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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 500/2019

ROHIT

Through

..... Appellant

Mr. R. M. Tufail, Advocate with
Mr. Farooq Chaudhary,
Mr. Equebal Nasir and Mr. Naahid
Nasir, Advocates.

versus

STATE

Through

..... Respondent

Mr. Rajat Katyal, APP for the State
with Insp. Rajeev Ranjan, SI
Jasmes Singh, PS Jahangir Puri.
Mr. Kuber Giri with Mr. Sarvpreet
Singh Chawla, Advocates for
Victim-Complainant.

WITH

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CRL.A. 504/2019

SHIV KUMAR @ SHIBU

Through

..... Appellant

Mr. R. M. Tufail, Advocate with
Mr. Farooq Chaudhary,
Mr. Equebal Nasir and Mr. Naahid
Nasir, Advocates.

versus

STATE

Through

..... Respondent

Mr. Rajat Katyal, APP for the State
with Insp. Rajeev Ranjan,
SI Jasmes Singh, PS Jahangir Puri.
Mr. Kuber Giri with Mr. Sarvpreet
Singh Chawla, Advocates for
Victim-Complainant.

WITH

+ CRL.A. 819/2019

SUNIL alias ANNU

Through

..... Appellant

Mr. S.S. Ahluwalia, Advocate with
Mr. Mohit B., Advocate

versus

STATE

Through

..... Respondent

Mr. Rajat Katyal, APP for the State
with Insp. Rajeev Ranjan,
SI Jasmes Singh, PS Jahangir Puri.
Mr. Kuber Giri with Mr. Sarvpreet
Singh Chawla, Advocates for
Victim-Complainant.

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Date of Decision: 26th July, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. While Crl.A.500/2019 has been filed by appellant-accused Rohit, Crl.A. 504/2019 has been filed by appellant-accused Shiv Kumar @ Shibu and Crl.A. 819/2019 has been filed by appellant-accused Sunil @ Annu challenging the judgment and order dated 26th March, 2019 convicting them under Sections 302, 341 and 34 IPC as well as the order on sentence dated 27th March, 2019 whereby appellant-convicts Rohit and Shiv Kumar @ Shibu were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.20,000/- each under Sections 302/34 of the IPC and in

default of payment of fine to undergo nine months simple imprisonment and also to undergo rigorous imprisonment for one month under Section 341/34 IPC. Appellant-convict Sunil @ Annu was directed to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- under Sections 302/34 of the IPC and in default of payment of fine to undergo one year simple imprisonment as well as rigorous imprisonment for one month under Section 341 IPC and in addition he was further sentenced to undergo rigorous imprisonment for one year under Section 323 IPC. All the sentences were directed to run concurrently.

FACTS AND FINDINGS MENTIONED IN THE TRIAL COURT JUDGMENT

2. The relevant portion of the trial court judgment dated 26th March, 2019 is reproduced hereinbelow:-

“1. Brief facts, as stated in the chargesheet are that on 05.04.2014, DD No. 19A regarding causing stab injuries to the brother of caller was received whereafter, SI Ved Prakash alongwith Ct. Nitin went to the spot i.e. at in front of G-1670, Jahangir Puri, where it was revealed to them that injured person had already been shifted to BJRM Hospital, Jahangir Puri.

Accordingly, SI Ved Prakash alongwith Ct. Nitin went to BJRM Hospital, where SI Ved Prakash had collected MLC No. 76272/14 of Mohan S/o Kanhaiya, wherein doctors had mentioned “Brought by Bharat (Mama) for medical examination, alleged history of physical assault, patient was declared brought dead”.

The dead body of Mohan was handed over to the police officials and was shifted to the mortuary of the said hospital. SI Ved Prakash also collected MLC No. 76402/14 of injured Rakesh S/o Gulab Chand, wherein doctor mentioned “Brought by self, alleged history of physical assault, patient is conscious, simple injuries”. SI Ved Prakash recorded the statement of Rakesh S/o

Gulab Chand which is reproduced as under:

“That I am a resident of H. NO. G-1670, Jahangir Puri and I have been selling clothes at Janpath, Delhi patri. Today on 05.04.2015, at about 10:30 am, I was sitting as a pillion rider on my motorcycle bearing no. DL-4SBP-3669 being driven by my nephew (bhanja) Mohan and were going for my work.

When we reached near dhobi ghat, Jahangir Puri, there Annu, who had been residing in his neighbourhood and son of Munna, whom he identifies by face, but not by name came there and Annu called “Oye” and made our motorcycle stopped and Annu after coming near to us caught hold of the handle of the motorcycle and he took out one sua (icepick) from the side of his pant and struck the said sua over the left leg of Mohan, upon this Mohan after putting the motorcycle on a stand ran towards 1600 wali gali towards his house, but from the front side the brother of Annu namely Rohit came there, who had caught hold of Mohan, when Mohan entered in the gali and the said Rohit started assaulting Mohan with legs and fists.

I also rushed to the said place and tried to rescue my nephew Mohan, but Annu had also reached there and struck sua over the chest of Mohan. While rescuing Mohan, the button of his shirt were opened and one blow of sua struck towards the left side of my chest and the son of Munna gave a fist blow over my left eye. When Annu was assaulting Mohan with sua, then Mohan raised his left hand in order to save him, but the said sua also struck over the left hand of Mohan.

In the meantime, public persons started gathering there and Annu, Rohit and son of Munna ran away. My nephew Mohan fell in 1600 wali gali in front of house of Satbir. Me and my brother Bharat took him to BJRM hospital, where doctor had declared my nephew Mohan dead.

I was also medically examined in the said hospital. The sister of Mohan namely Kavita was taken away /abducted by Rohit from her house around three years ago.

Both of them had performed marriage without the consent of the family members and there was a tension between both the families due to the said marriage.

Even yesterday night also, I and Mohan had an altercation over spitting with Annu and Rohit, but we entered into compromise, but today Annu, Rohit, who are brothers and son of Basanta alongwith son of Munna with common intention had wrongfully confined us and attacked us with sua in order to kill us, as a result of which, my bhanja Mohan had expired in the hospital. I want legal action against the said three persons. My statement has been recorded in BJRM hospital”.

2. SI Ved Prakash on the basis of said statement and contents of MLC, prepared rukka for offence(s) punishable u/s 302/307/341/34 IPC and handed over the said rukka to Ct. Naresh Kumar, who accordingly went to PS, got FIR No. 269/14 registered....”

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16. It is not that the prosecution is only relying upon oral testimonies of above witnesses, but same is duly corroborated by the testimony of PW13 ASI Lekh Raj, who on 04.04.2014 was posted at PS Jahangir Puri as ASI and on that day on receipt of DD No. 38A he along with constable reached at G-1686, Jahangir Puri, where caller Mohan S/o. Kanhiya Lal met them and told that he had quarrel with Sunil @ Annu S/o. Basant Lal and Rohit @ Basant Lal regarding spitting. Thereafter, on the intervention of neighbours and relatives, they had settled the matter as Mohan had informed him that he did not wanted to take any legal action. Thereafter, he came back to the PS and lodged DD entry no. 19B dated 05.08.2014. The said DD No. 38A has been proved by PW8 HC Dev Dutt as Ex. PW8/A.

17. Therefore, the testimonies of PW2, PW7 and PW16 with regard to prior quarrel with Mohan with the accused Sunil @ Annu and Rohit one day prior to the day of occurrence i.e. 05.04.2014 has been duly proved which shows that the ego of the accused persons had been bruised badly and they were looking

for an opportunity to teach lesson to the deceased Mohan and were having a feeling of rancour towards him, despite the fact deceased Mohan had chosen not to take any legal action against them on the call made by him.

IDENTITY OF THE ACCUSED PERSONS

18. The identity of the accused persons in this case is not disputed, as per the testimony of PW7 the deceased Mohan was residing in house no. 1686 and he was living in house no. 1670. Further, as per the testimony of PW2 Kanhiya Lal who was the father of Mohan the accused Rohit was residing in the house next to their adjoining house. The address of the accused Sunil @ Annu in statement u/S. 313 CrPC has been mentioned as G-1684-C. Same is the address of accused Rohit, as both are brothers and the address of Shiv Kumar @ Shibu is that of G-1598. Therefore, all are the residents of same place and block i.e. G Block, Jahangir Puri and the daughter of PW2 and the sister of deceased Mohan had eloped with accused Rohit, who is the brother of accused Sunil @ Annu and other accused Shibu is also relative of these accused persons. Therefore, there could not have been any doubt in the mind of PW7 with regard to the identity of the accused persons, involved in this case. Further, as per the prosecution story, the incident took place as per the testimony of PW7 in broad day light on 05.04.2014 at 10:30 am, therefore, there was sufficient sun light and elimination to clearly see the faces of all of them on the date and time of the incident. Therefore, the identity of the accused persons has clearly been established in this case.

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23. Merely because his MLC had been prepared at 12:35 pm Ex. PW3/A does not show that he was not present at the spot or was not the eye witness, as he has deposed that when the injured was removed to the hospital, he followed PW16 on the motorcycle. There is no reason to doubt the said part of statement, as he would have been arranging other things including informing the other relatives and other friends about the incident and these things may have taken time, in any case his priority at that time

was to give medical aid to deceased Mohan, who was seriously injured and since he had only suffered superficial wounds, so he could have waited for medical aid and preparation of his MLC at a later stage after emergency, medical aid had been imparted to the injured / deceased Mohan. There is nothing on the record to infer that the above testimony of PW7 is inherently improbable, unreasonable, inconsistent with the facts, circumstances or presumptions in the case, because of suspicious circumstances. Therefore, his testimony as a whole remains in the range of being highly trustworthy.

24.PW16 had seen accused persons running away from the spot after the transaction of killing the deceased Mohan. Ld. Counsel for the accused persons had attacked his testimony on the ground that he could have not been present there or near the spot, as there was no reason that the very family member of the deceased would also be present at the spot despite the fact that incident had taken place much away from the place of residence of PW7 and the deceased. The said contention of Ld. Defence without any substance, as possibility of PW16 reaching the place of the incident is not doubtful, as he was also residing nearby at G1670, whereas the incident finally ended near G1647, which would be quite near to his place of his residence, therefore, his presence at that time near the said spot cannot be said to unnatural, as he was also the resident of same G Block.

Further the deceased was brought to the hospital at around 11:15 am, as per the MLC of deceased Mohan Ex. PW3/B, this also shows that PW16 was very much present at the spot after the transaction or thereabouts that is how he had immediately brought the deceased / injured to the hospital after the first PCR call, which was made to the police with regard to the incident, which took place at around 10:30 AM vide DD No. 19A Ex. PW1/A, which was made at 10:50 am, if he would not have been at the spot, it was not possible for him to make a call at 10:50 am to the police which he did from his mobile and thereafter took the injured / deceased to the hospital by 11:15 am. This fact corroborates that he was very much present at the spot after the transaction was in the process of being over.

Though PW16 brought the deceased to the hospital at

around 11:35 am and the MLC of the PW7 was prepared at 12:35 pm that does not mean that PW7 was not present at the spot, as PW7 has explained in his cross examination that when his brother i.e. PW16 reached the spot, then only accused persons ran away, his brother and younger brother came there and they hired rickshaw and took injured to the hospital, whereas he followed on the motorcycle. This sufficiently explains this fact merely because the name of the PW7 is not mentioned in the MLC of the deceased does not mean or leads to an inference that PW7 was not present at the spot.....

The blood stained clothes of PW7 which he had handed over to the IO also shows that he would have tried to save deceased Mohan and would have also been associated with PW16 to remove him to the hospital in that process his clothes would have been blood stained. Further, the blood stained pant of the deceased Mohan which was seized vide seizure memo PW7/C also shows that there was a cut mark on the pant which also gels with the testimony of PW7 that Mohan was given several blows by Sunil @ Annu including on his leg.

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27.Merely because the said lady could not be found and examined during the investigation by the IO does not affect the case of the prosecution at all in the circumstances as discussed above, as the case of the prosecution as a whole is quite trustworthy in view of the testimonies of PW7 and PW16, it is also settled law that merely faulty investigation on the part of the IO with regard to the non examination of certain witnesses cannot affect the case of the prosecution, if it is otherwise credible and trustworthy even bereft of the same.

Regarding the testimony of the IO that both the spots were surrounded by houses and shops and that he made efforts for recording statement of the public persons, who gathered at both the spots, but no witness agreed to make statement and that he had not recorded the statement of the witnesses of both the spots despite his best efforts. The same does not in any way effect the prosecution case, as the general apathy of the public persons

not to be involved in investigation in such kind of ghastly incidents is well known and even otherwise both the parties were residents of the same Block and area, therefore, it is quite probable that none of the residents would have wanted to take sides either with the complainant or accused persons so that they may be inviting enmity with one party or any other later on.

Regarding the non recovery of ice pick in the present case, the accused persons Sunil @ Annu and Rohit had surrendered in PS on 11.04.2014 themselves and the other accused Shiv Kumar @ Shibu had also surrendered on 09.05.2014. Therefore, all the accused persons had sufficient time and opportunity to dispose off the weapon of offence i.e. ice pick, which was not a big or peculiar weapon, which would have been difficult to dispose off. In any case the non recovery of weapon of offence is fatal to the case of the prosecution if it is supported by other reliable and conclusive evidence.”

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR APPELLANT-CONVICTS SHIV KUMAR @ SHIBU AND ROHIT

3. Mr. R.M. Tufail, learned counsel for appellant-convicts Shiv Kumar @ Shibu and Rohit states that there are two PCR reports Ex.PW10/A containing different versions of the incident. He points out that while as per the first PCR Form, the caller was one Naresh Yadav, who stated that his brother had been stabbed, the second PCR Form records the name of the caller as Seema, who stated that her brother was fighting. The two PCR forms are reproduced hereinbelow:-

A. PCR Form 1

“DELHI POLICE CONTROL ROOM

FORM I

*Cell Received and Transmitted by
WCT/SUSHILA DEVI/E657/PCR/28106490*

1. Date 05 Apr 2014 10:42:51 Dispatch 05-Apr 2014 10:45:27 Extn No. 108 CPRDD No 141080095

2. Informant (i) Name NARESH YADAV (Male) (ii) Phone No 9971729206
(iii) Address 3586 FAIZ BZR NEW DELHI DELHI

Alternative Contact Name _____ Alternative Contact No _____

Complaint Type Stabbing Priority HIGH

Incident Address G BLOCK HNO-1670 JAHANGIR PURI

Incident Information CALLER KE BHAI KO CHAKU MAR DIYA HAI

PS Name JAHANGIR PURI District NORTH WEST 2

Shift Shift B

(PART II) Transmitted to VAN by HC/SATENDER/1183/C72798

Total Queue of Unattended calls at the lane call arrived at Dispatcher H 0 M 0 L 1

MPV Selected Times	Message Transmitted to MPV	At (Time)	MPV reaching time at the spot	MPV Report Time	MPV Free Time
05-Apr 2014 10:46:34	CMD-56	05-Apr2014 10:46:35	05-Apr 2014 10:51:52	05-Apr 2014 10:59:08	05-Apr 2014 11:54:39
05-Apr-2014 11:54:56	TGR 53A	05-Apr2014 11:54:56			

New Situation Found Time Stamp

New Situation Found

Now Priority

Report Received from MPV : 05/04/2011 11:00:00 INJ. PAHALE HI BJRM HOSP. JA CHUKA HAI. WAIT DETAIL. JANKARO KA JHAGDA HAI. 05/04/2014 11:32:18 BJRM HOSP. MAI INJ. MOHAN LAL S/O. KANYA LAL AGE 25 YRS. R/O. G-1686 JHANGIR PURI KO DOCTOR NE BROUGHT DEAD DECLARE KIYA HAI. DOCTOR NE BATAYA MOHAN LAL KO LEFT THAI PAR AUR RIGHT HAND KE THUMB PAR U/I NUKILI CHEEJ SE CHOT HAI. CHAKU NAHI LAGA HAI. MOKA PAR ABOUT 50 KI GATHRING HAI. COMMAND ROOM INF. 05/04/2014 11:34:32 HOSP. MAI ASI NARESH LP SE WITH STAFF AA GAYA HAI. SITUATION NORMAL HAI. HOSP. MAI SIMRAN MILI HAI JISNE BATAYA MAI MOHAN LAL KI MAAMI HUN. MOHAN LAL KE SAATH ROHIT AUR ANNU JHAGDA KARKE BHAG GAYE THE. HUM MOHAN LAL KO HOSP. LE KAR AAYE THEY. 05/04/2014 11:54:52 SITUATION NORMAL HAI.

Challan Close Time : 05-Apr 2014 11:55:09

(PART III)

(PART IV-A)

(PART IV-B)

CATS :

Informed CATS Time 05-Apr 2014 10:47:23 Call Sign ALFA-1

Location Info A==10 INFORMED Informed by HC JAI KARAN SINGH
(28881794)

SMS

SMS From NORTH WEST 2 SMS to CMD 02A Time Stamp 05-Apr 2014 10:46:50

SMS By HC SATBIR

SMS 9971729206 G BLOCK HNO-1670 JAHANGIR PURI – CALLER KE BHAI
KO CHAKU MAR DIYA HAI

SMS From NORTH WEST 2 SMS to CMD 02A Time Stamp 05-Apr 2014 11:36:40

SMS By HC SATBIR

SMS BJRM HOSP. MAI MOHAN LAL S/O KANYA LAL AGE 25 YRS. R/O. 1696
JAHANGIR PURI KO DOC NE BROUGHT DEAD DECLARE KIYA HAI
DOCTOR NE BATAYA MOHAN LAL KO LEFT THAI PAR AUR RIGHT HAND
KE THUMB PAR U/K NUKILI CHEEJ SE CHOT HAI CHAKU NAHI LAGA
HAI. MOKA PAR ABOUT 50 KI GATHRING HAI. COMMAND ROOM INF.
05/04/2014 11:34:32 HOSP. MAI ASI NARESH I.P. SE WITH STAFF AA GAYA
HAI. SITUATION NORMAL HAI.

(PART V-A) Address Resolution Group

(PART V-B)

Comment Time 05-Apr 2014 11:58:34 Supervisor Comment

Signature of Inspector : PA100(28822713)"

B. PCR Form 2

"DELHI POLICE CONTROL ROOM

FORM I

Cell Received and Transmitted by
WCT/GAYATARI DEVI /3692/PCR/28040005

1. Date	Dispatch	Extn	CPCRDD No
<u>05 Apr 2014 10:43:51</u>	<u>05-Apr 2014</u> <u>10:47:42</u>	<u>No.</u> <u>112</u>	<u>05 Apr</u> <u>141120109</u>
2. Informant	(i) Name <u>SEEMA</u> (Female)	(ii) Phone No <u>9899811549</u>	
	(iii) Address <u>1687 G BLK, JAHANGIR PURI Delhi</u>		

Alternative Contact Name

Alternative Contact No

Complaint Type QUARREL Priority HIGH

Incident Address H.NO.-G 1686 JAHANGIR PURI
DHOBH GHAT WALI GALI

Incident Information LADY KAH RAHI H KI BHAI JHAGRA KAR RHA H

PS Name JAHANGIR PURI

District NORTH WEST 2

Shift Shift B

(PART II)

Transmitted to VAN by HC/SATENDER/1183/C72798

Total Queue of Unattended calls at the lane call arrived at Dispatcher H 0 M 0 L 0

MPV Selected Times	Message Transmitted to MPV	At (Time)	MPV reaching time at the spot	MPV Report Time	MPV Free Time
05-Apr 2014 10:51:43	CMD-56	05-Apr2014 10:51:55			

New Situation Found Time Stamp

New Situation Found

Now Priority

Report Received from MPV : DCR=12== 05/04/2014 11:43:38 SAME
CHALLAN NO. 1080095

Challan Close Time : 05-Apr 2014 11:43:42

(PART III)

(PART IV-A)

(PART IV-B)

HELPLINE:

Local Police Time Stamp 05-Apr 2014 11:50:12 Local Police DCR 22

Local Police Informed _____

Location Police Informed Officer WSI

Local Police DCR==21== 05/04/2014

11:00:06 INJ. PAHALE HI

BJRM HOSP. JA CHUKA HAI. WAIT

DETAIL JANKARO KA JHAGDA HAI

T96 Time Stamp 05-Apr 2014 11:50:12

T96 DD No. _____ T96 informed _____

T96 Informed Officer _____

T96 informed _____

Informed by SHASHI GUPTA (28890006)

SMS

SMS From NORTH WEST 2 SMS to CHD 02A Time Stamp 05-Apr 2014 10:52:03

SMS By HC SATBIR

SMS 9899811549 H NO G-1686 JAHANGIR PURI

DHOBI GHAT WALI GALI- LADY KAH RAHI HAI BHAI JHAGRA KAR
RHA H

(PART V-A) Address Resolution Group

(PART V-B)

Comment Time 05-Apr 2014 11:55:56 Supervisor Comment

Signature of Inspector : PA100(28822713)”

4. According to learned counsel for appellant-convicts Shiv Kumar @ Shibu and Rohit, there was a serious lapse in the investigation as the prosecution had not bothered to interrogate the callers and none of the informants had been made witnesses.

5. Learned counsel for the appellant-convicts Shiv Kumar @ Shibu and Rohit points out that as per the list of seizure of miscellaneous exhibits, some red coloured pieces of broken bangles were recovered from the site of incident and were sealed. He states that the police did not investigate this fact, despite one of the PCR callers, namely, Seema stating that her brother was fighting. He contends that the investigating authority neither pondered upon the possibility of the involvement of any lady/ladies in the entire incident (which could have provided a plausible explanation with regard to the presence of broken bangles at the crime scene) nor was there any effort made on the part of the prosecution to examine Seema.

6. He further contends that the theory of stab injury on the chest had been introduced by the post-mortem report (Ex.PW-24/A) (wherein it had been stated that the cause of death was due to injury on the left side of the chest of the deceased Mohan), whereas the MLC (Ex.PW-3/B) of the deceased does not mention any chest injury. He emphasises that MLC of the deceased-Mohan mentions that an ECG had been conducted.

Therefore, according to him, it was improbable for any doctor not to mention a chest injury in the MLC. The MLC of deceased Mohan is reproduced hereinbelow:-

“BABU JAGJIVAN RAM MEMORIAL HOSPITAL, DELHI-110033
MLC REGISTER

No. <u>78272</u>	Name <u>Mohan</u> Age <u>22 yrs</u>	Father's /Husband Name <u>Kanhaiya Lal</u> Sex <u>M</u> Religion <u> </u> Occupation <u> </u>	Name of relative Date of examination <u> </u>
Residence <u>G-1686, Jahangirpuri Delhi</u> of friend <u>B/b Bharat (Mama) 997172.....</u> examination <u> </u>			
Date and hour of arrival <u>05/04/14 11: 15 am</u> No. and date of police docket <u>19A</u> No. and name of Constable <u>SI Ved Prakash, PS</u> <u>Jahangirpuri</u> { In Admitted <u> </u> <u> </u> <u> </u> Date of admission Date of Discharge Date and hour of report sent to police <u>Thumb Impression</u>		PARTICIULARS OF INJURIES OR SYMPTOMS, IN CASE OF POISONING <u>B/B Bharat (Mama) for Medical Examination</u> <u>A/H/O Physical assault</u> <u>O/E – Patient is in deep commatose unresponsive state</u> <u>LH (1) stab injury at left lower thigh laterality (2 cm x 1.5 cm)</u> <u>(2) C/w on pt. Thumb (1 cm x 0.5 cm)</u> <u>(3) C/w on bare Rt. Index Finger (1 x 9.5 cm)</u> <u>Chest – No respiratory effect</u> - <u>Breath sound absent</u> - <u>B/L __ entry absent</u> - <u>Pulse not palpable</u> - <u>EA not recordable</u> - <u>Heart sound absent</u> <u>CNS - B/L plantar mute, B/L DTR</u> <u>Pupil B/L dilated and fixed</u> <u>ECG – Straight line at 11.15 AM on 5/04/14.</u> <u>Hence on above mentioned finding and after thorough clinical examination,</u>	

	<i>pt. was declared brought dead. Dead body handed over to I/O for further _ to mortuary.</i>
<i>Space for particulars as to further reference to the case-date of giving evidence in the Court or despatch of articles said to contain poison</i>	<i>Name of injuries Sd/- Bharat 05/04/14</i>
<i>Identification Remarks</i> <i>1) <u>Tatoo mark on Rt.</u></i> <i>2) <u>Forearm (M.A.)</u></i>	<i>The kind of</i> <i>weapon</i> <i>used or poison</i> <i>suspected in</i> <i>case of</i> <i>_____</i> <i>(Simple, Grievous or Dangerous)</i>

Examining Medical Officer”

7. He also laid emphasis on the fact that the weapon of offence had not been recovered in the present case. He states that it is not clear as to what weapon was used in the offence. He points out that there are three different versions regarding the weapon of offence, namely:-

- i) As per Rakesh Kumar (PW-7), the weapon of offence was a Sua (Ice pick).
- ii) As per DD No. 19-A, the weapon of offence was a knife.
- iii) As per the post-mortem report prepared by Dr. Bhim Singh (PW-24), the weapon of offence was a screwdriver or a like object.

8. Learned counsel for the appellant-convicts Shiv Kumar @ Shibu and Rohit contends that the two alleged eyewitnesses of the present case, namely, Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) are interested witnesses since both of them are the relatives of the deceased i.e. maternal uncles and have a personal enmity with the appellant-convicts as the sister

of the deceased Mohan had married appellant-convict Rohit against the wishes of her family.

9. He states that the presence of Bharat Kumar (PW-16) at the scene of crime is highly doubtful since he was residing far away from the scene of crime and it is height of coincidence that he had witnessed the entire incident of murder by chance.

10. He further states that Rakesh Kumar (PW-7) is a planted witness, whose testimony does not inspire any confidence as his MLC belies his presence in the hospital at the time of admission of the deceased Mohan. He states that though as per the testimony of Rakesh Kumar (PW-7) he was being treated simultaneously with deceased Mohan at Babu Jagjivan Ram Memorial Hospital (hereinafter referred to as “BJRM Hospital”) as mentioned in MLC, yet Rakesh Kumar’s arrival time at the hospital is 12:35 p.m. in contradistinction to deceased Mohan’s arrival time of 11:15 a.m. He points out that Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) had not mentioned the name of the assailant to the doctor at the hospital. In support of his contention, he refers to the MLC (Ex.PW-3/A) of Rakesh Kumar (PW7), which is reproduced hereinbelow:-

“BABU JAGJIVAN RAM MEMORIAL HOSPITAL, DELHI-110033
MLC REGISTER

No. _____	Name <u>Rakesh</u> Father's /Husband Name <u>Gulab</u> <u>Chand</u> Age <u>32 yrs</u> Sex <u>M</u> Religion _____ Occupation _____ Residence <u>G-1670, Jahangirpuri Delhi</u> Name of _____ relative of friend <u>Self (9990476820)</u> Date of _____ examination _____		
Date and hour of arrival <u>5/4/14</u> <u>12 : 35 pm</u>		PARTCIULARS OF INJURIES OR SYMPTOMS, IN CASE OF POISONING	
No. and date of police docket _____			

<u>DDN-19A</u> No. and name of Constable <u>SI Ved Prakash, PS</u> <u>Jahangirpuri</u> In Admitted { Date of admission ____ Date of Discharge ____ <u>Thumb Impression</u> Date and hour of report sent to police _____	B/B <u>Self</u> A/H/O Physical assault H/H/O ____ seizures, vomiting, ____ O/E – Pt. Is ____ and ____ with T/P/P BP – 114/74 mmHg PR – 84/m RR – 16/m Temp. – afebrile L/E – Abrasion present over the lt. side of chest Adv. :- - Admt - Inj. TT (.ml) in stat. - Inj. Voveran /mp in stat - Inj Rantac /mp in stat - Tab. Voveran /BD - Tab. Ciplox /BD - Tab Rantac /BD
Space for particulars as to further reference to the case- date of giving evidence in the Court or despatch of articles said to contain poison Identification Remarks 1) <u>mole present at the Rt. side of</u> <u>neck</u> 2) _____	Name of injuries <u>Simple</u> The kind of weapon used or poison suspected in case of poisoning _____ (Simple, Grievous or Dangerous)

Examining Medical Officer”

11. He emphasises that the prosecution had neither recovered the weapon of offence nor made any public person a witness to the incident despite the fact that the incident had occurred on a busy road in broad daylight. Consequently, according to him, the credibility of the eyewitnesses in the present case is highly questionable, both due to their relationship with the deceased and due to the previous enmity with the appellant-convicts.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR APPELLANT-CONVICT SUNIL @ ANNU

12. Mr. S.S. Ahluwalia, learned counsel for appellant-convict Sunil @ Annu emphasises that there had been no seizure of bloodstained clothes from any of the appellant-convicts.

13. He contends that there are major discrepancies in the testimonies of Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) with regard to the incident of 04th April, 2014. Consequently, according to him, the allegation that a threat had been meted out by the appellant-convicts to the deceased Mohan on 04th April, 2014 (a night prior to the murder) is a make-believe story.

14. He also submits that the trial Court has laid undue emphasis on motive of the crime, namely, the alleged threat on 4th April, 2014. According to him, howsoever strong the motive be, it cannot form the basis of conviction of an accused. In support of his submission, he relies upon a Division Bench judgment of this Court in **Arun & Ors. vs. State, 209 (2014) DLT 515 (DB)** wherein it has been held as under:-

“34. In the absence of seizure of the employment record, the same could not be verified. Whatever record/computer generated salary sheets were produced, the same do not support the prosecution version. Similarly, as per the prosecution version, appellant Arun Kumar himself stopped coming to work whereas appellant Rani was still serving. Thus, there could not be a motive strong enough for appellants Arun Kumar and Rani to have entered into any conspiracy to commit the gruesome crime as alleged. Otherwise also, it is very well settled that motive, however, strong is not enough to base conviction of the accused. In Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124 while referring to N.J. Suraj v. State, (2004) 11 SCC 346, Santosh Kumar Singh v. State, (2010) 9 SCC 747

and Rukia Begum v. State of Karnataka, (2011) 4 SCC 779, the Supreme Court observed that motive alone can hardly be a ground for conviction....”

ARGUMENTS ON BEHALF OF LEARNED APP FOR STATE

15. *Per contra*, Mr. Rajat Katyal, learned APP for the State states that one of the PCR Forms mentions the mobile number of Bharat Kumar (PW-16) under the column of Informant’s Phone number. He states that the said PCR Form contemporaneously records that the appellant-convicts Rohit and Sunil @ Annu had fought with the deceased Mohan and had run away. He further states that though the second PCR Form records Informant Seema’s complaint saying, “*Bhai Jhagar Raha Hai*”, yet the same does not absolve the appellant-convicts in any manner.

16. Learned APP for the State points out that Rakesh Kumar (PW-7) in his testimony had clearly stated that he was treated simultaneously in the hospital at the time of admission of the deceased Mohan. He states that as the MLC of Rakesh Kumar (PW-7) records that he had suffered only a simple injury, his whole endeavour at the time of admission would have been to provide medical aid to deceased Mohan, who had suffered serious injuries.

17. He emphasises that the presence of Rakesh Kumar (PW-7) at the BJRM Hospital at the time of admission of the deceased Mohan has been confirmed by Constable Naresh Kumar (PW-15), ASI Brij Bhushan (PW-20), SI Ved Prakash (PW-21) and Inspector Jai Prakash (PW-22).

18. He emphasises that Rakesh Kumar (PW-7), who is an eyewitness, had consistently maintained that the weapon of offence was a Sua/Ice Pick. He contends that his testimony had been corroborated by the post-

mortem report and testimony of Dr. Bhim Singh, the doctor who conducted the post-mortem inasmuch as he had pointed out that the injuries on the deceased Mohan could have been caused by “*a pointed weapon like screw driver or like weapon*”.

19. Learned APP states that the appellant-convicts argument that the presence of Bharat Kumar (PW-16) at the scene of crime was highly doubtful as he was residing far away, is wrong and contrary to the record. He states that Bharat Kumar (PW-16) admittedly resides at G-1670, Jahangir Puri and the place of murder was nearby. He points out that Inspector Jai Prakash (PW-22) had deposed that the place of murder was at 1600 wali Gali in between House No.1647 and 1704/1705. He points out that Bharat Kumar (PW-16) had not deposed that he had seen the complete incident of murder. He emphasises that Bharat Kumar (PW-16) had described the events subsequent to the stabbing of the deceased Mohan.

20. He contends that the production of Jeans of deceased Mohan by Bharat Kumar (PW-16) before the police officials which had been found to have stains of ‘A’ Blood Group fortifies his presence at the hospital. He points out that the shirt of the deceased Mohan which had been handed over by the post-mortem Doctor to the police officials was also found by FSL to have ‘A’ Blood Group stains.

21. He contends that Bharat Kumar (PW-16) in his PCR call had mentioned the use of knife mistakenly as he was not an eyewitness and did not know about the exact weapon of offence. He refers to the testimony of Bharat Kumar (PW-16) wherein he had explained as to why he had initially mistakenly mentioned the use of knife as the weapon of

offence.

22. Learned APP for the State states that efforts were made by the Investigating Officer to examine independent witnesses, but none came forward. In support of his contention, he relies upon the testimony of the Investigating Officer Inspector Jai Prakash (PW-22) wherein he had deposed as under:-

“.....I made efforts for recording the statement of public persons who found gathered at both the spots, but no such public witness agreed to make statement to me.

The second spot was at 1600 Wali Gali in between H.No.1647 and 1704/1705. I had not recorded the statement of any person from the said houses. Voltd. I made efforts for recording their statements, I had also enquired their names and mentioned their names in the Inner Case Diary....”

23. Learned APP emphasises that both Bharat Kumar (PW-16) and Rakesh Kumar (PW-7) have stood the test of cross-examination and nothing had come in their testimonies which discredits them. He contends that there are no contradictions or exaggerations in their statements and they have given complete details of the incident of murder and events subsequent thereto.

24. Mr. Katyal states that it is an admitted case that the deceased had died an unnatural death and it is not the case of the appellant-convicts that the deceased Mohan had been stabbed later at any point of time by someone else. He further states that as the MLC of the deceased Mohan shows that he was declared brought dead, the Doctor who conducted the MLC might not have fully examined the deceased and might have mentioned the apparent injuries only in the MLC. He points out that the appellant-convicts had failed to cross-examine Dr. Avnish Tripathi

(PW-3), who had proved the MLC of the deceased Mohan, on this aspect.

25. Learned APP points out that with regard to recovery of broken pieces of bangles, the Investigating Officer, Inspector Jai Prakash (PW-22) had deposed as under:-

“During investigation, it was revealed to me that the broken bangle pieces, which were seized from the second spot, belonging to some lady who tried to intervene and separate the victim from the offenders. During investigation, I could not meet the said lady and accordingly, her statement could not be recorded.

It is correct that the complainant had not disclosed about any lady who had intervened in the occurrence. It is correct that I had not made any enquiry from Rakesh as well as from Bharat, about the said lady.....”

26. Learned APP further states that as in the present case two appellant-convicts had surrendered and were arrested on 11th April, 2014 and the third appellant-convict had been arrested on 09th May, 2014, neither the weapon of offence could be recovered nor the clothes worn by the appellant-convicts at the time of murder, could be recovered. He, however, submits that non-recovery of weapon of offence and clothes worn by the appellant-convicts does not give any benefit to appellant-convicts.

27. Mr. Rajat Katyal, learned APP lastly submits that the Apex Court has recently on similar facts in ***Ganapathi & Anr. Vs. State of Tamil Nadu, (2018) 5 SCC 549*** held as under:-

“11. Having given our thoughtful consideration to the submissions made by the respective learned counsel, we have perused the material on record in the light of facts and circumstances of the case. There is no denial of the fact that the marriage between the deceased Murugan and accused—

Muthulakshmi did not take place in a cordial atmosphere and there were strained relations between the couple and their families as well. About a month after her marriage, Accused No. 4 came out of her matrimonial home and due to that fact, the other accused persons (brothers of A-4) developed grudge against Murugan and his sister—Poomari, who was alleged to be the root cause of disturbances between the couple. Thus, the motive to commit the crime on the part of accused is quite clear inasmuch as on the previous day of occurrence also, the parties met at the police station and the accused had a heated discussion with the victims and laid a challenge to finish both Murugan and his sister Poomari.

12. The evidence of ocular witnesses, PWs 1 and 2, father and brother of the deceased, clearly exhibits the way in which the accused took away the life of deceased Murugan. Their evidence narrates the guilt of the accused beyond reasonable doubt and corroborates with that of the medical evidence. Dr. Danraj (PW12) who conducted the postmortem on the body of deceased Murugan, had pointed out as many as 10 cut injuries out of which injury Nos. 1, 2, 5, 6, 7, 8, 9 and 10 are fatal which were possible by sickle and capable of causing death whereas injury Nos. 7 and 9 were possible by knife. It appears that there were two independent witnesses (PWs 5 and 6) projected by the prosecution, but they have turned hostile. In several cases, only the family members are present at the time of incident, then the case of the prosecution will be based only on their evidence. When their evidence is the only evidence available, Courts should be cautious and meticulously evaluate the evidence in the process of trial and we are not able to appreciate the contention on behalf of the accused that the non-examination of independent witnesses and conviction based on the evidence of family members is fatal to the case of the prosecution.

13. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some

benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested' [See: State of Rajasthan v. Smt. Kalki, (1981) 2 SCC 752].

14. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made [See: Maranadu v. State by Inspector of Police, Tamil Nadu, (2008) 16 SCC 529].”

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR VICTIM-COMPLAINANT

28. Mr. Kuber Giri, learned counsel for the victim-complainant states that no suggestion in respect of remains of the bangles had been put to Rakesh Kumar (PW-7) and Bharat Kumar (PW-16). He also draws this Court's attention to the deposition of Inspector Jai Prakash, IO (PW-22) wherein he had stated as under:-

“....I have already deposed above that during investigation it was revealed to me that the said pieces of bangle fell at the second place when one lady tried to intervene. During investigation, no evidence has surfaced to the effect that except the aforesaid fact, there was any other angle regarding the fall of the bangle pieces at the spot....”

29. He further states that the appellant-convicts' contention that there are different versions with regard to weapon of offence is blatantly false.

He states that Rakesh Kumar (PW-7) had stated that the weapon of offence was “Sua” seven times in his testimony. He submits that non-description of the weapon of offence or non-recovery of the murder weapon is not fatal to the case of the prosecution. In support of his submission, he relies upon the following judgments :-

A) ***Sanjeev Kumar Gupta Vs. State of Uttar Pradesh, (2015) 11 SCC 69*** wherein it has been held as under:-

“22. The learned counsel appearing for appellant Saurabh took the following defences: that the common object was missing in respect of the present appellant; there was contradiction in the version stated by PW 1 in the FIR and in his deposition in the court; the credibility of PW 1 as an eyewitness is weakened by the medical version. Further there was no test identification parade conducted which was imperative as there were some members who were stated to be outsiders. PW 1 and PW 3 are not consistent in their depositions. In addition to the above, the evidence of the alleged crime does not connect with the appellant-accused as no weapon of offence was recovered by the police and the blood on the shirt of the deceased could not be ascertained.

xxxx xxxx xxxx xxxx

31. We do note that the investigation suffers from certain flaws such as non-recovery of the weapon used by the appellant-accused and recovery of the bloodstained shirt after six days of the date of the incident. However, merely on the basis of these circumstances the entire case of the prosecution cannot be brushed aside when it has been proved by medical evidence corroborated by testimonies of the prosecution witnesses that the deceased died a homicidal death. This Court has held in Manjit Singh v. State of Punjab [Manjit Singh v. State of Punjab, (2013) 12 SCC 746: (2014) 4 SCC (Cri) 531] , that when there is ample unimpeachable ocular evidence and the same has received corroboration from medical evidence, non-recovery of bloodstained clothes or even the murder weapon does not

affect the prosecution case.”

B) **Anwarul Haq Vs. State of U.P., (2005) 10 SCC 581** wherein it has been held as under:-

“15. Eyewitnesses in the present case have described the knife, and merely because the knife has not been recovered during investigation same cannot be a factor to discard the evidence of PWs 1 and 2. Wounds noticed by the doctor (PW 3) also throw considerable light on this aspect. The doctor's opinion about the weapon, though theoretical, cannot be totally wiped out. In that view of the matter the appellant has been rightly convicted under Section 324 IPC.”

30. Mr. Kuber Giri, learned counsel for the victim-complainant lastly states that antecedents of appellant-convicts Sunil @ Annu and Rohit are not clean as both of them have already been convicted in FIR No. 643/2008 registered with Police Station Jahangir Puri under Sections 323/325/34 IPC.

31. At this stage, learned APP for State has handed over two charts indicating the involvement of appellant-convicts Sunil @ Annu and Rohit in different criminal cases. The said charts are reproduced hereinbelow:-

A) **Appellant- Convict Sunil @ Annu**

Sl. No.	FIR No. and Date	Under Section(s)	Police Station	Judgement
1.	585/2007 dt. 31/08/2007	160 IPC	Jahangir Puri.	Fine Rs. 100/- on 22/09/2007.
2.	318/2008 dt.21/06/2008	380 IPC	Jahangir Puri	-
3.	31/2009 dt.18/01/2009	324/323/ 34 IPC	Jahangir Puri	Compounded on 05/02/2013
4.	643/2008 dt.17/12/2008	323/325/ 34 IPC	Jahangir Puri	Convicted on 10/07/2017

5.	269/2014 dt. 05/04/2014	302/307/ 341/34 IPC	Jahangir Puri	Convicted & sentenced to life imprisonment on 27/03/2019.
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B) Appellant-convict Rohit

Sl. No.	FIR No. and Date	Under Sections	Police Station	Judgement
1.	FIR 643/2008 dated 17/12/2008	323/325/ 34 IPC	Jahangir Puri.	Convicted on 10 th July, 2017
2.	FIR 269/2014 dated 05/04/2014	302/307 /341/34 IPC	Jahangir Puri	Convicted and sentenced to life imprisonment on 27 th March, 2019

COURT'S REASONING

IT IS PROVED BEYOND DOUBT THAT THE APPELLANT-CONVICTS ROHIT AND SUNIL @ ANNU HAD EXTENDED A THREAT TO KILL THE DECEASED MOHAN, A NIGHT PRIOR TO THE INCIDENT OF MURDER, I.E., 04th APRIL, 2014. THE THREAT EXTENDED TO THE DECEASED MOHAN ON 04th APRIL, 2014 IS RELEVANT AS IT ESTABLISHES A MOTIVE FOR THE CRIME. THOUGH MOTIVE IS NOT A SINE QUA NON FOR THE CONVICTION OF AN ACCUSED, YET IT IS A RELEVANT FACTOR.

32. Having heard learned counsel for the parties and having perused the paper book, this court is of the view that it is proved beyond doubt that the appellant-convicts Rohit and Sunil @ Annu had extended a threat to kill the deceased Mohan, a night prior to the incident of murder, i.e., 04th April, 2014.

33. D.D. Entry No.38-A recording the said fact has been proved by HC Dev Dutt (PW-8). Sub-Inspector Lekh Raj (PW-13) has deposed under oath that in pursuance to the said D.D. Entry No.38-A, he had met the deceased Mohan as well as appellant-convicts Rohit and Sunil on 04th April, 2014. The English translations of D.D. Entry No.38-A as well as the testimonies of HC Dev Dutt (PW-8) and SI Lekh Raj (PW-13) are reproduced hereinbelow:-

A) English translation of DD Entry No. 38A

“DD NO. 38 A dated 04.04.14, P.S. Jahangir Puri

*Information received from
PCR Call from intercom and
Handing over(?)*

*To
The DO*

Time 10.55 PM. At this time the operator of the aforesaid Police station informed through intercom that W/Ct. Ruchi, No. 8281/PCR has informed through phone No. 9268179977 that a quarrel was in progress at G-1686, Dhobi Ghat, Jahangir Puri. The information so received through telecom was entered into the Rojnamacha. SI Lekhraj was informed through telephone for initiating proper action in the said regard.

Scribed by: HC/DO.

Note: It is a true copy of the original.

DO/HC Dev Dutt

No. 40/NW

Attested by:

Sd/-Illegible

H.C. (-sic-) Ram

No. 645/NW

PS Jahangir Puri,

Delhi”

(emphasis supplied)

B) Statement of HC Dev Dutt (PW-8)

“On 04.04.2014 I was posted at PS Jahangirpuri as duty officer/DD writer and on that day at about 10.55 p.m. on receipt of information on wireless about quarrel at G-1686, Jahangirpuri, Dhobi Ghat, I recorded DD No.38A dated 04.04.2014 and the same was sent to ASI Lekhraj for further necessary action. I have brought the original DD register containing the aforesaid entry which is in my handwriting (OSR). The attested copy of the same is Ex.PW8/A.”

(emphasis supplied)

C) Statement of SI Lekh Raj (PW-13)

“On 04.04.2014, I was posted at PS Jahangir Puri as ASI. On that day, on receipt of DD No.38A, I alongwith Ct. reached at G-1686, Jahangir Puri, Delhi where I met caller Mohan S/o Kanhaiya Lal, who informed me that he had a quarrel with Sunil @ Annu S/o Basant Lal and Rohit S/o Basant Lal regarding spitting.

Thereafter, on the intervention of neighbours and relatives they had settled the matter. Mohan further informed me that he did not want any legal action. Thereafter, I came back to PS and lodged my arrival entry vide DD no.19B dated 05.04.2014 and on 07.07.2014 my statement was recorded by the IO in this regard.”

(emphasis supplied)

34. The fact that there was a quarrel on 04th April, 2014 between deceased Mohan and appellant-convict Rohit as well as appellant-convict Sunil @ Annu is corroborated by the testimonies of Kanhaiya Lal (PW-2) – father of the deceased Mohan, Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) – the two maternal uncles of the deceased Mohan. The relevant portion of the testimony of Bharat Kumar (PW-16) is reproduced hereinbelow:-

“....On 04.04.2014 at about 10:30-10:35 pm when I reached my house, at that time Annu and Rohit both the accused present in the court today (correctly identified by the witness) came there and started abusing my Bhanja Mohan. I asked both of them why they were abusing to Mohan, on this they have replied that after seeing to us, Mohan spat towards them. After my intervention, both of them continued to abuse Mohan while saying “Mata rani ki kasam, kal ka suraj Mohan to dekhne nai denge”. After the intervention by the public persons to make understand both the accused even then both of them again repeated “Mata rani ki ksam, Kal ka suraj Mohan to dekhne nai denge”. At that time, my Bhanja Mohan made a call at 100 number. PCR officials reached at the spot. Police officials told both the accused if they had any grievance, they would visit the police station in the morning even then both of them again repeated “Mata rani ki ksam, Kal ka suraj Mohan to dekhne nai denge” in the presence of PCR officials. PCR officials left from the spot. Both the accused also went to their house and we also went to their house.”

(emphasis supplied)

35. The threat extended to the deceased Mohan on 04th April, 2014 is relevant as it establishes a motive for the crime. Though motive is not a sine qua non for the conviction of an accused, yet it is a relevant factor. The Courts have repeatedly held that absence of a motive puts the Court on guard to scrutinize the situation more carefully. The Supreme Court in *Pankaj Vs. State of Rajasthan, (2016) 16 SCC 192* has held that “though motive is not sine qua non for the conviction of the appellant-accused, the effect of not proving motive raises a suspicion in the mind.”

THE INCIDENT OF MURDER HAS BEEN VIVIDLY DESCRIBED BY THE INJURED EYE-WITNESS RAKESH KUMAR (PW-7) WHO IS A NATURAL WITNESS. INJURIES ON RAKESH KUMAR (PW-7) CONFIRMS HIS PRESENCE AT THE TIME OF MURDER AND HIS PRESENCE AT THE HOSPITAL (AROUND 11:15 A.M.), IS CONFIRMED BY THE TESTIMONY OF CONSTABLE NARESH KUMAR (PW-15). IT IS SETTLED LAW THAT THE TESTIMONY OF AN INJURED WITNESS HAS TO BE ACCORDED A SPECIAL STATUS.

36. In the present case, the incident of murder of the deceased Mohan on 05th April, 2014 has been vividly described by the injured eye-witness Rakesh Kumar (PW-7). This Court is of the view that Rakesh Kumar (PW-7) is a natural witness as both the deceased Mohan and Rakesh Kumar (PW-7) used to work together and it was normal for them to go together to their place of business. It is pertinent to mention that the deceased Mohan was driving the motorcycle of the brother of Rakesh Kumar (PW-7) at the time of the incident. The relevant portion of Rakesh Kumar's (PW-7) testimony is reproduced hereinbelow:-

“On 05.04.2014 the Saturday, I alongwith deceased Mohan (my Bhanja) at about 10:30 am were going to Janpath, New Delhi in connection with our work as we used to sell clothes on Patri there. We were going on the motorcycle No.DL-4S-BP-3669. The said motorcycle was driven by deceased Mohan. When we reached near Kushal Cinema, Dhobi Ghat, Jahangirpuri, in front of G-1670, accused Annu, present in the court today (correctly identified by the witness) gave a call (Oye Karke awaz mari). Accused Shibu present in the court today (correctly identified by the witness) was accompanying accused Annu. Accused Shibu came in front of the motorcycle and accused Annu caught hold the handle of the motorcycle. Accused Annu had taken out one sua meant for pricking ice from the side of his pant (pocket) and gave blows to Mohan. I got down from the motorcycle. Mohan after

leaving the motorcycle fled. Accused persons Annu und Shibu chased Mohan. Mohan was running towards Gali No.1600, where I was living in H.No.1670 and Mohan was living in H.No.1686. I also went towards Gali No.1600. Accused Rohit present in the court today (correctly identified by the witness) came from the lane of Gali No.1600 and caught hold Mohan. All the three accused persons had caught hold Mohan and accused Annu gave several Sua Blows to Annu including on his leg, on the side of his chest....”

xxxx xxxx xxxx xxxx

....My brother Bharat reached at the spot. All the three persons Sunil @ Annu, Rohit and Shiv Kumar @ Sibufled away from the spot and the family members (four ladies) were beating Mohan. Deceased Mohan was shifted to hospital in a battery rickshaw accompanied by my brother Bharat and I also followed them to the hospital on my motorcycle.”

(emphasis supplied)

37. This Court is of the opinion that injuries on the body of Rakesh Kumar (PW-7) confirms his presence at the time of murder and his blood-stained clothes also corroborate his presence not only at the place of murder, but also in the hospital.

38. In fact, the presence of Rakesh Kumar (PW-7) at BJRM Hospital at the time the deceased arrived at the hospital (around 11:15 a.m.), is confirmed by the testimony of Constable Naresh Kumar (PW-15), wherein he has deposed as under:-

“I left from the police station at 11:20 a.m for BJRM Hospital and reached there within 5 minutes. When I reach the hospital, only Rakesh was there. It is wrong to suggest that when I reached the hospital, Rakesh was not present there and came there much later....”

(emphasis supplied)

39. It is settled law that the testimony of an injured witness has to be accorded a special status. The Supreme Court has repeatedly held that injury to a witness is an inbuilt guarantee of his presence at the scene of crime and no witness wants his actual assailant to go unpunished merely to falsely implicate a third party. The Supreme Court in **Abdul Sayeed v. State of Madhya Pradesh, (2010) 10 SCC 259** has held as under:-

“Injured witness

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide Ramlagan Singh v. State of Bihar [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , Malkhan Singh v. State of U.P. [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , Machhi Singh v. State of Punjab [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , Bonkya v. State of Maharashtra [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , Bhag Singh [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , Mohar v. State of U.P. [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), Dinesh Kumar v. State of Rajasthan [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , Vishnu v. State of Rajasthan [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , Annareddy Sambasiva Reddy v. State of A.P. [(2009) 12 SCC 546: (2010) 1 SCC (Cri) 630] and Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211].

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status

accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong

grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

31. Ashfaq (PW 2) had given a graphic description of the entire incident. His presence on the spot cannot be doubted as he was injured in the incident. His deposition must be given due weightage. His deposition also stood fully corroborated by the evidence of Anees (PW 1) and Usman Ali (PW 4). The depositions so made cannot be brushed aside merely because there have been some trivial contradictions or omissions.”

(emphasis supplied)

THOUGH NOT AN EYE-WITNESS TO THE MURDER, YET BHARAT KUMAR (PW-16) HAS DEPOSED CONSISTENTLY WITH REGARD TO THE EVENTS SUBSEQUENT TO THE STABBING OF THE DECEASED MOHAN. HE HAS ALSO EXPLAINED IN HIS TESTIMONY AS TO WHY IN THE FIRST INSTANCE HE HAD MISTAKENLY MENTIONED THE USE OF KNIFE AS THE WEAPON OF OFFENCE. HIS PRESENCE AT THE SCENE OF CRIME IS CONFIRMED BY THE PCR CALL AND THE MLC OF THE DECEASED MOHAN.

40. Though not an eye-witness to the murder, yet Bharat Kumar (PW-16) has deposed consistently with regard to the events subsequent to the stabbing of the deceased Mohan. The relevant portion of the testimony of Bharat Kumar (PW-16) is reproduced hereinbelow:-

“....On 05.04.2014 at about 10:30-10:35 am in the morning, my Bhanja Mohan and my younger brother Rakesh left the house for their work. At that time, I was at my house. I also came out from my house to visit the temple. When I reached in front of H.No.G-1647, I saw my bhanja was lying there in a pool of blood and my brother Rakesh was standing there. When I reached there, accused persons Sunil @ Annu, Rohit and Shiv Kumar @ Shibu left from there while giving the abuses. Accused Shiv Kumar @ Shibu is also present in the court today (correctly identified by the witness).

I immediately took my bhanja Mohan to BJRM Hospital in a battery rickshaw while my brother Rakesh followed us in a motorcycle....”

(emphasis supplied)

41. Further, Bharat Kumar (PW-16) has explained in his testimony as to why he had in the first instance mistakenly mentioned the use of knife as the weapon of offence. The relevant portion of testimony of Bharat Kumar (PW-16) is reproduced hereinbelow:-

“I informed the police that accused Annu and Rohit had stabbed my stabbed my bhanja and my brother Rakesh with knife. However, later I came to know from my brother Rakesh that they had been stabbed with ice pick (Sua).”

(emphasis supplied)

42. Bharat Kumar's (PW-16) presence at the scene of crime immediately after the incident of stabbing is confirmed not only by the fact that he had made a PCR call, but also by the MLC of the deceased Mohan which records the presence of Bharat Kumar (PW-16) as “brought by”. Further, from the record, it is apparent that the jeans of the deceased Mohan had been handed over by Bharat Kumar (PW-16) to the police officials and the said jeans were found to have the same blood group as on the shirt of the deceased. The English translation of the memo showing taking over possession of pants of the deceased Mohan by the police from Bharat Kumar (PW-16) is reproduced hereinbelow:-

*“CASE FIR NO. 269/14 DATED 05.04.14 UNDER SECTIONS
302/307/341/34 IPC, P.S. JAHANGIR PURI, DELHI*

**MEMO REGARDING TAKING PANTS OF (MOHAN)
INTO POSSESSION**

In the presence of the witnesses mentioned hereinafter,

Bharat S/o Late Sh. Gulab (-sic-) R/o. G-1670, Jahangirpuri, Delhi produced a dark blue colored Jeans Pants bearing a tag of 'B-6 Basix' to me, the Inspector, and told that he had removed the pants of Mohan, the aforesaid, during his medical treatment in the presence of the doctor at BJRM Hospital. The aforesaid pants of Mohan is stained with blood and there is a cut near the pocket of pants towards left foot and there is a hole (hole/cut) in between the stains of blood. The aforesaid pants were taken into Police possession as a piece of evidence by means of this memo and the same was converted into a parcel with the help of a white cloth piece and sealed with the seal of 'JP'.

The seizure memo has been prepared.

Sd/- (Bharat Kumar)
(In Hindi)

Sd/- Illegible
SI Ved Prakash
No. 4462/D
P.S. Jahangir Puri, Delhi

Sd/- Bhushan
(In English)
No. 262/NW
P.S. Jahangir Puri,
Delhi

Attested by:

Sd/- Illegible
05.04.14

Insp. J.P. Meena
P.S. Jahangir Puri Delhi”

(emphasis supplied)

JUST BECAUSE RAKESH KUMAR (PW-7) AND BHARAT KUMAR (PW-16) ARE MATERNAL UNCLES OF DECEASED MOHAN, THEIR TESTIMONIES CANNOT BE REJECTED. THE APEX COURT HAS MADE A DISTINCTION BETWEEN AN 'INTERESTED WITNESS' AND A 'RELATED WITNESS'. FURTHER, NON-EXAMINATION OF

INDEPENDENT/PUBLIC WITNESSES IS NOT ITSELF A GROUND TO DISCARD THE PROSECUTION CASE. THE TESTIMONIES OF RAKESH KUMAR (PW-7) AND BHARAT KUMAR (PW-16) ARE CLEAR, COGENT, CONSISTENT, CREDIBLE AND TRUSTWORTHY.

43. This Court is further of the opinion that just because Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) are maternal uncles of deceased Mohan, their testimonies cannot be rejected. The Supreme Court has repeatedly held that relationship is not a factor which affects the credibility of a witness. The Apex Court has made a distinction between an 'interested witness' and a 'related witness'. The Supreme Court in **Waman and Others v. State of Maharashtra, (2011) 7 SCC 295** has held as under:-

“Evidence of relatives of the complainant/deceased

“14. In view of the stand of the counsel for the appellants that since PWs 1-4, eyewitnesses are closely related to the deceased and the complainant, conviction cannot be based on such evidence, let us state the law on the admissibility/acceptability or otherwise of their evidence as considered by this Court.

15. In Sarwan Singh v. State of Punjab [(1976) 4 SCC 369 : 1976 SCC (Cri) 646] , a three-Judge Bench of this Court, while considering the evidence of an interested witness held that: (SCC p. 376, para 10)

“10. ... it is not the law that the evidence of an interested witness should be equated with that of a tainted [witness] or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of the interested [witness has] a ring of truth such evidence could be relied upon even without corroboration.”

16. The fact of being a relative cannot by itself discredit the evidence. In the said case, the witness relied on by the prosecution was the brother of the wife of the deceased and was living with the deceased for quite a few years. This Court held that: (Sarwan Singh case[(1976) 4 SCC 369 : 1976 SCC (Cri) 646] , SCC p. 379, para 16)

“16. ... But that by itself is not a ground to discredit the testimony of this witness, if it is otherwise found to be consistent and true.”

17. In Balraje v. State of Maharashtra [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] this Court held that the mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence. It was further held that when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically and the court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. After saying so, this Court held that: (SCC p. 679, para 30)

“30. ... if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.”

18. The same principles have been reiterated in Prahalad Patel v. State of M.P. [(2011) 4 SCC 262 : (2011) 2 SCC (Cri) 205] In para 15, this Court held that: (SCC p. 265)

“15. ... Though PWs 2 and 7 are brothers of the deceased, relationship is not a factor to affect credibility of a witness. In a series of decisions this Court has accepted the above principle (vide Israr v. State of U.P. [(2005) 9 SCC 616 : 2005 SCC (Cri) 1260] and S. Sudershan Reddy v. State of A.P. [(2006) 10 SCC 163 : (2006) 3 SCC (Cri) 503]).”

19. The above principles have been once again reiterated in *State of U.P. v. Naresh* [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] . Here again, this Court has emphasised that relationship cannot be a factor to affect the credibility of a witness. The following statement of law on this point is relevant: (SCC p. 334, para 29)

“29. ... The evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence. The plea relating to relatives' evidence remains without any substance in case the evidence has credence and it can be relied upon. In such a case the defence has to lay foundation if plea of false implication is made and the court has to analyse the evidence of related witnesses carefully to find out whether it is cogent and credible. (Vide *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] and *Balraje* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .)”

20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

(emphasis supplied)

44. Consequently, Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) are neither interested nor planted witnesses.

45. Further, non-examination of independent/public witnesses is not itself a ground to discard the prosecution case. The Supreme Court in ***Satbir Singh & Ors. v. State of Uttar Pradesh*, (2009) 13 SCC 790** has held as under:-

“26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon.”

(emphasis supplied)

46. Consequently, this Court is of the view that the testimonies of Rakesh Kumar (PW-7) and Bharat Kumar (PW-16) are clear, cogent, consistent, credible and trustworthy.

FURTHER AS THE INJURIES ON THE DECEASED MOHAN WERE SUFFICIENT TO CAUSE DEATH IN THE ORDINARY COURSE OF NATURE, THIS COURT IS OF THE VIEW THAT THE APPELLANT-CONVICTS HAD CLEAR INTENT TO KILL. MEDICAL EVIDENCE IN THE PRESENT CASE CORROBORATES THE TESTIMONIES OF RAKESH KUMAR (PW-7) AND BHARAT KUMAR (PW-16).

47. The medical evidence in the present case corroborates the testimonies of Rakesh Kumar (PW-7) and Bharat Kumar (PW-16). Dr. Bhim Singh (PW-24), Medical Officer, BJRM Hospital, who conducted the post mortem of the deceased Mohan, has stated in his Examination-in-Chief as under:-

“On 06.04.2014, I was working as Incharge Mortuary, MD Forensic Medicine/Jr. Specialist, BJRM Hospital. On that day, I had conducted post-mortem on the body of Mohan S/o Sh. Kanhaiya Lal with the alleged history of brought dead on 05.04.2014 at 11:15 am. After conducting post-mortem, I had prepared PM report no.281/14 which is in my handwriting and is now exhibited as Ex.PW24/A which bears my signatures at point A.

I had opined the cause of death of Mohan to be due to hemmorrhagic shock consequent upon stab injury to left lung

and heart. All the injuries were ante mortem and fresh. I had also opined that injury no.1 to 5 could be caused by pointed weapon like screwdriver or like weapon. I had also opined injury no.6 could be caused by blunt force impact. I had also opined that injury no.1 was sufficient to cause death in ordinary course of nature....”

(emphasis supplied)

48. The relevant portion of the post mortem report of the deceased Mohan is reproduced hereinbelow:-

*“BABU JAGJIVAN RAM MEMORIAL HOSPITAL, GOVT. OF
NCT OF DELHI, Jahangir Puri, Delhi-33*

No.281/14 Date 06.04.14 Time 10:30 AM conducted by Dr. Bhim Singh Chief Medical Officer BJRM Hospital, Delhi

Body of Mohan Age 22 yrs./M S/o Kanhiya Lal

Body Sent by Insp. J.P. Meena P.S. Jahangir Puri, Delhi

Body is identified By Relative of the Deceased/Accompanying Police Officer

BRIEF HISTORY (As per inquest Papers) *Alleged h/o Assault, declared brought dead on 05.04.14 at 11.15 AM*

General Description

Clothes Worn & Their Condition- *Blood stained shirt having tears left side front area, Banian, torn at places, underwear.*

Built of the Body & Weight: *Average built, adult male*

Rigor Mortis: *Present in both upper and lower limbs*

Post Mortem Staining: *Present over back*

Eyes: *open, Conjunctivae: NAD Cornea: NAD*

Mouth: *Open, Tongue: NAD, Nails: NAD*

Any Discharge From Natural Orifices: NIL

EXTERNAL INJURIES:

- 1. Punctured stab wound, 0.3 cm x 0.3 cm x cavity deep left side of chest, 3 cm lateral (outer) to left nipple, margins abraded of confused.*

2. Punctured stab wound, 0.3 cm x 0.3 cm x 2 cm front of left thigh middle part.
3. Punctured stab wound, 0.3 cm x 0.3 cm x 4 cm front of left thigh, 6 cm below injury no.2.
4. Punctured stab wound, 0.3 cm x 0.3 cm x 3.5 cm outer aspect of left thigh, 7 cm outer to injury no.3.
5. Lacerated wound, 1.5 cm x 1 cm x 1 cm, inner side of right thumb base.
6. Confusion redish in colour, 4 cm x 3 cm over right side of forehead.

INTERNAL EXAMINATION

1. **HEAD**

a) Scalp Tissues b) Skull Bones c) Brain Matter Meninges & Cerebral Vessels: Pale d) Base of Skull		NAD
---	--	-----
2. **Neck: Soft Tissues**

a) Hyoid Bone b) Thyroid Cartilage c) Cricoid Cartilage d) Tracheal Rings e) Tracheal Mucosa f) Any Foreign Body in Trachea/its Divisions		Intact -NAD
--	--	-------------
3. **CHEST**
 - a) Bony Cage/Ribs
 - b) Pleural Cavities
 - c) Lungs
 - d) Heart

Shows through & through (Hole) in left – 4th intercostals space, enters into pleura, base of upper lobe, pericardium to left side base of ascending aorta, Pleural cavity and pericardial cavity full of blood about 02.5 litres.

4. ABDOMEN & PELVIS

- A) Liver & Gallbladder

- b) Spleen
- c) Kidneys
- d) Pancreas
- e) Stomach : Contents- full of semi-digested food.
Mucosa - NAD
Abnormal Smell - NAD
- f) Bowels- Small
-Large
- g) Urinary Bladder- 1/2
- h) Rectum – 1/2
- i) Genital organs – NAD
- j) Uterus
- 5. SPINAL COLUMN -- NAD

OPINION:- Death was due to Haemorrhage shock, consequent upon stab injury to left lung and heart. All the injuries were ante mortem and fresh and injury no.01 to 04, could be caused by pointed weapon, like screwdriver or like weapon. Injury no.6 could be caused by blunt force impact. Injury no.2 is sufficient to cause death in ordinary cause of nature.
Time since Death about – 24 hrs.
Total Inquest Papers – 10 Ten.

ARTICLES/SPECIMEN PRESERVED & HANDED OVER TO POLICE

- a) Clothes sealed
- b) Blood i.e. Gauge piece
- c) Scalp Hair
- d) Any other Specify

Sd/-
Dr. Bhim Singh
M.D. (Forensic Medicine)
Jr. Specialist, B.J.R.M. Hospital
Govt. of NCT Delhi
Signature
Chief Medical Officer”
(emphasis supplied)

49. Consequently, all the above factors go to establish that there was intent on the part of appellant-convicts to kill the deceased Mohan.

RAKESH KUMAR (PW-7) IN HIS TESTIMONY HAD DEPOSED WITH REGARD TO THE STAB INJURY ON THE CHEST. FURTHER, IT IS SETTLED LAW THAT NON-MENTIONING OF THE NAME OF THE ASSAILANT TO THE DOCTOR IS NOT FATAL TO CASE OF THE PROSECUTION.

50. The argument of the appellant-convicts that the theory of stab injury on the chest had been introduced for the first time by the post mortem report is contrary to facts. Rakesh Kumar (PW-7) in his testimony had deposed with regard to the stab injury on the chest as under:-

“.....Accused Annu present in the court today had given forceful blows of Sua meant for breaking ice on my bhanja Mohan and had given several blows to him and other accused Rohit and Shiv Kumar, all present in the court today, had caught hold Mohan and one of the blow was given on the chest near heart....”

(emphasis supplied)

51. In fact, Rakesh Kumar (PW-7) and Dr. Avnish Tripathi (PW-3) have neither been cross examined, nor confronted on this point.

52. Further, it is settled law that non-mentioning of the name of the assailant to the doctor when the body of the deceased was taken to the hospital, is not fatal to case of the prosecution. The Supreme Court in ***Pattipati Venkaiah Vs. State of Andhra Pradesh, (1985) 4 SCC 80*** has held as under:-

“17. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eyewitnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only

stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible.”

(emphasis supplied)

53. This Court is also of the opinion that no prejudice has been caused to the appellant-convicts as a consequence of any alleged discrepancy between the MLC and the post mortem report of the deceased Mohan.

SECTION 34 IPC IS ATTRACTED TO THE PRESENT CASE

54. Despite appellant-convict Sunil @ Annu giving repeated ‘Sua blows’ to the deceased Mohan, which were sufficient in ordinary course of nature to cause death, neither appellant-convict Rohit nor appellant-convict Shiv Kumar @ Shibu tried to protect the deceased Mohan. On the contrary, they caught hold of the deceased Mohan and ensured that he did not manage to escape. The Supreme Court in **Suresh and Another Vs. State of U.P., (2001) 3 SCC 673** has held as under:-

“24. Looking at the first postulate pointed out above, the accused who is to be fastened with liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done

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

55. Consequently, Section 34 IPC is attracted to the present case.

EVEN IF IT IS ASSUMED THAT THE INVESTIGATION HAS BEEN FAULTY, THE BENEFIT OF THE SAME CANNOT BE GIVEN TO THE ACCUSED.

56. Further, non recovery of the weapon of offence and clothes worn by the appellant-convicts as well as non-investigation of the second PCR caller or the broken bangles at the scene of crime are not fatal to the prosecution case as the present case is based on ocular evidence, which is corroborated by the medical evidence. In fact, this Court is of the view that the presence of broken bangles of ladies at the scene of crime has been explained by Rakesh Kumar (PW-7) in his deposition inasmuch as he has deposed that when the appellant-convicts fled from the scene of crime, their family members, namely four ladies, started beating the

deceased Mohan.

57. Even if it is assumed that the investigation has been faulty, the benefit of the same cannot be given to the accused. The Supreme Court in **Ram Bali Vs. State of U.P., (2004) 10 SCC 598** has held as under:-

“12. The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

13. In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined dehors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand in the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the community at large.

14. As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in Amar Singh case [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the

Forensic Test Laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.”

(emphasis supplied)

CONCLUSION

58. Keeping in view the aforesaid ocular and medical evidence, this Court is of the view that the appellant-convicts, being well aware of the movements of the deceased Mohan, executed a pre-planned murder in accordance with the threat meted out a night prior to the incident by appellant-convicts Rohit and Sunil @ Annu. Further, despite appellant-convict Sunil @ Annu giving repeated ‘Sua blows’ to the deceased Mohan, which were sufficient in ordinary course of nature to cause death, neither appellant-convict Rohit nor appellant-convict Shiv Kumar @ Shibu tried to protect the deceased Mohan. On the contrary, they caught hold of the deceased Mohan and ensured that he did not manage to escape. Accordingly, present appeals being bereft of merits are dismissed and the conviction as well as sentence of appellant-convicts is upheld. A copy of the judgment be given to the appellant-convicts through the concerned Jail Superintendent.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JULY 26, 2019

rn/js