some distance. The other accused also disclosed on same lines.

4. During investigation at the instance of accused Irfan @ Lucky and Sandeep @ Sindhi dandas were recovered and at the instance of accused Vishal one blood stained knife was recovered. Accused Vishal refused to participate in

TIP. As per opinion of the doctor, injured Prakasho Devi suffered grievous injury and deceased Jagat Singh died of shock due to hemorrhage caused by the stab injuries suffered. Injured Kamala Devi also found to have suffered grievous injuries.

5. Police during investigation recorded the statement of injured Kamla, Prakasho Devi on 15.09.2012. Injured Kamla in her statement u/s 161 Cr.P.C stated that she knew the accused Neeraj @ Nagar prior to the incident, and he used to harass her daughter on the way to tuition, and on 07.09.2012 her daughter told in the evening that when she was going with Mohsin, accused Neeraj @ Nagar alongwith his three friends Sanjay, Lucky and Vicky made quarrel with them thereafter accused Neeraj @ Nagar came with his three friends having knife in his hand and others two having dandas started abusing them, and then Neeraj inflicted knife injuries and other hit her with dandas, and shouting one Prakasho Devi and Jagat Singh neighborhood came and when she went towards them to save herself, they also inflicted knife and danda injuries over them, thereafter she also got unconscious and got discharged from the hospital on 10.09.2012.

6. Prakasho Devi in her statement u/s 161 Cr.P.C also stated that at around 6.30pm, she heard the shouts of injured Kamla Devi and saw her running towards her and behind her Nagar, Lucky, Sindhi and Sanjay who she know prior to incident came with knife and dandas, and when her husband tried to save her then they inflicted injuries over them, thereafter she got unconscious. On completion of investigation, charge-sheet was filed.

7. On committal, vide order dated 13.12.2012, charges u/s 302/307/34 IPC were framed against all the accused persons to which they pleaded not guilty and claimed trial."

3. In order to bring home the guilt of the accused persons, the prosecution has examined 35 witnesses in all. The incriminating evidence and circumstances were put to the accused persons under Section 313 of Code

of Criminal Procedure wherein they pleaded to have been falsely implicated in the present case and claimed their innocence. The accused persons chose not to lead any evidence in their defence.

4. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court held that the prosecution had miserably failed to prove the charges under Section 302/307/34 IPC against the accused persons and thereby acquitted them for the same but found the accused persons guilty for the offence punishable under Section 326/34 IPC.
5. Aggrieved by the impugned judgment, Ms. Aashaa Tiwari, learned APP for the state argued that the impugned judgment passed by the Trial Court was perfunctory in nature, full of conjectures and surmises and therefore was liable to be set aside. She further contended that the impugned judgment was a case of legal defects resulting in the acquittal of the accused persons under Section 302/307 IPC and a grave failure of justice.
6. Learned APP for the State labored hard to contend that the present case is a fit case for punishment under Section 302/307/34 IPC, placing reliance on the MLC of the deceased (Ex. PW-2/A) and the postmortem report (Ex. PW-24/A). She further emphasized that the learned trial court erred in convicting the accused persons only for the offence punishable under Section 326/34 IPC, ignoring the fact that the deceased (Jagat Singh) had lost his life in the alleged incident and that the other two victims PW-8 (*Smt. Kamla Devi*) and PW-13 (*Smt. Prakashoo Devi*) suffered grievous injuries which were dangerous enough to cause death.

7. Ms. Tiwari further contended that the testimonies of PW-1 (*Kumari Barkha*), PW-8 (*Smt. Kamla Devi*) and PW-13 (*Smt. Prakashoo Devi*) are consistent and trustworthy and the minor contradictions and discrepancies in the testimonies do not go to the root of the matter. It is a settled proposition of law that even if there are some omissions, contradictions and discrepancies in the testimonies of the witnesses, the entire evidence cannot be completely disregarded. To substantiate her arguments learned APP for State relied upon the case of ***Ashish Kali @ Amar Vs. State*** reported in ***2018(1) JCC 67***.
8. Learned APP for the State further contended that the prosecution has relied upon recovery of knife & Dandas which were recovered on the pointing out of the accused persons in the presence of PW-33, (Insp. Jarnail Singh), PW-32 (SI Manmeet) PW-20 (SI Rakesh Kumar) and PW-32 (Insp. Parasnath Verma). She further emphasized that there is no cogent reason to disbelieve the aforementioned recovery on the ground that the same was not supported with the presence of an independent witness.
9. She submitted that the weapon of offence (knife) was sent to forensic science laboratory for analysis wherein it was opined that human blood was detected on the weapon of offence and the fact that the same could not be linked with the blood of the deceased is of no significance and is not always fatal to the case of the prosecution. To substantiate her arguments learned APP for the State relied upon the case of ***Khujji @ Surendra Tiwari V. State of Madhya Pradesh*** reported at ***AIR 1991 SC 1853*** and ***State (Govt of NCT of Delhi) vs Sunil*** reported in ***(2001) 1 SCC 652***.

10. Lastly, the learned APP for State contended that, it is amply clear that the ocular evidence and the medical evidence is eloquent and self-explicit, connects the accused persons with the crime, considering the impugned order, the accused persons should also be convicted under Section 302/307 IPC.
11. Per contra, Mr. Sunil Upadhyay, learned counsel appearing on behalf of Neeraj @ Nagar and Irfan Siddiqui at the outset contended that the learned Trial Court while acquitting both the accused persons under Section 302/307 read with Section 34 IPC had held that the prosecution had failed to establish its case as the evidence produced by the prosecution was neither qualitative nor credible and the entire story of the prosecution deserved to be rejected.
12. Learned counsel further argued that the recovery of knife and Dandas were planted and could not have been relied upon, more so, when there was no material on record to connect the injuries suffered by the victim from the recovered weapon of offence. He further contended that the Medical Evidence as well as the Forensic Science Laboratory Report had nullified the entire case of the prosecution and the conviction and sentence awarded to Neeraj @ Nagar and Irfan Siddiqui under Section 326/34 IPC was liable to be set aside.
13. Mr. Ravi Ranjan, learned counsel appearing on behalf of Sandeep @ Sindhi adopted the arguments addressed by the learned counsel for Neeraj @ Nagar and Irfan Siddiqui. Learned counsel further submitted that the learned Trial Court after scrutinizing the evidence on record rightly acquitted Sandeep @ Sindhi under Section 302/307/34 IPC, hence the same did not warrant any interference by this Court.

14. We have heard the learned counsel appearing on behalf of the parties and have perused the material on record.

Testimony of Material witnesses

15. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses of the prosecution, more particularly the testimonies of PW-1 (Kumari Barkha), PW-8 (Kamla Devi), PW-10 (Mohsin) and PW-13 (Smt. Prakasho Devi), who have witnessed the alleged incident.
16. Kumari Barkha, stepped into the witness box as PW-1 and deposed that:

“On 07.09.2012, at about 05.30 pm I along with my friend Mohsin was going to aforesaid coaching centre for tuition. When we reached at a some distance ahead of State Bank of Tigri Branch, accused Neeraj along with his three associates came to us. One associate of accused Neeraj caught hold my friend Mohsin by neck and other his two associates gave fist blows to Mohsin and threatened my friend Mohsin not to join my company in future. I raised alarm to leave Mohsin. After causing injury to my friend Mohsin all four aforesaid persons ran away from the spot. The witness correctly identified the accused Neeraj @ Nagar. Witness put finger on accused Vishal present in the court saying that he is the same person who had caught hold neck of Mohsin. Witness again put her finger towards accused Irfan present in the court and accused Sandeep @ Sidhu saying that they are same person who had given fist blows to my friend Mohsin. I and my injured friend Mohsin returned back to our houses. All the accused persons present in the court are the resident of Tigri Colony and all three were known to me by faces prior to date of incident and one accused Neeraj @ Nagar was known to me by name also.

On that date at about 06.30 pm I was sitting on cot alongwith my mother Kamla Devi in gali in front of my house. All four accused persons present in the court came to us at that time accused Vishal was having Knife and

remaining three were having dandas in their hands. On seeing the accused persons my mother stand up from the cot and immediately accused Neeraj, Irfan and Sandeep over powered my mother Ms. Kamla Devi when my mother started shouting. Immediately accused Vishal stabbed her and caused injuries on her belly. In the meantime, my aunty Smt. Prakasho (sic.) Devi resident in our galli also came to us to save my mother. Immediately accused Vishal caught hold the aunty and also caused injury on her belly. Sh. Jagat Singh husband of injured Smt. Prakasho (sic.) Devi also came to us and he tried to give danda blow on accused Vishal. Accused Vishal stabbed to Sh. Jagat Singh with the same knife and caused three stabbed injury on his belly. All three aforesaid injured persons fell down in the street on sustaining injuries caused by the accused persons. Blood had also fallen at the spot. Three accused persons had ran away from the spot with their respective weapons towards main road while accused Vishal had ran away with his weapon towards gali.”

17. Mohsin, stepped into the witness box as PW-10 and deposed that:

“I do not remember the date, however the same pertains to the month of November last year. At about 5.30 P.M., I along with my friend Kumari Barkha were going to tuition near Sai Baba Mandir. When we reached near State Bank, at that time we were stopped by one boy and he demanded my wrist watch (witness put finger towards the accused Neeraj standing in the Court by saying that he is same person who demanded wrist watch from me). Neeraj gave beatings to me. I fell down on the road and thereafter he left. I informed the incident to my maternal uncle Niyaz Khan. I was going to my house, in the way my maternal uncle met me near Arpan Hospital and he took me to the house and he made call 100 (sic.) number informing about the incident.”

18. Kamla Devi, stepped into the witness box as PW-8 and deposed that:

*“We returned to our house and I again sat on the same cot near the gate of our house and my daughter Barkha was also sitting near me on the cot. **In the meantime, four boys came, I know only one namely Neeraj (witness correctly identified the accused Neeraj present in the court). Remaining three accused persons were identified by the witness by their faces, who are present in court today.** Witness identified them before court. At that time, two associates of Neeraj were having dandas in their hands. **Accused Neeraj hit danda on my head. As and when I tried to save myself, one associate of Neeraj stabbed on my belly, but I could not see him. Blood and intestines came out from the my stab injury. I fell down on road/gali. My daughter Barkha raised alarm. I had also raised alarm when I was stabbed. Barkha made call to police about incident by using my phone. I cannot tell its connection number. I am not aware, by whom I was taken to hospital. Next day, I regained my consciousness in Trauma Centre, AIIMS. I remained admitted there for three days for treatment. I further remained under treatment for a long period as I had been operated there. Smt. Prakasho Devi and her husband Sh. Jagat Singh had also sustained stab injuries. Jagat Singh expired in this incident due to stab injury. Prakasho Devi and Jagat Singh are the residents of house, which is located in front of my house. They had come on hearing the noise raised by me and my daughter in the gali.**”*

19. Smt. Prakasho Devi stepped into the witness box as PW-13 and deposed that:

*“On the day of incident at **about 06:30 PM**, I was cooking roti in the kitchen of my house. I heard a noise of “bachao-bachao” from the gali. **I came out of the house and noticed that 3-4 boys were quarrelling with Smt. Kamla. I asked them “kya kar rahe ho, kya kar rahe ho”. Immediately they rushed towards me and one of them stabbed me with knife and cause injury on the left side of my belly and I became unconscious on seeing the blood***

oozing out from my injury. I cannot say by whom the injury was caused to my husband as a result of which he scummed in the hospital.”

20. From a conjoint reading of the aforesaid testimonies of the prosecution witnesses, it is evidently established that the accused persons were actively involved in the commission of the alleged offence and had given knife and danda blows to the deceased Jagat Singh, PW-8 (Kamla Devi) and PW-13 (Smt. Prakasho Devi). Further it is relevant to highlight that the first incident had occurred at 05:30 pm, wherein the accused persons had wrongfully restrained (PW-1) Kumari Barkha and had robbed and knocked down (PW-10) Mohsin.
21. Thereafter, at about 06:30 pm all the accused persons arrived in the gali in front of the house of PW-1(Kumari Barkha), wherein accused Vishal was having a Knife in his hand and remaining three accused persons (*Neeraj @ Nagar, Irfan Siddiqui and Sachin @ Sindhi*) were having dandas in their hands. Perusal of the aforesaid testimonies also reveal that accused Vishal had given knife blows to the deceased Jagat Singh, (PW-8) Kamla Devi and (PW-13) Smt. Prakasho Devi which were grievous in nature as well as dangerous enough to cause death and in furtherance of their common intention, accused persons(*Neeraj @ Nagar, Irfan Siddiqui and Sachin @ Sindhi*) had subjugated the aforesaid prosecution witnesses.
22. It is well settled in law that minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The Hon’ble Supreme Court of India in the

case of *Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr.*, reported at (2013) 12 SCC 796, has held as under:

*“28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defense can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See *Leela Ram vs. State of Haryana* and another, *Rammi alias Rameshwar v. State of M.P.* and *Shyamal Ghosh v. State of West Bengal*)”*

23. In the present case nothing has been brought on record to prove that the evidence of the prosecution witnesses cannot be believed and relied upon or they have falsely implicated the accused persons due to some personal vengeance at the instance of the prosecution. In all criminal cases, minor discrepancies are bound to occur in the depositions of the witnesses due to common errors in observations, namely, error of memory due to lapse of time or due to mental disposition such as shock and horror at the time of the incident. Hence, the argument with regard to the contradictions in the testimonies of material prosecution witnesses holds no ground.

Medical & Scientific Evidence

24. At this stage, it is relevant to examine whether the medical evidence adduced by the prosecution finds support from the testimonies of the prosecution witnesses. Dr. Adarsh Kumar (PW-24) AIIMS Hospital, New Delhi appeared on behalf of Dr. Kartik Krishna who had conducted the post-mortem of the deceased and proved the post mortem report as Ex.PW24/A wherein the doctor opined that *“the injuries were ante mortem in nature and death in the present case was caused due to hemorrhage by the injuries as mentioned”*. The relevant portion of his statement recorded is reproduced below:

“I am posted as Additional Professor, forensic Medicine in AIIMS hospital since 2005 and also working as a In-charge of Medico-legal record in AIIMS hospital. During the course of my official duties number of doctors have been posted in AIIMS hospital in department of forensic medicine who had worked with me and under my supervision and I have seen them writing and signing, therefore, I am well acquainted with the writing and signature of number of doctors. I have seen post-mortem report of deceased Jagat Singh vide PM report no. 1221/12 dated 08.09.2012 prepared by Dr. Karthik Krishna which is Ex.PW24/A and bears his signature at point A. As per the PM report the injuries found were as under:

- (1) A stab wound, spindle shaped measuring 3x1cm, with clean-cut margins is present vertically placed on the midline of abdomen, 104 cms above the left heel and 21 cms below the suprasternal notch. The direction of the wound is upwards and laterally cutting the skin, superficial and deep fascia, muscles, peritoneum and penetrating into the liver parenchyma. The stab wound on the liver is measuring 3x1x5 cm and is present on the left lobe of liver associated with hematoma. The track of the wound is bloodstained.*

(2) *A stab wound, spindle shaped measuring 3x1cm, with clean-cut margins is present obliquely placed on the abdomen, 85 cms above the left heel, 40 cms below the suprasternal notch and 1 cm right to midline. The direction of the wound is upwards, backwards and medially cutting the skin, superficial and deep fascia, muscles, peritoneum, perforating the mesentery of small intestine. The track of the wound is bloodstained.*

As per report on internal examination 500 ml of blood was found in pleural cavities and 2.5 liters of blood in peritoneal cavity. All the organs were pale in appearance. The injuries were antemortem in nature and death in the present case was shock due to hemorrhage by the injuries as mentioned. Injury no. 1 and injury no. 2 were individually sufficient to cause death in ordinary course of nature.

Blood sample and the clothes of the deceased were preserved and handed over to the police.

I have seen MLC of Mrs.Prakasho Devi w/o of Jagat Singh, female aged 55 years vide MLC no. 94990 dated 15.09.2012 which has been prepared by Dr. Karthik Krishna. The MLC is Ex.PW24/B bears his signature at point A.

The blood sample in gauze was collected and preserved after taking consent of the patient which was handed over to the police.

I have seen subsequent opinion regarding weapon of offence used in the crime. As per report the IO had submitted a sealed parcel containing knife and another parcel containing clothes of the deceased on 13.03.2013.

Dr. Karthik Krishna prepared sketch of the knife which is Ex.PW24/C and then gave his opinion dated 20.03.2013 which is Ex.PW24/D that injury no. 1 and injury no. 2 mentioned on post-mortem Ex.PW24/A could be caused by weapon of which sketch is Ex.PW24/C and that cut marks on the clothes submitted could be caused by the same weapon i.e. sketch Ex.PW24/C.

I had also seen subsequent opinion vide no. TC55/13 dated 04.04.2013 in reference of MLC no. 328504/12 dated 08.09.2012 of Kamla Devi, female aged 45 years w/o Puran Singh which is prepared by Dr. Sanjay Kumar-

II. As per subsequent opinion the IO had submitted MLC as well as other relevant documents and sealed parcel containing knife and another sealed parcel containing clothes of injured namely Kamla Devi. Dr. Sanjay Kumar prepared the sketch of the knife which is Ex.PW24/E which bears his signature at point A and his subsequent opinion is Ex.PW24/F which bears his signature at point A. As per his opinion possibility of injury mentioned in MLC of Kamla Devi being caused by examined knife cannot be ruled out and possibility of cut marks on ladies skirt being caused by examined knife cannot be ruled out. The subsequent opinion of Dr. Karthik Krishna was forwarded by Dr. Sudhir Kumar Gupta.”

25. Perusal of the aforesaid testimony also reveals that the Investigating Officer had forwarded a sealed parcel containing the weapon of offence (knife) and the clothes of the deceased for an expert opinion on whether the injuries on the deceased could have been caused by said weapon. Relevant portion of the ‘*Opinion regarding the weapon of offence*’ (Ex.PW24/D) is reproduced herein below:-

*“1. Injury no.1 and injury no. 2 mentioned in the postmortem report could be caused by the weapon submitted
2. the cut marks on the clothes submitted could be caused by this weapon.”*

26. Further a subsequent opinion was given by Dr. Sanjay Kumar as the Investigating Officer had forwarded a sealed parcel containing the weapon of offence (knife) and the MLC no. 328504/12 of Kamla Devi. Relevant portion of the ‘*Subsequent Opinion regarding the weapon of offence*’ (Ex.PW24/F) is reproduced herein below:-

:1. Possibility of the injury(mentioned in the MLC of Kamla Devi) being caused by the examined knife cannot be ruled out.

2. Possibility of the cut marks(as mentioned above) in the examined ladies skirts **being caused by the examined knife cannot be ruled out.**”

27. Joint Perusal of the aforesaid ‘*Opinion regarding the weapon of offence*’ reveals that the injuries on the body of deceased and the injuries as mentioned in the MLC of Kamla Devi could have been inflicted by the alleged weapon of offence (*knife*). Further it is relevant to highlight that the alleged weapon of offence (*knife*) was sent to forensic science laboratory for analysis wherein it was opined that blood was detected on exhibit ‘7’ (*one knife made up of metallic blade and wooden and metallic handle described as ‘Blood stained knife*). Relevant portion of FSL.2012/B-7020 is reproduced below:

RESULTS OF ANALYSIS

1. ***Blood was detected on exhibits ‘1a’, ‘1b’, ‘2a’, 2b’, ‘2c’, ‘3a’, ‘3b’, ‘3c’, ‘4’, ‘5’, ‘6’, ‘7’, ‘8’ & ‘9’.***
2. ***Report of serological analysis in original is attached herewith***

28. Relevant portion of Serological report (*Ex.PW33/E*) reads as under:-

<i>Exhibits</i>	<i>Species of Origin</i>	<i>ABO Grouping/Remarks</i>
<i>‘1a’ Banyan</i>	<i>No reaction</i>	<i>---</i>
<i>‘1b’ Underwear</i>	<i>No reaction</i>	<i>---</i>
<i>‘2a’ Ladies shirt</i>	<i>Human</i>	<i>No reaction</i>
<i>‘2b’ Ladies salwar</i>	<i>Human</i>	<i>‘AB’ Group</i>
<i>‘2c’ Chunni</i>	<i>Human</i>	<i>No reaction</i>
<i>‘3a’ Ladies shirt</i>	<i>Human</i>	<i>No reaction</i>
<i>‘3b’ Ladies salwar</i>	<i>Human</i>	<i>No reaction</i>
<i>‘3c’ Ladies chunni</i>	<i>Human</i>	<i>No reaction</i>
<i>‘4’ Cotton wool swab</i>	<i>Human</i>	<i>No reaction</i>
<i>‘5’ Cotton wool swab</i>	<i>Human</i>	<i>No reaction</i>
<i>‘6’ Blood stained gauze cloth piece</i>	<i>Human</i>	<i>‘A’ group</i>

'7' Knife	Human	No reaction
'8' Gauze cloth piece	Human	'AB' group
'9' Blood stained gauze piece	Human	'A' group

29. Consequently, from the perusal of the FSL Report, it is evident that the stains found on the weapon of offence were of human blood, however, the serological report did not provide a conclusive finding, on whether the blood stains were of the deceased.
30. The Hon'ble Apex Court in the case of ***R. Shaji v. State of Kerala*** reported in ***(2013) 14 SCC 266*** has held that the absence of determination of blood group on the weapon of offence is of no significance and is not always fatal to the case of the prosecution. Germane portion of the Judgment is extracted below:

“31. A failure by the serologist to detect the origin of the blood due to disintegration of the serum does not mean that the blood stuck on the axe could not have been human blood at all. Sometimes it is possible, either because the stain is insufficient in itself, or due to hematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood in question. However, in such a case, unless the doubt is of a reasonable dimension which a judicially conscientious mind may entertain with some objectivity, no benefit can be claimed by the accused in this regard. Once the recovery is made in pursuance of a disclosure statement made by the accused, the matching or non-matching of blood group(s) loses significance.”

(emphasis supplied)

31. The aforesaid judgment was followed by the Hon'ble Apex Court in a very recent case of ***Balwan Singh vs. The State of Chhattisgarh and Anr*** reported in (2019) 7 SCC 781. The relevant para is reproduced as under:

*“12. The cases discussed above highlight the burden that the prosecution would ordinarily have to discharge, depending on the other facts and circumstances of the case, for the evidence relating to recovery to be considered against the accused. At the same time, as mentioned above, we are conscious of the fact that it may not always be possible to inextricably link the bloodstains on the items seized in recovery to the blood of the deceased, due to the possibility of disintegration of bloodstains on account of the time-lapse in carrying out the recovery. For this reason, in ***Prabhu Dayal v. State of Rajasthan***, (2018) 8 SCC 127, where one of us (Mohan M. Shantanagoudar J.) had the occasion to author the judgment, this Court, relying on *Teja Ram* (supra), had held that the failure to determine the blood group of the bloodstains collected from the scene of offence would not prove fatal to the case of the prosecution. In ***Prabhu Dayal*** case (supra), although the FSL report could not determine the blood group of the bloodstains on account of disintegration, the report clearly disclosed that the bloodstains were of human origin, and the chain of circumstantial evidence was completed by the testimonies of the other witnesses as well as the reports submitted by the Ballistic Expert and the Forensic Science Laboratory regarding the weapon used to commit murder.*

13. From the aforementioned discussion, we can summarise that if the recovery of bloodstained articles is proved beyond reasonable doubt by the prosecution, and if the investigation was not found to be tainted, then it may be sufficient if the prosecution shows that the blood found on the articles is of human origin though, even though the blood group is not proved because of disintegration of blood. The Court will have to come to the conclusion based on the facts and circumstances of

each case, and there cannot be any fixed formula that the prosecution has to prove, or need not prove, that the blood groups match.”

(emphasis supplied)

32. In view of the ratio of the judgments cited above, as well as on the basis of material available on record, it is established, that the doctors who had conducted the postmortem of the deceased and the FSL report in the present case, corroborate the version of prosecution and thus the prosecution has discharged its onus to prove the fact that the alleged weapon of offence (*knife*) was used to kill the deceased Jagat Singh.

Recovery of weapon of offence

33. Further during the course of arguments an apprehension was expressed that the recovery of knife and dandas pursuant to the disclosure statement of the accused persons is not admissible in the eyes of law and the same was planted in order to falsely implicate the accused persons.
34. It is apparent from the record that pursuant to the disclosure statement of accused persons and subsequent pointing out, the alleged weapons of the offence (knife and Danda) were recovered. According to Section 25 of the Indian Evidence Act 1860, no credence can be placed upon the confession made by the accused, which reads as under:

“25. Confession to police officer not to be proved
No confession made to a police officer shall be proved as against a person accused of any offence.”

35. However, Section 27 of the Indian Evidence Act is in the nature of a proviso or an exception which partially lifts the prohibition imposed by Section 25 and reads as under:

“Section 27 of the Indian Evidence Act:
27. How much of information received from accused may be proved.--Provided that, when any fact is

deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

36. In the light of Section 27 of the Indian Evidence Act, 1872 whatever information is given by the accused in consequence of which a fact is discovered then only the fact so recovered would be admissible in the evidence, regardless whether such information amounts to a confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from an accused; such a discovery is true and admissible. ***The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes reliable information.***
37. In view of the law discussed above, it is clear, Section 27 of the Indian Evidence Act, 1872 is applicable, if a confessional statement leads to discovery of some new facts. It is further not in dispute that a fact discovered on information furnished by an accused in his disclosure statement is a relevant fact and is admissible in evidence if something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused (**Ref: Kamal Kishore Vs. State (Delhi Administration), (1997) 2 Crimes 169 (Del).**

38. From the perusal of the record, we find that the prosecution in the present case has relied upon the recovery of the knife and danda at the instance of accused persons. The version of the prosecution is corroborated by the testimony of police witnesses, PW-33, (Insp Jarnail Singh), PW-32 (SI Manmeet) PW-20 (SI Rakesh Kumar) and PW-31 (Insp. Parasnath Verma).
39. Insp Jarnail Singh stepped into the witness box as PW-33 and deposed that:

“then I interrogated all the accused and recorded their disclosure statement which are already Ex.PW28/A to C respective which bears my signature at point C and that of accused persons at point X. The above respective arrest memos and personal search memos also bears my signature at point C and signature of respective accused persons at point X. I had muffled accused Vishal after his arrest in the present case and thereafter, all the above named accused as well as JCL were got joined in investigation further and they have pointed out the scene of crime. I prepared pointing out memo to this effect which is already Ex.PW20/K bears my signature at point D and that of all the accused Neeraj, Vishal, Sandeep and Irfan at point X. JCL Sanjay had also pointed out the scene of crime and SI Rakesh had prepared separate pointing out memo. Thereafter, firstly accused Irfan got recovered a danda from a small park at the corner Tigri colony, MB Road which I converted into a pulanda, affixed by seal JS and took into possession vide memo Ex.PW20/N bears my signature at point B and that of accused Irfan at point X. Then accused Sandeep also got recovered one danda from a different place in the same park which I converted into a cloth parcel sealed with my seal of JS and took into possession vide memo Ex.PW20/M bears my signature at point B and that of accused Sandeep at point X. Thereafter, I directed my team members to return back to PS and take accused Neeraj @ Nagar, Sandeep and

Irfan as well as JCL to PS. I further got joined accused Vishal in investigation who took the police party consisting of myself alongwith SI Manmeet and accused Vishal to transformer near Saket Court and thereafter he got recovered used in the crime underneath a piece of stone near transformer near the wall of nallah near Saket Courts towards the side of Select City Mall and the same was found having blood stains. I prepared sketch of the knife which is already Ex.PW32/A bears my signature at point B and that of accused at point X. Then I converted the same into a pulanda, sealed with the seal of JS and took into police possession vide memo already Ex.PW32/B bears my signature at point B and that of accused at point X.”

40. SI Manmeet stepped into the witness box as PW-32 and deposed that:

“All the accused were got joined in investigation who firstly took the police party to the scene of crime and pointed out the place of incident. IO prepared pointing out memo to this effect which is already Ex.PW20/K. The accused persons were further got joined in investigation. Thereafter, the accused Irfan and Sandeep took the police party to the park at the junction of MB Road, and Tigri Road and they got recovered two dandas, one danda by each accused, which were used in the crime. Both the dandas were converted into cloth parcel sealed with the seal of JS and taken into police possession vide memo Ex.PW20/L & M. Memo Ex.PW20/L bears my signature at point B. Thereafter, the I alongwith IO and accused Vishal went for further investigation while Inspt. Parasnath along with SI Rakesh, HC Dalbir and other staff took accused Neeraj, Irfan and Sandeep as well as JCL to PS. Thereafter, accused Vishal took the police party to near Transformer opposite Saket Court and thereafter, he had pointed a place behind Transformer, he removed some stones and got recovered a knife stained with blood. IO prepared sketch of the knife which is Ex.PW32/A bears my signature at point A and thereafter, the same was converted into a cloth parcel sealed with the seal of JS and was taken into police

possession vide memo Ex.PW32/B bears my signature at point A.”

41. SI Rakesh Kumar stepped into the witness box as PW-20 and deposed that:

“Pursuant to the disclosure of the accused persons, the IO had prepared the pointing out memo of the place of the occurrence at their instance. The pointing out memo is Ex.PW20/K, which bears my signature at point A. Pursuant to the disclosure statements, accused Sandeep and Irfan had got recovered dandas from a park at Tigri. The said dandas were stated to have been used in the commission of the offence. The IO had seized one danda at the instance of accused Irfan vide seizure memo Ex.PW20/L. The seizure memo of other danda is Ex.PW20/M. Both the said seizure memos bear my signatures at point a. Both the dandas were measured by the IO, but I do not remember their length. The long danda was recovered at the instance of accused Sandeep and the smaller one was recovered at the instance of accused Irfan. Thereafter, I took the JCL to the police station alongwith SI P.N. Verma and three accused persons, namely, Neeraj @ Nagar, Sandeep and Irfan. The other accused, namely Vishal remained with the IO, who conducted the further investigation qua him. I got medically examined the accused persons. Later on, the IO had recorded my statement in this regard. The accused persons, namely, Neeraj @ Nagar, Vishal, Sandeep @ Sindhi and Irfan @ Siddique are present in the Court today. I can identify both the dandas if shown to me.”

42. Insp. Parasnath Verma stepped into the witness box as PW-31 and deposed that:

“All the accused were got joined in investigation who firstly took the police party to the scene of crime and

pointed out the place of incident. IO prepared pointing out memo to this effect which is already Ex.PW20/K. The accused persons were further got joined in investigation. Thereafter, the accused Irfan and Sandeep took the police party to the park at the junction of MB Road, and Tigri Road and they got recovered two dandas, one danda by each accused, which were used in the crime. Both the dandas were converted into cloth parcel sealed with the seal of JS and taken into police possession vide memo Ex.PW20/L & M. Memo Ex.PW20/M bears my signature at point B. Thereafter, the IO alongwith SI Manmeet and accused Vishal went for further investigation while I alongwith SI Rakesh, HC Dalbir and other staff brought accused Neeraj, Irfan and Sandeep as well as JCL to PS. After sometime IO Inspector Jarnail Singh alongwith SI Manmeet and accused Vishal also returned back to the PS and IO had deposited the case property in malkhana and then he recorded statement of the witnesses. My statement was also recorded.”

43. A conjoint reading of the aforementioned testimonies of the prosecution witnesses reveals that the bloodstained knife was recovered pursuant to the disclosure statement of Vishal from ‘*the wall of nala near Saket Court underneath a piece of stone near transformer*’, which was seized vide seizure memo (**Ex.PW32/B**) and the dandas were recovered pursuant to the disclosure statement of the accused persons Neeraj @ Nagar, Irfan Siddiqui and Sachin @ Sindhi from the ‘*park in Tigri colony, MB Road*, which were seized vide seizure memos (**Ex.PW20/M**) and (**Ex.PW20/L**).
44. In relation to the recovery of articles at the instance of the Accused persons, the Apex Court in a catena of judgments has held that the recovery and the pointing out memo which directly links the accused persons with the commission of the alleged offence is relevant and is

admissible in the eyes of the law. While dealing with such a case, the Hon'ble Supreme Court of India in the case of ***Debapriya Pal vs. State of West Bengal*** reported at (2017) 11 SCC 31 has held as under: -

“10. ...Under Section 27 of the Evidence Act only so much of recovery, as a result of the disclosure statement, which directly pertains to the commission of crime is relevant. Otherwise, such an evidence is barred Under Section 25 of the Evidence Act. Recovery of laptop does not have any bearing. It is neither the weapon of crime nor it has any cause of connection with the commission of crime. The law on this aspect is succinctly said in the case "Jaffar Hussain Dastagir v. State of Maharashtra: (1969) 2 SCC 872 in the following manner:

5. Under Section 25 of the Evidence Act no confession made by an Accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an Accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the Accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the Section is that the information given by the Accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.”

(emphasis supplied)

45. It was extensively argued by learned counsel for the accused persons that the abovementioned recovery of knife and danda's is not admissible

in the eyes of the law because no genuine and sincere efforts were made by the investigating officer to authenticate the recovery with the presence of an Independent/Public witness.

46. There is no good reason for this Court to disbelieve the said recovery merely because the recovery witnesses PW-33, (Insp Jarnail Singh), PW-32 (SI Manmeet) PW-20 (SI Rakesh Kumar) and PW-32 (Insp. Parasnath Verma) happen to be police officers. In this context, we rely on the case of *Kripal Singh v. the State of Rajasthan* reported in (2019) 5 SCC 646. The germane portion of the judgment is extracted below:

*“17. The submission of the learned senior counsel for the Appellant that recovery has not been proved by any independent witness is of no substance for the reason that in the absence of independent witness to support the recovery in substance cannot be ignored unless proved to the contrary. **There is no such legal proposition that the evidence of police officials unless supported by independent witness is unworthy of acceptance or the evidence of police officials can be out rightly disregarded.**”*

(emphasis supplied)

47. We are thus of the opinion that in the instant case, non-joining of public witnesses at the time of recovery is not a sufficient ground to doubt the truthfulness of the police witnesses on the above aspect or discard their evidence completely as the testimonies of the police witnesses inspires confidence.
48. Keeping in view the facts of the present case and on the basis of corroborative testimonies of the material police witnesses, we find no cogent reason to disbelieve the recovery made by the Investigating team at the instance of the accused persons. The testimonies of the

prosecution witnesses in relation to the recovery made pursuant to the disclosure statement are consistent, trustworthy and corroborative; as such the ground raised by learned counsel for the accused persons in relation to the inadmissibility of the recovery of weapon of offence made at the instance of the accused persons holds no ground.

Motive

49. Insofar as, the issue of motive is concerned, it is a settled legal proposition that even if the absence of motive as alleged is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is trustworthy evidence of witnesses as to commission of an offence, the motive loses its significance. However, if the genesis of the motive of the occurrence is not proved but the evidence is worthy of reliance, the testimony of the witness as to the occurrence could not be discarded only by the reason of the absence of motive.
50. There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Our view is fortified by the law laid down by the Hon'ble Apex Court in *Sardul Singh v. State of Haryana* reported in *AIR 2002 SC 3462* wherein the Hon'ble Supreme Court held that the motive is not always capable of precise proof, if proved, may only lend additional support to strengthen the probability of commission of the offence by the accused person, but the absence of proof does not ipso facto warrant an acquittal.

51. While dealing with a similar issue, the Hon'ble Apex Court in a recent judgment titled as *Khurshid Ahmed Vs State of Jammu And Kashmir* reported in **2018 7 SCC 429**, has held that the motive is a double-edged weapon and the same loses its importance when there are direct and reliable evidence available on record. Relevant part from the aforesaid judgment is extracted below:

“18. Another argument advanced is that there was no motive to commit the offence and in the absence of strong motive, the appellant cannot be held guilty under Section 302 IPC. In the present case, motive can be traced from the evidences produced by the prosecution with regard to the prior incident that took place between the deceased and accused in connection with payment of money over a transaction where the accused stood as a guarantor. Because of the earlier scuffle, the subsequent incident has occurred in which the accused hit the deceased with an iron rod due to which the deceased lost his life. It is appropriate to observe that in Halsbury's Laws of England, 3rd Edn., with regard to “motive”, it is stated that “the prosecution may prove, but it is not bound to prove the motive for a crime”. “Motive” is an emotion which compels the person to do a particular act. But in all the cases, it will be very difficult for the prosecution to prove the real motive. Motive is a double-edged weapon when there is a direct and reliable evidence available on record, motive loses its importance. In a case of circumstantial evidence, motive assumes greater importance than in the case of direct evidence. In a case of direct and compelling evidence, even assuming that no motive is attributed, still the prosecution version has to be examined.

19. As regards to the importance of existence of motive in a criminal case, here it is worthwhile to look at the ratio laid down by this Court in Shivaji Genu Mohite v. State of Maharashtra [Shivaji Genu Mohite v. State of Maharashtra, (1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55] : (SCC pp. 224-25, para 12)

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28. *In view of the above discussion, we are of the considered view that the direct oral evidence available on record coupled with the medical evidence, points at the guilt of the accused and not proving the motive for commission of the offence lost its significance in the facts of the case.*”

- ### Common Intention

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54. Before delving into the merits of the case, we deem it appropriate to discuss the relevant provisions which are involved in the present case, Section 34 of the IPC reads as under:

“34. Acts done by several persons in furtherance of common intention. —When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

55. To bring an offence within the ambit of Section 34 IPC, the following factors are necessary to be present there:

(1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person.

(2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons.

56. Therefore, in order to constitute an offence under Section 34 IPC, the accused is to be fastened with liability on the strength of Section 34 IPC, that they 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 distinction between a “***common intention***” and a “***similar intention***” which is real and substantial is also not to be lost sight of. The common intention implies a ***prearranged plan or a plan developed on the spur of the moment***. Such common intention which is developed on the ***spur of the moment*** is ***different from the similar intention actuated by a number of persons at the same time***.

57. In other words, 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. 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.

58. The Apex Court in the case of **Rambilas Singh v. State of Bihar** reported in **AIR 1989 SC 1593** the Hon'ble Supreme Court held as under:

“It is true that in order to convict persons vicariously under S. 34 or S. 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the common intention of all the accused or in prosecution of the common object of the members of the unlawful assembly.”

(emphasis supplied)

59. The aforesaid judgment was followed by the Apex Court in the case of **Suresh &anr v. State of UP** reported in **2001 3 SCC 673**. The germane portion of the judgment is extracted below:

“37. However, in view of the importance of the matter, insofar as the interpretation of Section 34 of the Indian Penal Code is concerned, we have chosen to express our views in the light of consistent legal approach on the subject throughout the period of judicial pronouncements. For the applicability of Section 34 to a co-accused, who is proved to have common intention, it is not the requirement of law that he should have actually done something to incur the criminal liability with the aid of this section. It is now well settled that no

overt act is necessary to attract the applicability of Section 34 for a co-accused who is otherwise proved to be sharing common intention with the ultimate act done by any one of the accused sharing such intention.

38. Section 34 of the Indian Penal Code recognizes the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives statutory recognition to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case.

39. The dominant feature for attracting Section 34 of the Indian Penal Code (hereinafter referred to as “the Code”) is the element of participation in absence resulting in the ultimate “criminal act”. The “act” referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.

60. Keeping in view the facts of the present case and applying the principles laid down by the Hon'ble Apex Court, it is established that common intention necessitates prior concert which requires a prearranged plan, but such preconcert may develop on the spur of the moment and will make the accused persons responsible for the ultimate criminal act done by several persons. Further, on the basis of evidence borne out from the previous part of the judgment, it is substantiated that all the accused persons in furtherance of their common intention were actively involved in the commission of the alleged offence.

Culpable Homicide Vs. Murder

61. During the course of arguments, learned APP for the State labored hard to contend that the learned trial court erred in convicting the accused persons only for the offence punishable under Section 326/34 IPC, ignoring the fact that the deceased (Jagat Singh) had lost his life in the incident and that the other two victims PW-8 (*Smt. Kamla Devi*) and PW-13 (*Smt. Prakashoo Devi*) suffered grievous injuries which were dangerous enough to cause death.
62. Hence, based on the evidence borne out from the previous part of the judgment this Court is of the view that it is essential to first analyze that whether the present case would fall within the ambit of Section 302 or Section 304 of the Indian Penal Code.
63. Section 304 of the Indian Penal Code, reads as under:

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

64. An offence is stated to be culpable homicide not amounting to murder, punishable either under Part I or Part II of Section 304 IPC, if:-

a) It comes under any of the five exceptions mentioned under Section 300 IPC, or

b) It does not come under the four clauses of the definition contained in Section 300 IPC.

65. Consequently, if any of the Exceptions mentioned under Section 300 IPC are attracted, the offence would be punishable under Part-I of Section 304 IPC. Section 300 IPC which reads as under :-

*“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—*

Thirdly—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for

15. The appeal is allowed to the aforesaid extent.”

67. In *Sandhya Jadhav v. State of Maharashtra* reported at **2006 Cri LJ 2111**, the Hon'ble Supreme Court came to the conclusion that the Courts are bound to consider a large number of factors for arriving at an opinion as to whether the fight was sudden or not and whether the offender has taken undue advantage of the situation in the following words:

“9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case or prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation.....

.... The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed, to be sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The

expression "undue advantage" as used in the provision means "unfair advantage."

68. Considering the circumstances of the present case and the fact that two incidents had occurred on the same date, within a very short span of time, we are of the view that the aforesaid confrontation took place in the heat of passion upon a sudden quarrel. Both the incidents had occurred in about an hour as the first incident had occurred at 05:30 pm wherein the accused persons had wrongfully restrained (PW-1) Kumari Barkha and had robbed and knocked down (PW-10) Mohsin. Thereafter at about 06:30 pm all the accused persons arrived in the gali in front of the house of PW-1 (Kumari Barkha), wherein Vishal had Knife and the remaining three accused persons (*Neeraj @ Nagar, Irfan Siddique and Sachin @ Sindhi*) had dandas in their hands. Further as per the MLC of the other two victims (*Prakasho Devi & Kamla Devi*) and as per the post mortem report of the deceased two stab wounds measuring 3x1cm were present on the abdomen of the deceased *Jagat Singh*, one stab wound measuring 3x2 cm was present over the abdomen of *Kamla Devi* and one stab wound measuring 3x2 cm was present on the left side of upper abdomen of *Prakasho Devi*. Herein it is relevant to highlight that the injuries inflicted were sufficient in the ordinary course of nature to cause death, but such injuries cannot be termed to be either inflicted in a cruel or unusual manner.
69. In similar facts, in the case of *Sukhbir Singh vs. State of Haryana* reported in (2002) 3 SCC 327, wherein two fatal blows were inflicted by the appellant by a bhala on the upper right portion of chest of the

deceased, the Hon'ble Apex Court opined that the two injuries cannot be termed to be either inflicted in a cruel or unusual manner. The germane portion of the judgment is extracted below:

17.....Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the courts that a fight is not per se palliating circumstance and only unpremeditated fight is such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception.

18. In the instant case, concededly, there was no enmity between the parties and there is no allegation of the prosecution that before the occurrence, the appellant and others had premeditated. As noticed earlier, the occurrence took place when Sukhbir Singh got mud splashes on account of sweeping of the street by Ram Niwas and a quarrel ensued. The deceased gave slaps to the appellant for no fault of his. The quarrel appeared to be sudden, on account of heat of passion. The accused went home and came armed in the company of others though without telling them his intention to commit the ultimate crime of murder. The time gap between the quarrel and the fight is stated to be a few minutes only. According to Gulab Singh (PW 10) when Sukhbir Singh was passing in the street and some mud got splashed on his clothes, he abused Ram Niwas. They both grappled with each other whereupon Lachhman (deceased) intervened and separated them. Accused Sukhbir had abused Lachhman who gave him two slaps. The said accused thereafter went to his home after stating that he would teach him a lesson for the slaps which had been given to him. After some time he, along with other accused persons, came at the spot and the fight took

place. His own house is at a different place. There is a street in between his house and the house of Lachhman (deceased). On the northern side of his house, the house of the appellant is situated. Similarly Ram Niwas (PW 11) has stated that after the quarrel the accused went towards his house and within a few minutes he came back with other accused persons. It is, therefore, probable that there was no sufficient lapse of time between the quarrel and the fight which means that the occurrence was “sudden” within the meaning of Exception 4 of Section 300 IPC.

19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given, the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner.”

(emphasis supplied)

70. Similarly, in *Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC 528* and *Sukbhir Singh v. State of Haryana (2002) 3 SCC 327*, it was observed that:

“ ...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused Appellants had come prepared and armed for attacking the deceased....”

71. Applying the law laid down by the Apex Court to the present case and having regard to the oral evidence as well as the fact that two incidents of the same date occurred within a very short span of time, we are of the view that the occurrence took place in the heat of passion upon a sudden quarrel. Further, it is firmly established that the accused persons used the knife & Dandas to cause bodily injury, moreover did not take any undue advantage and did not act in a cruel or unusual manner because when the injured persons had fallen down and when they were in a helpless position, no further injuries were inflicted on them by the accused persons. Thus, in our view, the case of the accused persons squarely falls within the Exception 4 to Section 300 IPC.

Conclusion

72. Since the case of the accused persons falls within the purview of Exception 4 to Section 300 IPC, they cannot be held guilty of the offence of culpable homicide amounting to murder and the offence committed by them falls within the category of culpable homicide not

amounting to murder under Section 304 part I of the IPC, we partially allow the appeal filed by the state(CRL.A. 700/2019) to the extent that instead of Section 302 IPC, the accused shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part I read with Section 34 IPC and consequently, accused persons are sentenced to ten years rigorous imprisonment under Section 304 Part-I IPC. Sentence of fine stands unaltered and conviction for the offence punishable under Section 326 IPC is set aside.

73. With the aforesaid modification of sentence, CRL.A. 700/2019 stands partly allowed and CRL.A. 88/2019 being devoid of merit is dismissed.
74. Copy of the order be communicated to the Trial Court as well as to the Jail Superintendent, Tihar Jail.
75. Trial Court record be sent back along with a copy of this order

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

NOVEMBER 14, 2019
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