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

+ CRL.A. 743/2019

SACHIN alias CHAJJA

Through

..... Appellant

Mr. Kirti Uppal, Senior Advocate with
Mr. Badar Mahmood, Mr. Atul Kumar
Sharma and Mr. Aditya Raj,
Advocates.

versus

THE STATE

Through

..... Respondent

Ms. Aashaa Tiwari, APP for the State.

Reserved on : 19th September, 2019

Date of Decision: 10th October, 2019

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:

1. Present appeal has been filed by the appellant-convict challenging the judgment dated 05th March, 2019 and the order dated 08th March, 2019 passed by the Additional Sessions Judge-03 (FTC), North-West, Rohini Courts, Delhi in Sessions Case No.53529/2016 arising out of FIR No.617/2016 under Section 302 IPC and Sections 25/27 Arms Act registered with Police Station Mangolpuri, whereby the appellant-convict had been convicted under Section 302 IPC and was sentenced to undergo rigorous imprisonment for life with fine of Rs. 30,000/- as well as Section 27 of Arms Act for which he was sentenced to undergo rigorous imprisonment for five years with fine of Rs. 20,000/-.

CASE OF THE PROSECUTION

2. The case of prosecution in brief is that appellant-convict committed murder of Pawan @ Golu on 10th May 2016 at about 1:00 p.m. on the road in front of House No. 451-452, C block, Mangolpuri, Delhi with intent to take revenge of his brother's murder committed by the deceased on 6th December 2013. After the conclusion of investigation, charge sheet was filed on 2nd August 2016 by Investigating Officer, Inspector Rajpal Singh under Section 302 IPC and Sections 25 and 27 of Arms Act.

FINDING OF THE TRIAL COURT

3. The relevant portion of the trial court judgment is reproduced hereinbelow:-

“125. Applying the above principles of law to the present case, the prosecution has proved that the deceased was known to the accused and the accused had the motive to commit the murder of the deceased. The presence of the accused at the spot at the relevant time stands proved. The deceased ran away from the spot after seeing PW13. On the clothes and slippers worn by the accused at the time of his arrest, blood stains of the blood of the deceased were found. The recovery of the knife was effected at the instance of the accused from the place which was exclusively within his knowledge. Accused absconded after the incident. The accused has failed to give any explanation regarding the incriminating evidence found and proved against him. In view of the forgoing discussions, it can be held that in the present case, the chain of evidence is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and shows that in all human probability the act must have been done by the accused.

126. Admittedly, the deceased succumbed to the knife injuries. Postmortem report of the deceased Ex. PW1/A proves that cause of death of the deceased was hemorrhagic shock due to chest injury. The said injuries were antemortem in nature and were sufficient to

cause death. As such, the injury sustained by the deceased, its cause and cause of death of the deceased stand proved. On external examination, 16 injuries were found on the body of the deceased. The accused was responsible for the said injury. There was no instigation on the part of the deceased. The accused left the deceased in unattended at the spot and ran away from there and remained absconded. The accused inflicted 16 stab injuries on the body of the deceased and there was no one nor any possibility of any to be in between the accused and the deceased. It is not a case of mistaken identity also. As such, it can be held that the accused while committing the act knew that it was so imminently dangerous that it must, in all probability, cause death or such bodily injury as was likely to cause death of the deceased and committed such act without any excuse for incurring the risk of causing death of such injury. In view of the foregoing discussions, it can be held that the prosecution has proved beyond reasonable that the accused committed the murder of deceased Pawan @ Golu. Hence, the accused is held guilty under section 302 IPC.

127. PW1 proved his subsequent opinion and sketch of the knife Ex. PW1/B and opined that all the 16 external injuries as aforesaid were possible with the said knife or with similar weapon. It is also proved that the said knife was used by the accused to inflict injuries on the deceased and was recovered at his instance. In view thereof, it can be held that accused used the knife against the deceased in contravention of provisions of the Arms Act. Therefore, the accused is held guilty under section 27 of Arms Act."

ARGUMENTS ON BEHALF OF THE APPELLANT-CONVICT

4. Mr. Kirti Uppal, learned senior counsel for the appellant-convict stated that the prosecution's case was solely based on circumstantial evidence and there was neither any evidence against the appellant-convict nor any eyewitness to the incident.
5. Learned senior counsel for the appellant-convict contended that the prosecution had failed to establish the place of occurrence as there were

multiple contradictions in the site plan prepared by the Investigating Officer and the statement of Constable Sunil (PW-13) at whose instance the said site plan had been prepared. He stated that as per the site plan, place of occurrence was point EF i.e. in front of C-518, however as per the FIR place of occurrence was point ABCD i.e. road in front of C-451 and C-452. He further stated that as per Deepak/PW-3, who had made the PCR call, place of occurrence was completely different i.e. point GHI i.e. Gali no. 9. He also stated that prosecution had failed to explain why there were no blood stains present between point ABCD and point EF in the site plan. He emphasised that since the place of occurrence was not established, the appellant-convict was entitled to an acquittal. In support of his submission he relied upon ***Syed Ibrahim Vs. State of A.P., (2006) 10 SCC 601*** wherein it has been held as under:-

“11. In the background of principles set out above it is to be seen how far the evidence of PW 1 is cogent and credible. Merely because he was the solitary witness who claimed to have seen the occurrence, that cannot be a ground to discard his evidence, in the background of what has been stated in Section 134 of the Evidence Act, 1872 (in short “the Evidence Act”). No particular number of witnesses are required for the proof of any fact; material evidence and not number of witnesses has to be taken note of by the courts to ascertain the truth of the allegations made. Therefore, if the evidence of PW 1 is accepted as cogent and credible, then the prosecution is to succeed. It is to be noted that PW 1, father of the appellant, claimed to have set law into motion. The testimony of PW 1 was to the effect that after witnessing a part of the occurrence he had run to the police station and had come back within about five minutes. The evidence on record disproves veracity of this part of his evidence. The occurrence is alleged to have taken place at about 10 p.m. The FIR was lodged at the police station at about 11.30 p.m. PW 1 and the investigating officer accepted that it will take nearly one hour for somebody on foot to reach the police station

considering the distance of the alleged place of occurrence and the police station. There is another interesting factor: PW 1 accepted in the cross-examination that the report (Ext. P-1) was written in the police station in the presence of Sub-Inspector and a constable. But in his examination-in-chief, he had stated that he had got written the report by somebody at a hotel and the person normally writes petitions. No particulars of this person who allegedly scribed the report, not even his name, was stated by PW 1. His evidence is further to the effect that he alone had come to the police station where the report was lodged and that is how he admitted that the report was written at the police station. This may not appear to be that important a factor considering the illiteracy of PW 1. But there is another significant factor which completely destroys the prosecution version and the credibility of PW 1 as a witness. He has indicated four different places to be the place of occurrence. In his examination-in-chief he stated that the occurrence took place in his house. In the cross-examination he stated that the incident took place at the house of his wife, the deceased's mother. This is a very important factor considering the undisputed position and in fact the admission of PW 1 that he and his wife were separated nearly two decades ago, and that he was not on visiting terms with his wife. Then the question would automatically arise as to how in spite of strained relationship he could have seen the occurrence as alleged in the house of his wife. That is not the end of the matter. In his cross-examination he further stated that the incident happened in the small lane in front of the house of his wife. This is at clear variance with the statement that the occurrence took place inside the house where allegedly he, the deceased, his son, PW 2 and daughters, PWs 3 and 6 were present. That is not the final say of the witness. He accepted that in the FIR (Ext. P-1) he had stated the place of occurrence to be the house of the deceased. Though the FIR is not a substantive evidence yet, the same can be used to test the veracity of the witness. PW 1 accepted that what was stated in the FIR was correct. When the place of occurrence itself has not been established it would not be proper to accept the prosecution version.”

6. Learned senior counsel for the appellant-convict contended that Constable Sunil (PW-13), who appeared before the Trial Court was not the same person alleged by the prosecution to be present at the place of occurrence. He pointed out that the belt number of the person produced as Constable Sunil (PW-13) was 2173, whereas the Constable Sunil who was alleged to be present at the place of occurrence had the belt number 3239. He stated that since the belt numbers did not match, Constable Sunil (PW-13), who deposed, was a different person.

7. Learned senior counsel for the appellant-convict further contended that Constable Sunil (PW-13) was a planted witness and he was not present at the spot/scene of the murder. He stated that the conduct of Constable Sunil (PW-13) points towards his absence as he had neither chased nor mentioned about the escape route taken by the appellant-convict after seeing him near the body of the deceased. He stated that it was the duty of the Constable Sunil (PW-13) to act in a responsible manner and apprehend the accused, when he saw the appellant-convict standing near the body of the deceased. In support of his contention he relied upon the judgment of Supreme Court in ***Govindaraju Alias Govinda Vs. State (2012) 4 SCC 722***. The relevant portion of the same is reproduced hereinbelow:-

“54. The injuries were piercing injuries between the intercasal (sic intercostal) space and the stab injuries damaged both the heart and the lungs. It has been noticed by the High Court that according to PW 1, the victim was not able to talk. The post-mortem report clearly establishes injuries by knife. But the vital question is who caused these injuries. It takes some time to cause so many injuries, that too, on the one portion of the body i.e. the chest.

55. If the statement of PW 1 is to be taken to its logical conclusion, then it must follow that when the said witness saw the incident, the accused Govindaraju was not stabbing the deceased but was watching the police coming towards them and had called upon one of the other accused, Govardhan, to run away as the police was coming. Obviously, it must have also taken some time for the accused to inflict so many injuries upon the chest of the deceased. Thus, this would have provided sufficient time to PW 1 to reach the spot, particularly when, according to the said witness he was only at a distance of 30 yd and was on a motorcycle. At this point of time, stabbing had not commenced as the accused were alleged to be chasing the victim. Despite all this, PW 1 was not able to stop the further stabbing and/or running away of the accused, though he was on a motorcycle, equipped with a weapon and in a place where there were shops such as VNR Bar and also nearby the conservancy area, which presupposes a thickly populated area. Thus, the statement of PW 1 does not even find corroboration from the medical evidence on record.

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58. There is still another facet of this case which remains totally unexplained by PW 1. As per his statement Head Constable 345 and Police Constable 5857 had come to the spot. It was with their help that he had shifted the victim to KCG Hospital. It is not understandable as to why he could not send the body of the victim to the hospital with one of them and trace the accused in the conservancy where they had got lost, along with the help of the constable/Head Constable, as the case may be. This is an important link which is missing in the case of the prosecution, as it would have given definite evidence in regard to the identity of the accused as well as would have made it possible to arrest the accused at the earliest.

59. The High Court, while setting aside the judgment of acquittal in favour of the appellant Govindaraju, has also noticed that it may not have been possible for PW 1 to notice the details explained in the complaint, Ext. P-1, while riding a motorbike. This observation of the High Court is without any foundation.

Firstly, PW 1 himself could have stated so, either before the court or in Ext. P-1. Secondly, as per his own statement, his distance was only 75 ft when he noticed the accused chasing the victim and only 30 ft when the victim fell on the ground. Thus, nothing prevented an effective and efficient police officer from precluding the stabbing. If this version of PW 1 is to be believed then nothing prevented him from stopping the commission of the crime or at least immediately arresting, if not all, at least one of the accused, since he himself was carrying a weapon and admittedly the accused were unarmed, that too, in a public place like near VNR Bar.

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61. It is a settled canon of appreciation of evidence that a presumption cannot be raised against the accused either of fact or in evidence. Equally true is the rule that evidence must be read as it is available on record. It was for PW 1 to explain and categorically state whether the victim had suffered any injuries earlier or not because both, the accused and the victim, were within the sight of PW 1 and the former were chasing the latter.”

8. Learned senior counsel for the appellant-convict further submitted that the site plan Ex PW-13/B was not admissible in view of Section 162 of Cr.P.C. as it was prepared by Inspector Rajpal i.e. Investigating Officer (PW-29), at the instance of Constable Sunil (PW-13). He stated that as per the testimony of Inspector Rajpal (PW-29), there were public persons at the spot but their statements were neither recorded nor mentioned in the site plan. Consequently, he submitted that the appellant-convict was entitled to the benefit of doubt. In support of his submission he relied upon ***Pratap Singh and Anr. Vs. State of M.P., (2005) 13 SCC 624***. The relevant portion of the same is reproduced hereinbelow:-

“11. In the appeal preferred by the State of Madhya Pradesh against the said judgment of acquittal passed by the learned Sessions Judge, the High Court on the other hand has reversed the said judgment

holding:

“It is reflected from the map that the place of occurrence was by the side of River Chambal. The lands are on the slope towards the river. Therefore, any field away from the river will be on higher plain than the fields nearer to the river. Even otherwise, the map so prepared does not have any evidentiary value. Any statement made in respect of a map alleged to have been prepared on the information supplied by other persons, is inadmissible in evidence being hearsay. All the statements recorded in the map are the statements of police and are not admissible in evidence under Section 162 of the Code of Criminal Procedure.”

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18. The High Court, in our opinion, further committed an error in not drawing an adverse inference for non-examination of Shivrajsingh and Motiram. It was for the prosecution to prove its case. Even if in the first information report their names were not disclosed but if during investigation materials came to the notice of the investigating officer that apart from Mangal Singh two other witnesses had also witnessed the occurrence, he was duty-bound to show the places wherefrom they had witnessed the occurrence in the site plan prepared by him and also record their statements under Section 161 of the Code of Criminal Procedure. We do not see any reason as to why adverse inference should not have been drawn for non-filing of the said statements before the Court along with the charge-sheet. We have noticed hereinbefore the adverse remarks made as against the investigating officer. The High Court may or may not be correct in making those remarks but we only intend to point out that a site plan is not prepared at the instance of the witnesses but is done as a part of the investigation. If a site plan has been prepared and if during the investigation it has been brought to the notice of the investigating officer that there were some other witnesses whose evidence would be material for the purposes of proving the prosecution case, namely, witnessing the occurrence by two independent witnesses; we do not see any reason why evidence of such witnesses should not have been recorded. [Ed.: As is evident from paras 5, 12 and 13.] It is correct that it is the duty of the investigating officer to produce the

said statements with the charge-sheet but, if the same had not been done, the benefit thereof must be given to the defence and not to the prosecution. The High Court therefore in our opinion committed a serious error in this behalf. Non-examination of the seizure witnesses also, in the peculiar facts and circumstances of the case, was of some significance. The learned Sessions Judge made comments about the non-examination of the seizure witnesses only for the purpose of showing that the investigation in the matter might have been partisan in nature at the hands of PW 7. The High Court on the one hand made adverse comments against the conduct of the investigating officer but on the other hand placed strong reliance on his evidence alone for the purposes of believing that several material objects including the weapons of offence viz. lathi and barchhi were recovered in accordance with law.”

9. Mr. Kirti Uppal stated that the Trial Court had convicted the appellant-convict solely on the basis of testimony of Constable Sunil (PW-13), who was a beat constable of the area when the incident had happened. He pointed out that Trial Court failed to consider material contradictions between the testimony of Constable Sunil (PW-13) and the rukka/complaint which resulted in the FIR being registered. Therefore, according to the learned senior counsel for the appellant-convict, Constable Sunil (PW-13) was not a reliable witness and his testimony ought not to be relied upon. He referred to a judgment of the Supreme Court in ***Bhimappa Chandappa Hosamani & Ors. Vs. State of Karnataka, (2006) 11 SCC 323*** wherein it has been held as under:-

“24. We have undertaken a very close and critical scrutiny of the evidence of PW 1 and the other evidence on record only with a view to assess whether the evidence of PW 1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be

recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness.

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26. We, therefore, feel compelled to give to the appellants the benefit of doubt while allowing their appeal. Accordingly, this appeal is allowed, the appellants are acquitted of the charge levelled against them, and they are directed to be released unless required in connection with any other case.”

10. Learned senior counsel for the appellant-convict contended that the recovery of alleged weapon of offence i.e. knife was also doubtful inasmuch as it was identified by Constable Sunil (PW-13), who had not seen the said weapon prior to the recovery. In support of his contention, he referred to the initial complaint filed by Constable Sunil (PW-13). The English translation of the relevant portion of complaint Ex.PW-13/A is reproduced hereinbelow:

“I am deputed as a Constable at the Police Station Mangolpuri. I am the Beat Officer in the beat coming under Block OP and ABC of Mangolpuri. Today on 10.05.16, I was patrolling in A, B, C Block of Mangolpuri on feet. At about 1 PM, I was going towards SBI ATM, C-Block, Mangolpuri from C-Block Primary School, Mangolpuri, then I saw a boy namely Pawan S/o Atender, who earlier used to reside in C-Block, was lying in a blood stained condition in between the shutters of two shops adjacent to Street, C-518, Mangolpuri and a boy namely Sachin alias Chhajju, who resides in C-Block in my beat, fled in the street after leaving over there the injured boy....”

11. Learned senior counsel for the appellant-convict contended that despite the place being open and accessible to public, no independent witnesses were called at the time of recovery of the knife which casts a serious doubt upon the case of the prosecution. He further contended that the knife that was recovered was slightly bent at the tip and therefore, it could not have been used to cause injuries that were found on the body of the deceased. He submitted that in any event, conviction of the appellant-convict could not be based solely upon the alleged recovery of the knife. In support of his submission he relied upon the following judgments :-

A) *Narsinbhai Haribhai Prajapati etc., vs. Chhatrasinh & Ors., AIR 1977 SC 1753* wherein it has been held as under :-

“2. We are prepared to assume in favour of the prosecution that the evidence in regard to the incident of the 23rd near the pond and the evidence in regard to the incident which took place near the Ota of the Pir shows that the respondents had some motive for committing the crime. We may also accept that blood stained shirt and dhoti were seized from the person of respondent 1 and dharias were seized from the houses of respondents 1 and 3. But these circumstances in our opinion wholly insufficient for sustaining the charge of murder of which the respondents are accused.”

B) *Deepak Chadha vs. State, 2012 [1] JCC 540* wherein it has been held as under :-

*“18. We do not propose to deal with the purity of the evidence relating to the two recoveries i.e. the recovery of the shirt and the knife at the instance of the appellant, for the reason, in the decisions reported as *Kaloo Passi v. State, 2009 (2) JCC 1206; Narsinbhai Haribhai Prajapati v. Chhatrasinh, AIR 1977 SC 1753; Surjit Singh v. State of Punjab, AIR 1994 SC 110; Deva Singh v. State of Rajasthan, 1999 Cri LJ 265, & Prabhoo v. State of UP, AIR 1963 SC 1113* the Supreme Court held that in the absence*

of other incriminating evidence, the circumstances of seizure of blood stained clothes at the instance of the accused as also the recovery of a possible weapon of offence at the instance of the accused are wholly insufficient to sustain the charge of murder against the accused.”

12. He further stated that appellant-convict was a law abiding citizen and was not involved in any kind of illegal activities and prior to this incident, family members of the deceased had never complained nor had filed any written complaint against the appellant-convict. Consequently, according to him, prosecution had failed to prove any motive against the appellant-convict.

13. Learned senior counsel for the appellant-convict contended that the arrest of the appellant-convict was also highly doubtful as the prosecution failed to establish how the police officers had reached the railway station to apprehend the appellant-convict. He pointed out that there were no independent witnesses at the time of arrest nor was the CCTV footage pertaining to the arrest from the railway station produced. He emphasized that it was legally mandatory to inform the concerned officer from whose jurisdiction the arrest was effected, but in the present case even the Station master had not been informed about the arrest of the appellant-convict.

14. Learned senior counsel for the appellant-convict lastly submitted that prosecution must stand on its own legs and prove the case beyond reasonable doubt which it has failed to do in the present case as the chain of events was not complete. In support of his submission, he relied upon ***Logendranath Jha & Ors. Vs. Shri Polai Lal Biswas, AIR (38) 1951 SC 316*** wherein the Supreme Court has held as under:-

“4. The learned Sessions Judge examined the evidence in great detail and found that the existence of factions as alleged by the appellants was true. He found, however, that the appellants' plea of alibi was not satisfactorily made out, “but the truth of the prosecution”, he proceeded to observe, “cannot be judged by the falsehood of the defence nor can the prosecution derive its strength from the weakness of the defence. Prosecution must stand on its own legs and must prove the story told by it at the very first stage. The manner of occurrence alleged by the prosecution must be established beyond doubt before the accused persons can be convicted...”

ARGUMENTS ON BEHALF OF THE APP FOR STATE

15. *Per contra*, Ms. Aashaa Tiwari learned APP for the State stated that Constable Sunil bearing Belt No.3239 and Constable Sunil (PW-13) bearing Belt No.2173 was the same person as a new belt number had been subsequently allotted to him due to merger of police stations upon creation of a new outer district. In support of her contention she relied upon the order of ACP/HQ for DCP Outer District, Delhi dated 17th December 2016. The relevant portion of the same is reproduced hereinbelow:-

S. No.	Rank	Name	Belt No.	PIS No.	New No. Allotted	Place of Posting
472	CT	Sunil Sharma	3239/OD	29100622	2173/OD	PS Mangolpuri

16. She contended that from the evidence on record, there was no doubt that Constable Sunil (PW-13) was present at the spot. She referred to the testimonies of ASI Ajit Singh i.e. ERV Incharge (PW-15), Constable Birju (PW-24), SI Amit Nara (PW-28) and Inspector Rajpal i.e. Investigating Officer (PW-29).

17. Learned APP for the State contended that the place of occurrence was the road in front of C-451 and C-452, Mangolpuri, Delhi and the same had been mentioned in the testimonies of SI Akashdeep (PW-6), Constable Anil (PW-11), Constable Naveen (PW-10), Constable Birju (PW-24), SI Amit nara (PW-28), Inspector Rajpal (PW-29) as well as the Mobile Crime Team Report Ex PW-6/A.

18. Learned APP for the State submitted that the site plan Ex PW-13/B was admissible evidence as it had been prepared at the instance of Constable Sunil (PW-13) and not at the instance of some third party. She pointed out that the said site plan had been duly exhibited by Constable Sunil (PW-13). In support of her submission, she referred to the Supreme Court judgment in ***Tori Singh and Anr. Vs. State of Uttar Pradesh AIR 1962 SC 399.***

19. Ms. Aashaa Tiwari stated that Constable Sunil (PW-13) was a witness who had last seen the appellant-convict holding a knife, while deceased was lying near him in an injured condition.

20. She emphasised that the appellant-convict had a strong motive to murder the deceased. She pointed out that the deceased was facing trial for the murder of elder brother of appellant-convict and he was out on bail in the said case i.e. FIR No.778/2013 registered with Police Station Mangolpuri. She stated that appellant-convict had not rebutted the said fact. She therefore states that this fact in itself is sufficient to prove the motive for the act of murder committed by the appellant.

21. Learned APP for the State stated that the clothes and slippers of the appellant-convict were seized vide seizure memo Ex PW-13/K at the time of arrest and the same had blood stains on them. She also stated that the weapon of offence i.e. knife was recovered at the instance of the appellant-

convict vide seizure memo Ex PW-13/M. She referred to the FSL Report Ex PW-22/A, wherein it was stated that the DNA profile generated from the blood detected on the recovered knife, clothes and slippers of the appellant-convict was found similar to the DNA generated from gauze cloth piece of the deceased. According to her, this proved that the recovered knife had been used to inflict injuries on the body of the deceased that led to his death.

22. Consequently, according to learned APP for the State, the prosecution was able to prove its case beyond reasonable doubt and chain of events was well established.

COURT'S REASONING

THE PLACE OF OCCURRENCE HAS BEEN CONSISTENTLY AND CONTEMPORANEOUSLY MENTIONED BY MULTIPLE WITNESSES TO BE THE ROAD IN FRONT OF C-451 AND C-452, MANGOLPURI, DELHI I.E. POINTS ABCD MENTIONED IN THE SITE PLAN EX. PW-13/B.

23. Having heard learned counsel for the parties and having perused the evidence on record, this Court is of the view that the place of occurrence has been consistently and contemporaneously mentioned by multiple witnesses to be the road in front of C-451 and C-452, Mangolpuri, Delhi i.e. Points ABCD mentioned in the Site Plan Ex. PW-13/B. The same place has also been mentioned in the Mobile Crime Report Ex. PW-6/A as the scene of crime. The relevant portions of the testimonies are reproduced hereinbelow:-

A. SI Akashdeep, PW-6:-

“On 10/05/2016, I was posted as aforesaid and on receipt of information from control room at about 3.00 p.m., I along with my crime team including Ct Anil (Photographer), SI Manish Kumar (finger print proficient) and driver reached the spot in front of H. no. C-451/452, Mangol Puri, where we learnt that a

murder had taken place. SI Amit Nara along with local police officials were already present at the spot. We saw blood lying on the road in huge quantity outside that house. There were 2-3 areas where the blood was lying in front of that house and on the road. A pair of slippers was also found lying there. Blood spots were also found lying on the street which was leading to that road.”

B. Constable Anil, PW-11:-

“On 10/05/2016, I was posted in Mobile Crime Team, Outer District, as Ct/Photographer. On that day, I along with in-charge crime team SI Akash Deep and other staff visited the place of occurrence i.e. in front of H. No. C-451-452, Mangol Puri, where IO SI Amit Nara along with other police officials met us.”

C. Constable Birju, PW-24:-

“On 10.05.2016 I was posted at PS : Mangol Puri. On that day, I was on emergency duty from 8 am to 8 pm. On that day at about 1:20 pm, SI Amit Nara received DD no. 40A and thereafter, I along with SI Amit Nara reached at spot at main road, in front of C-451-452, Mangol Puri where beat constable Sunil Sharma met us and informed about the incident. SI Amit Nara left Ct. Sunil at the spot and I alongwith SI Amit Nara reached at SGM Hospital Mangol Puri, where SI Amit Nara obtained the MLC of injured Pawan S/o Atender.”

D. SI Amit Nara, PW-28:-

“On 10.05.2016, I was posted at PS Mangol Puri as SI. On that day, I was on emergency duty and my duty hours were from 8.00 am to 8.00 pm. On receipt of DD No. 40-A regarding stabbing a boy in Gali No. 11, C-Block, Mangol Puri. I along with Ct. Birju went to the said spot where I saw that blood was scattered on the ground/road opposite to H.No. C-451-452. Blood stained rubber slippers (two) of green colour were also lying there. I also saw that blood was also lying on the footpath between the two shutters of the shop. Beat Ct. Sunil was also present at the spot and he

informed me about what he saw during his patrolling. He also told me that injured Pawan @ Golu was also shifted to SGM Hospital and further told me that assailant Sachin @ Chhajja had fled away from the spot. Ct. Sunil also told me that accused Sachin @ Chhajja was holding knife in his hand where as injured Pawan was lying between the two shutters of the shops. No other eye-witness was found at the spot at the instance of Ct. Sunil. Thereafter, I alongwith Ct. Birju left for SGM hospital leaving behind Ct. Sunil at the spot for its supervision.....”

E. Insp. Rajpal, PW 29:-

“On 10.05.2016, I was posted at PS Mangol Puri as Inspector Investigation. On that day, after registration of the present FIR, the further investigation was marked to me. I reached at the spot i.e. H. No. 451-452, Mangol Puri, Delhi where I met SI Amit Nara, Ct. Sunil and other staff. The injured was already removed to the hospital. In the meantime, crime team also arrived at the spot. I got spot inspected by crime team. Ct. Anil (Photographer) clicked the photographs of the spot from different angles and also on my instructions. Blood was lying on the spot and one pair of rubber slipper was also lying at the spot.”

(emphasis supplied)

24. A perusal of the Mobile Crime Team Report Ex. PW-6/A reveals that the distance between points ABCD (road in front of C-451 and C-452) and EF (in front of C-518) is merely about 25 paces/steps. The relevant portion of the Mobile Crime Team Report Ex. PW-6/A is reproduced hereinbelow:-

“On scene of crime, Mobile Crime Team/Outer District (MCT/OD) reached in front of House No.C-451/452, Mangolpuri on road in street where an incident of murder took place. The victim identified as Pawan @ Golu, aged about 19-20 years was already hospitalised to SGM Hospital, Mangolpuri. The arrival of MCT/OD in the scene of crime on the street in front of above address, a large pool of blood was lying. Another big spot of blood was also lying about one and a half feet away from the

large pool. Another large pool of blood approximately 25 steps away from the main pool of blood i.e. (outside the H. No.C-451/452) was also lying in front of shop No.C-518 towards the tanga stand. Further, in Gali No.9 in C-Block, four bloody foot prints were there each at a distance of one and a half feet. Further two green hawai chappels were also lying in front of H. No.C-451/452 near the pool of blood. Scene of crime photographed as per direction of the I.O. After that, on request of IO, MCT/OD reached SGM hospital, Delhi in casualty for the examination of the dead body. On inspection of dead body, it was found that a deep slit mark on the neck, a deep cliff mark on right side of neck apparent. A very deep cut on the left arm. A small cut on a left arm. Multiple injury marks apparent on the back side of deceased. Dead body was photographed.”

(emphasis supplied)

25. Keeping in view the close proximity between the two points (i.e. between ABCD and EF), this Court is satisfied that after a sudden knife attack by the appellant-convict on the deceased, a scuffle between the two ensued. Consequently, the scuffle and knifing which began from point ABCD (road in front of C-451 and C-452) continued towards point EF (in front of C-518), where Constable Sunil (PW-13) saw them – at the fag end of the incident.

26. As far as point GHI (Gali No.9) is concerned the same is not the place of occurrence as Deepak (PW-3), who had mentioned the said spot, had admittedly not given correct information to the police. He was not an eyewitness to the incident and had not even seen the injured. The relevant portion of his testimony is reproduced hereinbelow:-

“...I had seen few persons rushing that injured to help. I also felt that if ambulance and police is called, that person can be saved and, therefore, I had made the call. In the haste, I had informed the police on phone about the spot as gali no.11

whereas, in fact, it was gali no.9. Such gali is situated on the backside of my house.....

xxx

xxx

xxx

Court Q: Did you see the incident yourself or not?

Ans. No. When I reached at the spot, lot of people were present at the spot and I even could not see the injured properly as people were already trying to rush him for medical help."

(emphasis supplied)

27. Recovery of slippers belonging to the deceased from point ABCD (road in front of C-451 and C-452) and presence of pool of blood at both the places i.e., ABCD (road in front of C-451 and C-452) and EF (in front of C-518) proves that the incident started at ABCD (road in front of C-451 and C-452) and concluded at EF (in front of C-518). Consequently, as the place of occurrence has been established beyond doubt, the judgment of the Apex Court in ***Syed Ibrahim*** (supra) has no relevance to the present case.

THIS COURT IS OF THE OPINION THAT CONSTABLE SUNIL (PW-13) WAS PRESENT AT THE PLACE OF OCCURRENCE I.E. ROAD IN FRONT OF C-451 AND C-452, MANGOLPURI AND HE HAD SEEN THE APPELLANT-CONVICT HOLDING A KNIFE NEAR THE INJURED BODY OF THE DECEASED. AS THERE IS NO CONTRADICTION BETWEEN THE INITIAL COMPLAINT OF CONSTABLE SUNIL (PW-13) AND HIS DEPOSITION AS WELL AS THE FACT THAT HIS CONDUCT WAS NORMAL, HIS TESTIMONY IS CLEAR, COGENT, CONSISTENT, CREDIBLE AND TRUSTWORTHY.

28. This Court finds no merit in the argument of the learned senior counsel for appellant-convict that Constable Sunil (PW-13) bearing Belt No. 2173 and Constable Sunil bearing Belt No. 3239 were different persons as the order of ACP/HQ for DCP Outer District, Delhi dated 17th December 2016 sufficiently explains why a new belt number was issued to Constable

Sunil (PW-13).

29. This Court further finds that multiple witnesses have deposed regarding Constable Sunil (PW-13) being present at the spot. The relevant portions of the said testimonies are reproduced hereinbelow:-

A. ASI Ajit Singh, PW-15 i.e. ERV Incharge:-

“On 10.05.2016 I was working as Incharge ERV (Emergency Response Vehicle). On that day, I was on patrolling duty and while patrolling, I reached C-Block, Government School, Main Road, Mangol Puri. I saw crowd there and one police official i.e. Ct. Sunil indicated us to stop.....”

B. SI Amit Nara, PW-28:-

“..... Beat Ct. Sunil was also present at the spot and he informed me about what he saw during his patrolling. He also told me that injured Pawan @ Golu was also shifted to SGM Hospital and further told me that assailant Sachin @ Chhajja had fled away from the spot. Ct. Sunil also told me that accused Sachin @ Chhajja was holding knife in his hand where as injured Pawan was lying between the two shutters of the shops.”

30. The testimonies of the abovementioned witnesses are also corroborated by testimonies of Constable Birju (PW-24) and Inspector Rajpal (PW-29) which have been discussed earlier. Nothing has come on record to suggest that Constable Sunil (PW-13) was planted at a belated stage as suggested by learned senior counsel for appellant-convict.

31. This Court is also of the view that since no questions were put to any of the witnesses who testified that Constable Sunil (PW-13) was present at the spot or the place of occurrence, during their cross-examination, the said issue cannot be raised at this stage. In *Mahavir Singh Vs. State of Haryana, (2014) 6 SCC 716*, the Apex Court has held as under:-

“16. It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide Atluri Brahmanandam v. Anne Sai Bapuji and Laxmibai v. Bhagwantbuva)”

(emphasis supplied)

32. Consequently, this Court is of the opinion that Constable Sunil (PW-13) was present at the place of occurrence i.e. road in front of C-451 and C-452, Mangolpuri and he had seen the appellant-convict holding a knife near the injured body of the deceased. The relevant portion of the testimony of Constable Sunil (PW-13) is reproduced hereinbelow:-

“On 10/05/2016, I was posted as Ct at PS Mangol Puri and I was working as Beat Officer, ABC Block, Mangol Puri. On that day, I was doing patrolling duty in the above ABC Block, Mangol Puri. At about 1.00 p.m., while I was passing through C Block, Primary school Mangol Puri and was going towards the SBI ATM, C Block, Mangol Puri, I saw that a young boy namely Pawan was lying in injured condition in between the shutters of one shop bearing no.C-518, Mangol Puri. I also saw that accused Sachin @ Chajja who was resident of C block, was holding a knife in his hand and on seeing me, he ran away. Accused Sachin is present in the Court today (correctly identified). I also knew Pawan prior to this incident. I immediately rushed to injured Pawan and with the help of two persons namely Sahil and Nitin @ Shanky took him to the side of the main road. Meanwhile, ERV of PS Mangol Puri was passing through there. I got stopped the said ERV. I handed over the custody of injured Pawan to ERV in-charge ASI Ajit Singh who took the injured to SGM hospital. Pawan was unconscious at that time. I came back to the spot. IO SI Amit Nara along with Ct Birju reached at the spot. I narrated about the incident to him. IO left me at the spot and he along with Ct Birju went to SGM Hospital.”

(emphasis supplied)

33. Further, it cannot be said as a matter of rule how a person especially a police officer should react when faced with the situation like Constable Sunil (PW-13) faced in the present case. Since every person reacts differently, it is perfectly normal that Constable Sunil (PW-13) thought that it was important to help the injured instead of chasing the appellant-convict. Accordingly, the judgments in ***Govindaraju Alias Govinda*** (supra) and ***Bhimapa Chandappa Hosamani*** (supra) have no applicability to the present case.

34. Consequently, as there is no contradiction between the initial complaint of Constable Sunil (PW-13) and his deposition as well as the fact that his conduct was normal, his testimony is clear, cogent, consistent, credible and trustworthy.

THE SITE PLAN EX. PW-10/A PREPARED BY CONSTABLE NAVEEN I.E. DRAFTSMAN (PW-10) AT THE INSTANCE OF CONSTABLE SUNIL (PW-13) WAS ADMISSIBLE IN VIEW OF THE SUPREME COURT JUDGMENT IN TORI SINGH (SUPRA).

35. This Court is in agreement with the contention of learned APP for the State that the Site plan Ex. PW-10/A prepared by Constable Naveen i.e. Draftsman (PW-10) at the instance of Constable Sunil (PW-13) was admissible in view of the Supreme Court judgment in ***Tori Singh*** (supra) wherein it has been held as under:-

“7. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of Section 162 of the Code of Criminal

Procedure as it will be no more than a statement made to the police during investigation. We may in this connection refer to Bhagirathi Chowdhury v. King-Emperor [AIR 1926 Cal 550] where it was observed that placing of maps before the jury containing statements of witnesses or of information received by the investigating officer preparing the map from other persons was improper, and that the investigating officer who made a map in a criminal case ought not to put anything more than what he had seen himself. The same view was expressed by the Calcutta High Court again in Ibra Akanda v. Emperor [AIR 1944 Cal 339] where it was held that any information derived from witnesses during police investigation, and recorded in the index to a map, must be proved by the witnesses concerned and not by the investigating officer, and that if such information is sought to be proved by the evidence of the investigating officer, it would manifestly offend against Section 162 of the Code of Criminal Procedure.

(emphasis supplied)

KEEPING IN VIEW THE CIRCUMSTANCES MENTIONED BELOW, ESPECIALLY THE TESTIMONY OF CONSTABLE SUNIL (PW-13) READ WITH MEDICAL AND SCIENTIFIC EVIDENCE, WHICH IS OF CONCLUSIVE NATURE, THIS COURT IS OF THE VIEW THAT THE CHAIN OF EVENTS IS SO COMPLETE THAT NO CONCLUSION OTHER THAN THE GUILT OF THE APPELLANT-CONVICT IS POSSIBLE IN THE PRESENT CASE.

36. Since this is a case where there is no eye witness, it is essential to outline the conditions which have to be fulfilled before a criminal case against an accused based on circumstantial evidence can be said to be fully established. This Court in ***Seema @ Prabha Vs. State, 2019 SCC OnLine Del 8735*** has held as under:-

“ 27. The Supreme Court in ***Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*** after referring to its earlier decision in ***Hanumant, Son of Govind Nargundkar vs. State of***

Madhya Pradesh, 1952 SCR 1091 stated the five golden principles, constituting the Panchsheel, of proof of a case based on circumstantial evidence as follows:-

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

(emphasis supplied)

37. In the present case, the Post Mortem Report Ex. PW-1/A proved by Dr. Munish Wadhawan (PW-1) revealed that the deceased had seventeen injuries and injury No. 1 was sufficient to cause death in ordinary course of

nature and that injuries were caused by sharp, single edged weapon.

38. The appellant-convict had been arrested vide arrest memo Ex.PW-13/H on the day of the incident itself and his blood stained clothes and slippers that he was wearing at the time of arrest were also seized vide seizure memo Ex. PW-13/K.

39. The weapon of offence i.e. knife was recovered at his instance vide pointing out and seizure memo Ex PW-13/M. There is nothing on record to doubt the said recovery. Furthermore, mere non-joining of an independent witness at the time of recovery cannot cast doubt on the version forwarded by the prosecution (See *Gian Chand & Ors. vs. State of Haryana, AIR 2013 SC 3395*). Therefore the submission of learned senior counsel for the appellant-convict that the knife was recovered from a public place in the absence of an independent witness and therefore the said recovery was doubtful, is untenable in law.

40. During the course of the arguments, weapon of offence i.e. knife recovered at the instance of appellant-convict was produced before the Court and the same was examined. The tip of the knife was found to be slightly bent and the same has also been mentioned in the sketch made by Dr. Munish Wadhawan (PW-1) while giving a subsequent opinion regarding weapon of offence Ex. PW-1/B. Despite the bent tip, Dr. Munish Wadhawan (PW-1) had opined that the said knife could have caused the injuries mentioned in the post mortem report of the deceased and he was not cross-examined on this aspect [See: *Mahavir Singh* (supra)]. The relevant portion of his testimony is reproduced hereinbelow:-

“On 01/06/2016, Inspector Rajpal had come along with sealed pullanda having seal of “AN” for seeking opinion with respect to

weapon of offence. I opened-up the pullanda which was found containing one single edged knife with blood like stains. I prepared its sketch which is on Ex. PW1/B (report and sketch is composite) and after seeing the aforesaid weapon as well as the aforesaid PM report, I opined that all the 17 external injuries as aforesaid were possible with said weapon or with similar weapon. My report is Ex. PW1/B which bears my signatures at point A. Thereafter, the weapon was sealed with the seal of "SGMH Mortuary Mangol Puri Delhi-83".

(emphasis supplied)

41. The FSL Report Ex. PW-22/A has confirmed that the DNA profile generated from the blood present on the recovered knife as well as clothes and slippers of appellant-convict, matches with the DNA of the deceased. The relevant portion of the FSL report Ex. PW-22/A is reproduced hereinbelow:-

"FORM No.FSL/DELHI/FM/03/23/24.12.2007

FORENSIC SCIENCE LABORATORY

*Govt. of NCT of Delhi
Sector 14, Rohini, Delhi-110085.
Tel:011-27555811, Fax: 011-27555890*

Accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL)

As per standards of ISO/IEC 17025:2005 and NABL 113:2008

REPORT No.FSL-2016/B-4631 BIO NO.1341/16 Dated 31/08/16

1. Please quote the Report (Opinion) No. & Date in future correspondence & Summons.

2. This report is Perse admissible u/s 302 IPC \$25-27/54/59/ Arms Act.

To,

*The SHO,
P.S. Mangol Puri,
Delhi.*

Your letter No.2320/SHO/Mangol Puri Dated: 20/06/2016 regarding 07(seven) parcels in connection with the case FIR No.617/16 Dated:10.05.16 u/s: 302 IPC & 25-27/54/59/ Arms Act P.S.: Mangol Puri duly received in this office on 20.06.16.

xxxx

xxxx

xxxx

xxxx

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

xxxx

xxxx

xxxx

xxxx

Exhibit 'A' : Metallic knife having brownish stains.

xxxx

xxxx

xxxx

xxxx

Exhibit 'B' : Gauze cloth piece of deceased having brownish stains.

xxxx

xxxx

xxxx

xxxx

Parcel 'AC' :One sealed cloth parcel sealed with the seal of 'A.N' containing exhibits 'AC-1', 'AC-2', 'AC-3', described as clothes & chappal of accused.

Exhibit 'AC-1' :Pant.

Exhibit 'AC-2' :T- shirt having brownish stains

Exhibit 'AC-3': Pair of chappal having brownish stains.

xxxx

xxxx

xxxx

xxxx

Exhibit 'C': Pair of chappals having brownish stains.

xxxx

xxxx

xxxx

xxxx

RESULT OF DNA ANALYSIS

DNA(STR) analysis performed on exhibits 'A'(Knife), 'B'(Gauze cloth piece of deceased), 'AC-1, AC-2, AC-3'(clothes & chappal of Accused), 'E' (Stone pieces), 'BS'(Gauze cloth piece) and 'C' (Pair of chappal), is sufficient to conclude that DNA profile generated from the source of exhibit 'B' (Gauze cloth piece of

deceased) is similar with the DNA profile generated from the source of exhibits 'A' (Knife), 'AC-1, AC-2, AC-3' (clothes & chappal of Accused), 'E' (Stone pieces), 'BS' (Gauze cloth piece) and 'C' (Pair of chappal)."

(emphasis supplied)

42. Consequently, the weapon of offence used to inflict injuries on the body of the deceased which resulted in his death, has been proved to be the knife recovered at the instance of appellant-convict. Accordingly, the nexus between the nature of injuries and weapon of offence is also proved. In view of the same as well as the testimony of Constable Sunil (PW-13) read with medical and scientific evidence, which is of conclusive nature, this Court is of the opinion that the reliance placed by learned senior counsel for the appellant-convict on the judgments in *Narsinbhai Haribhai Prajapati* (supra) and *Deepak Chaddha* (supra) is misplaced inasmuch as the said judgments were based on peculiar facts and in the present case, the scientific evidence is conclusive.

43. It is apparent from the record that the deceased was being tried for murder of appellant-convict's brother and he had been granted bail. Brother and Father of the deceased (PW-5 and PW-7 respectively) have deposed to the same effect:-

A. Statement of Mr. Rohit PW-5

".....I know accused Sachin present in Court (correctly identified). He is resident of our locality only. I do not know anything else but there was previous enmity between my brother Pawan and accused. He had threatened my brother earlier. Accused was booked for such incident but I do not recall the particulars of such matter...."

B. Statement of Mr. Atender Singh, PW-7.

“.....Pawan had a quarrel with younger brother of accused Sachin and in such quarrel, younger brother of accused had died. He was, therefore, harbouring grudge against my son Pawan.....”

44. Thus, there was enmity between the deceased and appellant-convict. This fact proves that there was motive for the murder of the deceased. Though motive is not *sine qua non* for a conviction, yet it is an important circumstance in a case of circumstantial evidence.

45. In view of the aforesaid, the following circumstances have been proved and they form a complete chain of events:-

A. Place of occurrence was road in front of C-451, C-452, Mangolpuri, Delhi.

B. On 10th May 2016 i.e. the date of the incident, Constable Sunil (PW-13) had seen the appellant-accused holding a knife near the injured body of the deceased and the appellant-convict had run away after seeing Constable Sunil (PW-13).

C. On 11th May, 2016 a post-mortem was conducted and the cause of death was opined to be hemorrhagic shock due to chest injury. Further, there were seventeen injuries on the body of the deceased and injury No. 1 was sufficient to cause death in the ordinary course of nature.

D. Appellant-convict was arrested on 10th May 2016 i.e. the day of the incident and the bloodstained clothes and slippers worn by him were also seized.

E. On the basis of the disclosure statement of the appellant-convict, a knife i.e. weapon of offence was recovered.

F. As per the subsequent medical opinion Ex. PW-1/B, all the external injuries were possible by the recovered knife or a similar weapon.

G. FSL report confirmed that DNA profile generated from the recovered knife as well as the clothes and slippers of the appellant-convict was similar to the DNA profile generated from the blood sample of deceased.

H. Deceased was facing trial in FIR No.778/2013 for the murder of appellant-convict's brother, which proves that appellant-convict had a motive to kill the deceased.

46. Consequently, since the prosecution has been able to establish its case against the appellant-convict beyond reasonable doubt, the judgment in ***Logendranath Jha & Ors.*** (supra) has no application to the present case. Even the judgment in ***Pratap Singh and Anr.*** (supra) has no applicability to the present case as the said judgment is with respect to eyewitnesses and their statements. In the present case, the prosecution's case is based on circumstantial evidence.

47. Keeping in view the abovementioned circumstances, especially the testimony of Constable Sunil (PW-13) read with medical and scientific evidence, which is of conclusive nature, this Court is of the view that the chain of events is so complete that no conclusion other than the guilt of the

appellant-convict is possible in the present case. Consequently, it stands proved beyond doubt that the appellant-convict committed murder of the deceased.

48. Accordingly, present appeal being bereft of merit is dismissed. Copy of judgment be sent to appellant-convict through Jail Superintendent.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 10, 2019

rn/js