

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

CRL.A. 153/2004

&

CRL A 193/2004

Reserved on : 20.02.2019.

Date of Decision : 14.05.2019

IN THE MATTER OF:

SATISH

..... Appellant

Through : Mr. Ashutosh Bhardwaj, Advocate

versus

STATE

..... Respondent

Through : Ms. Aashaa Tiwari, APP

AND

RAJESH

..... Appellant

Through : Mr. Madhav Khurana, Advocate

versus

STATE

..... Respondent

Through : Ms. Aashaa Tiwari, APP

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The present appeals have been filed challenging the judgment of conviction dated 24.01.2004 arising out of Sessions Case No.110/2002 in

FIR No.421/2000 for the offences punishable under Sections 302/307/460/34 IPC at P.S. Mehrauli whereunder, both the appellants were sentenced:-

- (i) to undergo life imprisonment and to pay a fine of Rs.1,000/- each and in default thereof to further undergo RI for 15 days for the offence punishable under Section 302/34 IPC;
 - (ii) to undergo RI for four years and to pay a fine of Rs.1,000/- each and in default thereof to further undergo RI for 15 days for the offence punishable under Section 460/34 IPC; and
 - (iii) to undergo RI for four years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo RI for 15 days for the offence punishable under Section 307/34 IPC.
2. Benefit of Section 428 Cr.P.C. was given to both the appellants and their sentences were directed to run concurrently. Both the appeals shall be disposed by this common judgment.
3. The case of the prosecution, as noted by the trial court is:

“2. The case of prosecution is that in the intervening night of 01 & 02.07.2000 an information was received from Police Control Room which was recorded vide DD No.34A. On receipt of DD No.34A SI Surinder Sharma reached at spot, Inspector Satpal SHO alongwith Ct. Phool Kumar and Ct. Ram Kishore also started for the spot. After reaching at Akoi Farm House at 15/3, Jaunapur they came to know that

injured were removed to AIIMS Hospital by PCR Van and heavy quantity of blood was lying at the spot, at main gate of servant quarter and inside and outside room of Sukhram cook. At the spot Sanjay Kumar met them and made his statement.

3. Mr. Sanjay Kuamr in his statement has stated that he was working as guard in Wacken Hut Security Services, he was working as Security Guard in Akoi Farm House at 15/3, Jaunapur for the last one year, in the said farm house Mr. Godino of Italy was residing and at that time he had gone to Italy. In the night he was sitting on chair inside the farm house at some distance from main gate, somebody knocked the main gate, he went at main gate and saw two persons standing there. Both the said boys told him to open the gate, he told them what was the matter, they told him that they wanted to drink water. He disclosed the same to Ram Parsad Supervisor who was filling water in the cooler who had not cared. At about 11.30 PM he gave water bottle from below the gate, on this said persons told him to give two glasses which was refused by him and he went ahead towards his sitting place. After going at some distance he turned back and saw that two boys were trying to jump after climbing on the main gate. He went in fast speed and turned back and saw that said two persons had entered inside and two other boys were trying to jump, on this he ran inside quarter and called cook Sukhram at 2/3 times. At the same time he heard noise of entering said persons. He entered inside the room of Sukhram in attached Laterine Bath Room and closed the door from inside at that time he heard noise of "Bacho Bacho" of Sukhram and his wife, after 2/3 minutes he thought that said persons had left, still he remained inside the bathroom for 7/8 minutes due to fear and thereafter he tried to open the door of room and found that door was closed from outside. He came outside from the window and opened the door and closed the main switch room. He climbed on the drum near Generator and after jumping on the wall he went to disclose the same to Ram

Parsad but he had closed the door of his room from inside. On his not opening the door and stating that he had been bitterly beaten he went to adjacent Farm House of Meera Singh and one guard and three gardeners of said farm house were called to his farm house and switch on the light from switch room. On seeing in the room of Sukhram, Sukhram, his wife Itwari Devi, his brother in law Biswa and two other boys who had come from the village of Sukhram were found in injured condition. Thereafter on their reaching at the room of Ram Prasad he opened the door and all of them went to the farmhouse of Meera Singh and telephoned at No.100, PCR Van took all the six injured persons to hospital. All the four persons who entered in their farmhouse bet them and attacked were aged about 20/25 years, wheatish colour and height of 5 Feet 6/7 Inches, he can identify the said persons.”

4. On the above statement of Sanjay Kumar, the *Rukka* was prepared and FIR No. 421/2000 was registered. The injured were taken to AIIMS Hospital. Inspector Satpal conducted the investigation. When he reached the hospital, he was informed that the injured, Itwari Devi was declared ‘brought dead’. He also recorded the statements of other injured namely, Parkash, Joginder, Sukhram, Ram Prasad and Biswa.

Arrest & Recovery of Weapons of Offence

5. On 14.07.2000, on the basis of a secret information, all the four accused, Ravinder (accused no.1), Subhash (accused no.2), Satish (accused no.3) and Rajesh (accused no.4) were arrested from Dera Mod, Mehrauli. Their disclosure statements were recorded. On 15.07.2000, the appellants and the two co-accused pointed out the place of occurrence and got recovered their washed clothes and weapons of offence. As per

the prosecution case, Ravinder (accused no.1) got recovered a *Dagger*; Subhash (accused no.2) got recovered a grass cutting *talwar* (*Sword*); Satish (accused no.3) got recovered grass cutting *Scissors* used for cutting plants and Rajesh (accused no.4) got recovered a *Saria* (*Iron Rod*). The TIP proceedings were conducted on 21.07.2000 in which the appellants refused to participate. On 18.09.2000, the grass cutting *Scissors* and the *Dagger* were sent for a subsequent opinion. On 22.02.2001, the trial court framed charges under Sections 460/34 IPC, 302/34 IPC and 307/34 IPC against both the appellants along with the first and second accused namely, Ravinder and Subhash.

6. The prosecution examined a total of 24 witnesses in the trial. SI Satish Kumar (PW-12) and SI Badaru Singh (PW-18) were examined as witnesses to the arrest of both the appellants as well as the two co-accused. Insp S.P. Gupta (PW-22) and SI Badaru Singh (PW-18) testified that the appellants and the two co-accused were arrested on 14.07.2000 at about 6.15 PM from a bus stop at Dera Mod, Mehrauli vide arrest memos Ex. PW-22/F1 to Ex. PW-22/F4 and on the next day, i.e., on 15.07.2000, they pointed out the place of occurrence. The appellant, Rajesh got recovered from his house one lemon color shirt and chocolate pant and also got recovered one *Saria* (*Iron Rod*) from the bushes near the Bedi Farmhouse. The appellant, Satish got recovered one sky blue jeans and one shirt of parrot color and one *Scissors* (grass cutter) from the dicky of the scooter, DL 3S K 2496 which was parked in his house. Ravinder (accused no.1) got recovered a *Dagger*. Subhash (accused No.2) got recovered from his house multicolour lined shirt and blue colour jeans pant and also got recovered one grass cutting *sword* (*talwar*).

7. The trial court, vide the impugned judgment convicted both the present appellants, however, acquitted the two co-accused, Ravinder (accused no.1) and Subhash (accused no.2) for lack of identification. Their acquittal was not challenged by the State in appeal.

Post Mortem Report:-

8. The Post Mortem was conducted by Dr. Sudhir Gupta (PW-20) on 07.07.2000 and he proved the following Post Mortem Report (Ex. PW-20/A):-

“ I found that death in this case was due to excessive loss of blood as a result of stab injuries caused by sharp edged weapon. The injuries mentioned in PM report were sufficient to cause death in ordinary course of nature collectively. However, injury no.4 was sufficient to cause death individually. I received inquest papers along with the post mortem request which bears my initials and the belongings of the deceased sari, blouse, peticoat, bra and underwear which were blood stained driven, sealed and handed over to the IO. The post mortem interval in this case was about one week.

On 22.09.2000, the IO moved an application along with alleged weapons of offence for subsequent opinion. In my opinion the injuries mentioned in the PM report could be produced by these weapons.

Subsequent opinion enclosed with produced alleged weapon of offence. The weapon A and B marked and sketched could produce the injuries mentioned Nos. 1,2,3,4 and 6 in the postmortem by both weapons.”

MLC

9. Dr. Atul Kumar Aggarwal (PW-15) proved the MLCs of the injured persons, namely, Joginder, Sukhram, Parkash and the deceased as Ex. PW-15/A to PW-15/D respectively. Dr. Deepa Roy (PW-7) proved the MLCs of Biswa and Ram Prasad as Ex. PW-7/A and Ex. PW-7/B respectively.

FSL

10. Dr. Dhruw Sharma (PW-23) proved the FSL report (Ex. PW-23/A) and serological report (Ex. PW-23/B). He also proved the report of the Physics Department, which gave an opinion on the cut marks on the clothes of the injured and the deceased as Ex. PW-23/C. In terms of the FSL report (Ex. PW-23/A and 23/B), although blood was detected on the *iron rod*, however, on the grass cutting scissors and *Dagger* it was found to be too small for a serological analysis. As per the Physics department report (Ex. PW-23/C), the weapons of offence, i.e. *dagger*, grass cutting scissors, *saria* and grass cutting *sword* were examined and the cut marks were compared with the cut marks appearing on the multi-coloured check design full sleeve shirt of Parkash (Ex.11) and the orange colour blouse of the deceased (Ex.12C). The report is reproduced below.

“The cut marks Q1 on Exhibit-11 and Q2 on Exhibit-12c could have been caused by the dagger Exhibit-14”.

11. Arguments have been addressed by Mr. Ashutosh Bhardwaj, Advocate for the appellant, Satish and Mr. Madhav Khurana, Advocate for the appellant, Rajesh while Ms. Aashaa Tiwari, learned APP advanced arguments on behalf of the State.

12. Mr. Ashutosh contended that as per the prosecution case, the role assigned to the appellant, Satish was of using the grass cutting *Scissors*, however, there were major contradictions in the testimony of the witnesses as to the weapon alleged to be used by the appellant, Satish. He further contended that the witnesses who had identified the appellant in court, had improved their version as they did not give any identification details in their earlier statements recorded by the police. He also contended that the recovery of *Scissors* from the dicky of the scooter parked in the appellant's house, was doubtful as the prosecution failed to prove that the scooter belonged to him.

13. Mr. Madhav Khurana contended that the appellant, Rajesh was shown to be armed with a Saria (*Iron Rod*) however, the prosecution witnesses nowhere connected the appellant with Saria. He also contended that identification of the appellant in the court was unreliable as the witnesses did not support the prosecution case during their cross examination. He also contended that recovery of Saria and non-joining of public witnesses at the time of arrest and recovery was fatal to the prosecution case.

14. On the other hand, Ms. Aashaa Tiwari, learned APP has relied upon Khujji vs. State of M.P. reported as (1991) 3 SCC 627, to support her argument that even if the witness had turned turtle in the cross examination, his examination in chief can still be relied upon to the extent it supports the prosecution case.

ANALYSIS

Identification of the appellants

15. A perusal of the evidence on record reveals that a *Rukka* was prepared on the statement of Sanjay Kumar, in which, he had given a brief description of the features of the four assailants. He had stated that the assailants were 22 to 25 years of age, having wheatish colour and out of them, the two assailants had round faces; medium built & were approximate 5ft 7inch tall.

16. During the trial, Sanjay Kumar appeared as PW-16. He deposed that he was on duty inside the Akoi Farm House, Mehrauli on the date of the incident, when some persons had knocked at the gate of the farm and asked for drinking water. Initially, he had refused but later, when the said persons again knocked at the gate, he rolled a bottle of water from under the gate. Later, on seeing that the said persons were scaling the gate of the farm house to come inside, he ran inside. He entered a room and woke up the persons who were sleeping there and locked himself in the bathroom. He heard screams of those persons. When the intruders left, he came out and saw the injured lying in the room. He went to the adjoining house to make a phone call to the police. During his testimony, however, he failed to identify any of the appellants or the co-accused. He was cross-examined by the Ld. APP for the state, where he denied stating earlier in his statement recorded under S.161 CrPC that the light of the room was 'on' and he could identify the assailants.

17. Biswa and Parkash were also the injured in the same incident. They were examined as PW-2 and PW-6 respectively. A perusal of their testimony reveal that they had also not identified any of the appellants or

the co-accused during the trial. They were cross examined by the Ld. APP for the state however, they denied seeing the appellant or the co-accused on any previous occasion.

18. The prosecution examined other injured namely Sukhram (PW-4) and Ram Prasad (PW-5). Both the witnesses identified only the present appellants but failed to identify the co-accused during their examination-in-chief. In this regard, it is noteworthy that Sukhram was examined on 26.05.2001. He deposed that he was living at Akoi Farm House, Jonapur for the last about one year and 2 months prior to the date of incident, his wife Itwari Devi had also joined him. About 4-5 days prior to the date of the incident, Biswa, Parkash and Joginder had also started staying with him. He deposed that on the night of the incident at about 10/11 PM, he sustained stab injuries in his abdomen. He deposed that there were 3-4 persons who were armed with *knife* or similar objects. His wife raised an alarm and she was also stabbed. On hearing her, the other persons sleeping in the room, woke up and when they raised a noise, they were also beaten and injured by the assailants. The assailants ran away by locking the door of the room from outside. The said door was opened by the chowkidar (Sanjay). He further deposed that both the present appellants were armed with weapons which could be *Knives*, *Dagger* or similar type of objects.

19. PW-4 was cross-examined by the defence counsel after two months on 03.08.2001, on which date, he deposed that as the light in the room was 'off', he could not see any of the assailants. He was cross-examined by the learned APP where he stated that while deposing on 26.05.2001, he had falsely identified the present appellants as two of the

assailants. He stated that he did so at the asking of Inspector Gupta. On the same day, he was again cross-examined by the counsel for the appellants where he reiterated that he could not identify as to who was Rajesh and who was Satish. The witness further stated that when the police reached the farm house on the date of the incident, the weapons of offence, i.e., grass cutting *Sword*, *Rod*, *Scissors* etc. were lying in the farm house.

20. Ram Prasad (PW-5) was examined on 19.07.2001. He deposed that two persons, having *Swords* in their hand, had caused injuries to him on his head, neck, both hands and left thigh. These two persons had also caused injuries to Sukhram, Sukhram's wife (deceased), Jai Parkash and others. He identified the present appellants as the ones who had caused injuries to him and others. He was cross-examined by the Ld. APP for the State, where he denied the suggestion that four people had entered the farm house on the date of the incident. The witness was cross-examined on behalf of the appellants on 03.08.2001, during which he stated that he was alone in the room when he received injuries and there was no light in the room when he was assaulted. He also stated that after receiving injuries, he had lost consciousness and later, regained his senses while undergoing treatment in the hospital. He denied having seen any of the assailants. He stated that he could not identify as to who was Rajesh and who was Satish. He stated that, on the earlier date i.e. on 19.07.2001, he had falsely identified the appellants at the asking of the police. He was again cross-examined by the learned APP for the State where he reiterated that he had falsely identified the appellants on 19.07.2001 at the instance of the Inspector Gupta.

21. The prosecution had also examined one more injured, Joginder Singh (PW-3). He deposed that two persons had entered the farm house on the night of the incident. Those persons had *Knives* in their hands and caused injuries to the persons sleeping in the room including him. He identified the present appellants, as those two persons, who had committed the assault. He was cross examined by the Ld. APP where he denied the suggestion that four persons had entered the farm house and committed the assault. He was cross examined on the same day, on behalf of the appellants. He was confronted with his statement recorded under S.161 Cr.P.C. where he had stated that he fell unconscious after the assault and thus could not see the faces of the assailants. He reiterated that the light in the room was on and that both the assailants had *Knives* in their hand.

22. A perusal of the above testimonies would reveal that although the *Rukka* was prepared on the statement of Sanjay Kumar, who had the longest interaction with the assailants on the date of the incident, he did not identify any of the assailants in the Court including the present appellants. Biswa, the injured witness, stated that it was dark in the room for which reason, he could not see any of the assailants and he failed to identify the appellants in the court. Similarly, Parkash, another injured, did not identify any of the assailants in the court.

23. The other injured witnesses namely, Sukhram (husband of the deceased) and Ram Prasad, had resiled from their statements in the cross-examination. Indeed, they had identified both the appellants in the Court during their examination-in-chief. But, in the cross-examination conducted on a later date, they stated that on the earlier date, they had

falsely identified the appellants, at the asking of Inspector Gupta. As such, the testimonies of these two injured witnesses i.e., Sukhram and Ram Prasad needs to be examined with greater caution. Both the witnesses had denied identifying the appellants on any previous occasion.

24. So far as the testimony of the injured, Joginder Singh is concerned, it is noted that the witness had made material improvements over his statement recorded under S.161 Cr.P.C. where he had stated that he could not see the faces of the assailants but during his testimony before the court, he identified the appellants.

Discrepancy on the numbers of assailants

25. As per the case of the prosecution, four persons had entered the farm house on the date of the incident. Further, these four persons had caused injuries on Itwari Devi and other people present in the room. However, during the trial, when the injured, Biswa, Joginder and Ram Prasad appeared in the Court, they contradicted the prosecution case by deposing that only two persons had entered the farm house and caused the injuries.

Discrepancies on the weapons of offence

26. As per the prosecution case, the appellant Satish (accused no.3) was armed with grass cutting *Scissors* and the appellant, Rajesh (accused no.4) was armed with a *saria* (iron rod). The two co-accused, Ravinder (accused no.1) and Subhash (accused no.2), who were acquitted by the trial court, were armed with a *Dagger* and a grass cutting *Sword* respectively. However, in his testimony, Sukhram stated that the present

appellants were armed with weapons which could be *Knives*, *Dagger* or similar type of objects; Ram Prasad had deposed that the weapon used by the appellants was a *Sword* and Joginder Singh had stated that the weapon used were *Knives*. During the cross-examination conducted by the learned APP, no suggestion was given to any of the witnesses seeking clarification as to the nature of the weapon used by the appellants individually. The assailants who were shown to have used *Dagger (knife)* and *Sword*, namely Ravinder and Subhash were acquitted by the trial court. As such, the testimony of Sukhram, Ram Prasad and Joginder Singh, who had identified the appellants in the examination-in-chief, is at complete variance with the prosecution case.

27. A perusal of the scientific evidence on the record in the form of the FSL and post mortem opinion also show glaring discrepancies as to the nature of weapon used for causing injuries. As per the FSL Report (Ex.PW-23/C), it was opined that the cut marks on Ex. 11 (Multi color check design full sleeve shirt of the injured Parkash) and Ex.12C (orange color blouse of the deceased), were caused by a sharp, double edged weapon. It was further opined that cut marks on the above exhibits could have been caused by a *Dagger*. However, as per the prosecution case, the *Dagger* was used by Ravinder, who was acquitted by the trial court. The prosecution had sought subsequent opinion from Dr. Sudhir Gupta (Ex. PW-20/B) on the *Dagger* and grass cutting *Scissors*, in relation to the injuries of the deceased mentioned in the post-mortem report. As per the subsequent opinion (Ex. PW-20/B) given on 22.09.2000, it was mentioned that the above weapons of offence could produce the injuries mentioned as 1, 2, 3, 4 & 6 in the post-mortem. As such, the scientific

evidence is contrary to the testimony of injured eyewitnesses, who had mentioned different weapons, used by the appellants.

28. As far as the recovery of grass cutting *Scissors* on 15.07.2000 from the appellant, Satish is concerned, the same is stated to be shown from the dicky of a scooter DL 3S K 2496 parked in his house. The prosecution did not bring any evidence on record to prove that the said scooter belonged to the appellant, Satish. Similarly, the *saria* was shown to have been recovered on 15.07.2000 from the bushes outside a nearby farm house (Bedi farm house). It is noteworthy that the said recoveries were made after nearly 14 days of the incident. However, no public witness was associated with the recovery proceedings, despite the fact that neighbours and the family members were available, as was admitted by SI Badaru Singh (PW-18), the witness to the recovery.

29. Sukhram, the injured eyewitness had deposed that when the police arrived at the place of the incident, the weapons of offence, such as grass cutting *Sword*, *Saria*, *Scissors*, etc., were lying there and the police lifted the same from the spot. However, the above testimony of Sukhram is belied by the 'crime scene report' dated 02.07.2000, which did not mention the presence of the weapons of offence at the spot. Even the above testimony of Sukhram is contrary to the circumstances that show that the recovery of the weapons was not from the spot, but from different places and that too after 14 days after the incident, i.e. on 15.07.2000.

30. Learned counsel for the appellant Rajesh, argued that no expert opinion had come that the injuries on the deceased were caused by the *saria* (iron rod). Also, the biology report in this regard did not support

the case of the prosecution in as much as human blood was found on the *saria* (iron rod), but no blood grouping could be found.

31. An analysis of the evidence brought on record reveals that out of the six witnesses examined by the prosecution, Biswa, Parkash and Sanjay Kumar failed to identify any of the accused persons including the present appellants. Sukhram and Ram Prasad initially identified the present appellants but later, during their cross examination resiled by stating that the earlier identification was done at the asking of the police officials. Their depositions also do not inspire confidence as their testimonies qua the nature of the weapons used by the appellants, not only contradicts each other but runs contrary to the prosecution case. Similarly, the deposition of Joginder Singh is full of material improvements qua the identification of the appellants and is contradictory to the nature of weapons used by both the appellants. In A. Shankar vs. State of Karnataka reported as (2011) 6 SCC 279, the Supreme Court held as under:-

*"23. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." **The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.** [Vide: *State Represented by Inspector of Police v. Saravanan & Anr.*, AIR*

2009 SC 152; *Arumugam v. State*, AIR 2009 SC 331; *Mahendra Pratap Singh v. State of Uttar Pradesh*, (2009) 11 SCC 334; *Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra*, JT 2010 (12) SC 287; *Vijay @ Chinee v. State of M.P.*, (2010) 8 SCC 191; *State of U.P. v. Naresh & Ors.*, (2011) 4 SCC 324; and *Brahm Swaroop & Anr. v. State of U.P.*, AIR 2011 SC 280].

24. *Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide : State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106).”(emphasis added)*

32. We also find that the prosecution has failed not only to connect the specific weapon of offence to each of the appellants, but also the individual injuries on the body of the deceased with the specific weapon. In this regard, we may place reliance on the decision of the Supreme Court in State of U.P. Vs. Dharamraj and Anr. reported as (2003) 9 SCC 39, wherein it was held as under:-

“5..... The High Court noticed that there were different versions regarding the weapons used. In this regard, the eyewitnesses’ account does not tally with what was stated in the FIR and the panchnama (Ext. KA 6) attested among others by PWs 1 and 5. Whereas, PW 5 mentioned in the FIR that the deceased was attacked by barchi, in the panchnama (inquest report) prepared by the IO (PW 8), it was mentioned that the injuries were caused by bhala and lathi. PW 8 asserted that the reference in Ext. KA 6 to bhala and lathi was on the basis of statements made by the witnesses. The High Court observed that there was evidence on record that lathi was not used and the injuries were not the result of lathi-blows. It may be noted that each one of the eyewitnesses gave a different version of the weapons used. The High Court also observed that there were material contradictions in the statements of the eyewitnesses...”.

Sections 307 & 460 IPC

33. The MLCs of the injured Joginder, Sukhram and Parkash were proved by Dr. Atul Kumar Aggarwal and the MLCs of the injured Biswa and Ram Prasad were proved by Dr. Deepa Roy. A perusal of the record reveals that the weapons allegedly shown to have been recovered from the appellants, were not shown to the above two Doctors for seeking their opinion. The prosecution had seized the *baniyan* of Joginder and a multi colour check design full sleeve shirt of Parkash. However, the same were not even put to them for the purpose of identification. In his testimony, Joginder had stated that he was assaulted with a *knife*. However, his *baniyan* had no cut marks. Even otherwise, the *knife* was stated to have been used by Ravinder, who has been acquitted by the Trial Court. As per the FSL report (Ex.PW-23/C), the weapons of offence seized from the appellants and the co-accused were got examined in relation to the multi-colour check design full sleeve shirt, seized from Parkash, which had cut marks that were opined to have been caused by the *dagger*.

34. In his testimony, Parkash had stated that he received injuries from the *knives* used by the assailants. As noted earlier, the *knife* was stated to have been used by Ravinder (accused No.1), who stands acquitted by the Trial Court. Biswa did not identify anyone and also stated that he could not see any weapon as it was dark. Sukhram also deposed that he was caused injuries by the *knife/dagger*, which is again contradictory to the prosecution case, as per which the *knife/dagger* was used by Ravinder (accused no.1). So far as Ram Prasad is concerned, he had deposed that

the injuries on him were caused by a *sword*. Again, as per the prosecution case, the *sword* was used by Subhash (accused no.2), who was also acquitted by the Trial Court. Given the insufficiency of the prosecution evidence, on the points of identity as well as the nature of the weapons used by the appellants, in our opinion, it is a fit case where the appellants are entitled to grant of benefit of doubt with respect to the charges framed against them under Sections 302/307/460/34 IPC.

35. Resultantly, the appeals are allowed and the impugned judgment is set aside. The bail bonds filed by the appellants are discharged. The appellants shall, however, comply with the requirements of Section 437A Cr.P.C. within one week from the date of passing of this judgment.

36. Trial Court Record be returned alongwith a copy of this judgment.

(MANOJ KUMAR OHRI)
JUDGE

(HIMA KOHLI)
JUDGE

MAY 14, 2019
sm/na