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Reserved on : 12.04.2019

Date of Decision : 26 .04.2019

IN THE MATTER OF:

+ CRL.A. 536/2016

KAMALJEET SINGH

..... Appellant

Through: Ms.Shamshravish Rein and
Mr.Sriram P., Advocates.

versus

STATE

..... Respondent

Through: Mr.Amit Gupta, APP for State
with SI Amit rana, PS Swaroop
Nagar.

+ CRL.A. 612/2016

RAMANJEET SINGH @ RUMMY

..... Appellant

Through: Ms.Dimple Vivek, Advocate.

versus

STATE

..... Respondent

Through: Mr.Amit Gupta, APP for State
with SI Amit Rana, PS Swaroop
Nagar.

+ CRL.A. 613/2016

MANPREET

..... Appellant

Through: Mr.Chetan Lokur, Advocate.

versus

STATE

..... Respondent

Through: Mr.Amit Gupta, APP for State
with SI Amit Rana, PS Swaroop
Nagar.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The challenge in the present appeals filed by the appellants is to the common judgment on conviction dated 22.04.2016, passed by the

Trial Court, in SC no. 102/2013 arising out of FIR No.24/2012, P.S. Swaroop Nagar, whereby the appellants have been held guilty for the offences punishable under Sections 302/326/34 IPC. The appellants have also challenged the order on sentence dated 23.04.2016, whereby all the three appellants were sentenced to:

- (i) undergo rigorous imprisonment for life (each) and pay fine of Rs.25,000/- each and in default of payment of fine, to undergo simple imprisonment for a period of 6 months each for the offence punishable u/s 302/34 IPC.
- (ii) undergo rigorous imprisonment for a period of 5 years each and pay fine of Rs.10,000/- each and in default of payment of fine, to undergo simple imprisonment for a period of 3 months each for the offence punishable u/s 326/34 IPC.
- (iii) Benefit of Section 428 Cr.PC was given to the appellants and it has been directed that all the sentences would run concurrently.

2. Since the common judgment of conviction and order on sentence have been challenged by all the three appellants, Ramanjeet Singh (accused no.1), Manpreet (accused No.2) and Kamaljeet Singh (accused no.3), the individual appeals filed by them are being taken up together for hearing and disposal.

3. The prosecution case started with the Police Control Room (PCR) receiving a call at 23:16:37 hours on 10.02.2012 from mobile phone No.7428374690, to the effect that “*House No. J-964, Gali No.2, Swaroop Nagar-Kayi Log H-Jo Kirpan Nikal Kar Lad Rahe H*”. In the meantime, the said information was also forwarded to the local police which was

recorded vide DD No.64-B (Ex.PW-1/A) at 11:27 p.m. The above DD was handed over to SI Krishan Kumar (PW-15), who reached the spot and noticed blood, two pairs of slippers (four chappals) of red and brown colour, one cap of red and black colour lying in the side lane of House No. J-964. Finding nobody at the spot, he made some enquiries and came to know that the injured had been taken to BJRM hospital. On reaching BJRM hospital, he found that, pursuant to a quarrel, some persons had been admitted in the hospital. One of them was declared 'brought dead' and the other, an injured (Surender) was receiving treatment. The family members of the deceased and the injured were also present there.

4. SI Krishan Kumar obtained the MLC of Surender and recorded his statement (Ex.PW-13/A) to the effect that after finishing his work at 11 p.m. in the night, while he was coming back to his home, he saw that his brother, Narender was held down on the ground by Manpreet (accused no.2), Gulvinder Kaur & Balvinder Kaur while Ramanjeet Singh (accused no.1) & Kamaljeet Singh (accused no.3), who had *Gandasas* in their hands, were assaulting Narender with the *Gandasas*. When he tried to set his brother free, Ramanjeet Singh & Kamaljeet Singh gave *Gandasa* blows to him also which landed on his left shoulder & finger of his right hand whereafter, he became unconscious. He also stated that he did not remember as to who had brought him & his brother to the hospital. After regaining consciousness, Surender came to know that his brother, Narender had expired. He stated that his brother Narender was killed by Ramanjeet Singh, Kamaljeet Singh, Manpreet, Balvinder Kaur & Gulvinder Kaur. On the basis of this statement, FIR bearing No.24/2012 (Ex.PW-1/C) under Sections 302/307/34 IPC was registered at PS Swaroop Nagar.

5. During the investigation, Inspector Harish Chander lifted samples from the spot which included blood stained earth, sample earth, one pair of chappals of brown colour, one pair of hawai chappal of red/pink colour, one woollen cap of red and black colour (59 written on it). The postmortem of the deceased was conducted on 11.02.2012.

6. On receipt of a secret information, Ramanjeet Singh and Manpreet were arrested by the police on 13.02.2012. Ramanjeet Singh got recovered one *Gandasa* from under the bushes near a ganda nala near Khadda Colony. On 12.09.2012, Kamaljeet Singh was arrested. The other co-accused, Balvinder Kaur and Gulvinder Kaur absconded and they were declared proclaimed offenders (P.O).

7. After the investigation was completed, chargesheet was filed in the concerned Court and charges were framed against Ramanjeet Singh and Manpreet for the offence punishable under Section 302/34 IPC and Section 307/34 IPC on 06.07.2012. A similar charge was framed against Kamaljeet Singh on 21.01.2013.

8. The prosecution examined a total of 22 witnesses. The material witnesses are the brothers and the sister of the deceased. Surender, the injured brother of the deceased was examined as PW-13. Jeet Kaur, sister of the deceased was examined as PW-16. Jaswinder Singh, brother of the deceased was examined as PW-17. Rajvinder @ Raju, brother of the deceased was examined as PW-20. The PCR form (Ex.PW-10/A) was proved by W/Ct. Saroj. The PCR van reached the spot at about 11:23:40 hours and reported back. The PCR form records “– *RCD 5 –property par rishte daro ka jhagda tha jisme do injured the. Jo pahle hi hospital chale gaye tha*”. It also recorded that the local police had reached the spot at about 12:16:37 hours. DD No.64B (Ex.PW-1/A) was proved by HC Raj Kumar, who also proved DD 3B (Ex.PW-1/B), FIR (Ex.PW-1/C) and the

rukka (Ex.PW-1/D). The scaled site plan (Ex.PW-2/A) was proved by Inspector Manohar Lal (PW-2). HC Yashveer Singh, the Storekeeper was examined as PW-4 and he proved the entries in Register No.19 (Ex.PW-4/A to Ex.PW-4/C), Register No.21 (Ex.PW-4/D), FSL receipt (Ex.PW-4/E). Ct. Baljeet (PW-19), HC Rajender Singh (PW-21) and Inspector Harish Chander (PW-22) along with PW-13 were examined to prove the arrest of Ramanjeet Singh and Manpreet as well as the subsequent arrest of Kamaljeet Singh. In his defence, Kamaljeet Singh examined DW-1 and DW-2 to support his plea of alibi. He also examined DW-3, DW-4 and DW-5 to urge that he was arrested a day prior to the day shown in the record.

9. Dr. Bhim Singh (PW-14) proved the postmortem report (Ex.PW-14/A) which reads as under:

POST MORTEM

“External ante-mortem injuries on the body of the deceased.

1. *Lacerated wound 3cm x 1cm x 1cm, front of left leg.*
2. *Reddish bluish two in number over inner and front aspect of left lower thigh and upper part of leg measuring 6 cm x 2.8 cm each.*
3. *Reddish bluish 6cm x 8 cm present over front of left side of chest.*
4. *Incised chop wound 6cm x 1.3cm x 1cm over back of chest left scapular region with two incised wounds situated 2.5cm over left shoulder region measuring 5cm x 0.8cm and 4cm into 0.8cm x 0.6cm.*
5. *Chop wound 6.8cm x 2cm x bone deep situated on back of neck just below occipital region.*
6. *Chop wound 6.5cm x 2cm x bone deep over occipital region. ‘*
7. *Chop wound 6.6cm x 2 cm x bone deep over left prito occipital region.*
8. *Incised chop wound 4cm x 2cm x 3cm were right side of neck outer aspect.*
9. *Chop wound right side of face and jaw 6.5cm x 2cm x bone deep with fractures of mandible and teeth.*

10. *Incised chop wound 6cm x 2cm x bone deep right side of cheek.*
11. *Incised chop wound 6.5cm x 2cm x bone deep right parietal region.*
12. *Lacerated wound 3cm x 0.8cm x 0.5cm front of right neck.*

On internal examination:-

Head:- As mentioned in external injuries chop wounds were present over right parietal region cut and fracture of underline bones, dura exposing brain matter. Cut and fractures of right mandible and cheek bones present, brain was cut marks below injuries with sub dural sub arachnoid hemorrhage, brain parenchyma was pale.

Neck and neck structures :- shows cut injuries in skin subcutaneous tissues and muscles of neck by injury No.8.

All the organs were pale, stomach was full of semi digested food material.

OPINION : In my opinion death was due to coma and shock consequent upon multiple injuries. All the injuries were ante-mortem, fresh in duration. Injury No.4 to 11 were caused by heavy sharp edged weapon. Other injuries could be caused by hard blunt object. The above injuries were sufficient to cause death in ordinary course of nature.

Time since death was about 14 hours”.

10. Dr. Bhim Singh also proved his opinion (Ex.PW-14/C) on the cut marks found on the clothes of the deceased in relation to the *Gandasa* and the same reads as under:

“As I had already mentioned cuts on the clothes of the deceased is corresponding with the injuries mentioned in the P.M. report no. 114/12, dated 11-2-12.”

11. Dr Bhim Singh had also given an opinion (Ex.PW-22/G) on the MLC of Surender which reads as under:

“The injuries mentioned in MLC No. 37627, could be possible by the weapon used in infliction injuries in P.M. No. 114/12, dated 11. 2. 2012”.

FSL REPORT

12. Naresh Kumar, Sr. Scientific Officer, FSL, Rohini, Delhi, who was examined as PW-11, proved the FSL Report (Ex.PW-11/A). In the forensic examination, blood was detected on the clothes of the deceased and Surender (PW-13). In the serological report (Ex.PW-11/B), blood on the T-shirt of PW-13 was found to be of blood group 'A'. The blood on the clothes of the deceased were found to be of blood group 'O'. Although, blood was detected on the *Gandasa*, but no grouping could be obtained.

MLC OF THE DECEASED

13. Dr. Gopal Krishna who was examined as PW-18, proved the MLC of the deceased (Ex. PW-18/A). The MLC of the deceased bearing No.37626, was prepared at 12:15 a.m. on 11.02.2012 with an alleged history of physical assault. The deceased who was shown to be brought by his brother, Rajvinder Singh, was found to be unconscious and was declared 'brought-dead'.

MLC OF SURENDER (PW-13)

14. Dr Gopal Krishna also proved the MLC of Surender as Ex.PW-18/B. The MLC of Surender bearing no 37627, was prepared at 12:20 a.m. on 11.02.2012 with an alleged history of physical assault. The patient was shown to have been brought by his brother, Rajvinder Singh. The MLC records three injuries including lacerated wound and abrasions. The patient was referred to the Orthopedic and Surgery wards. He was shown to be conscious and oriented.

MATERIAL WITNESSES

15. Surender (PW-13), brother of the deceased deposed that on 10.02.2012, at about 11 p.m., he was coming back from Azadpur Mandi to his house and when he reached the corner, he heard his brother, Jasvinder screaming '*bachao bachao*'. He saw his other brother, Narender @ Kala lying on the ground near the backside gate of his house. While Manpreet, Gurvinder Kaur & Balvinder Kaur had caught hold of his brother, Kamaljeet Singh & Rummy (Ramanjeet Singh) were giving him *Gandasa* blows. He noticed his sister, Jeet Kaur, inside the gate seeing the entire incident from the staircase. He deposed that he tried to help his brother on which the appellants started inflicting injuries on him also due to which he fell down and became unconscious. He did not remember as to who had shifted him to the hospital. He proved his statement made to the police (Ex.PW-13/A). He further deposed that on 13.02.2012, he had joined the investigation and handed over his blood-stained T-shirt which he was wearing at the time of the incident. The blood-stained T-shirt was taken into possession vide seizure memo (Ex.PW-13/B).

16. Surender further deposed that on the same day, i.e., on 13.02.2012, at about 5:30 p.m., Ramanjeet Singh and Manpreet were arrested on his identification. He further deposed that Ramanjeet Singh got a *Gandasa* recovered from under the bushes situated near the factory of one Ravi which was seized vide seizure memo (Ex.PW-13/G); that Ramanjeet Singh and Manpreet pointed out the place of the incident vide Ex.PW-13/J; that a week prior to the incident, Rummy (Ramanjeet Singh) had a quarrel with him at a barber shop after which the witness called the police at number 100. Both were taken to the Police Station where Ramanjeet Singh had threatened to eliminate him and his family. The witness also proved the site plan of recovery of the *Gandasa* as Ex.PW-13/G. He identified the *Gandasa* as Ex.P-1; clothes of the deceased as

Ex.P-2 (Colly) [blue jeans as Ex.P-2A, white shirt as Ex.P-2B, blue and white sweater as Ex.P-2C and greyish/greenish banyan as Ex.P-2D, the woollen cap of black color and a pair of red stripe and blue colour slippers as Ex.P-3 & Ex.P-4. The T-shirt which was got recovered by the said witness was identified as Ex.P-5]. He also identified a pair of brown colour leather slippers, stated to be of Ramanjeet Singh, as Ex.P-6.

17. During his cross-examination, Surender stated that his statement was recorded at 3 a.m. in the hospital and since he was illiterate, he had affixed his thumb impression on the same. He was confronted with his earlier statement (Ex.PW-13/A) where the factum of seeing his sister Jeet Kaur was not so stated. He replied that nobody was present in the factory of Ravi when the *Gandasa* was got recovered. He stated that the *Gandasa* was got recovered from the bushes outside the gate of Ravi's factory and the said place was not accessible to public, as it was a hidden place. He also stated that there was a *ganda nala* next to the bushes from where the *Gandasa* was got recovered. On a Court question, the witness replied that it was Ramanjeet Singh who went to the bushes and got the *Gandasa* recovered. He denied the suggestion that the recovery was planted and that he was not present at the spot at the time of the incident. He also denied the suggestion that the injuries were self-inflicted. He admitted that there was a dispute between him and Ramanjeet Singh for which both were arrested for breach of peace.

18. Jeet Kaur, sister of the deceased was examined as PW-16. She deposed that on 10.02.2012, at about 11.00/11.30 *noon*, she had heard the noise of quarrel and screams. On coming out of the house, she saw that the appellants were hitting the deceased with a *Danda* and *Gandasas*. While Manpreet and Balvinder had caught hold of the deceased, Kamaljeet Singh gave *gandasa* blow to the deceased and Gurvinder Kaur

hit the deceased with a *danda*. She tried to save the deceased but Gurvinder Kaur ran after her forcing the witness to rush back to her house and shut the doors to save herself. She had called 100 number and raised an alarm, because of which her brother, Jasvinder Singh also rushed to the spot. She deposed that Kamaljeet Singh and Ramanjeet Singh also gave *gandasa* blows to Surender. In the meantime, Jasvinder Singh went to the house of their other brother, Rajvinder Singh @ Raju. In between, Kamaljeet, Ramanjeet and Manpreet ran away and Rajvinder Singh brought his champion scooter and removed the injured and the deceased to the BJRM hospital. During her cross-examination, she admitted that her signatures were not present on any of the documents.

19. Jasvinder Singh, brother of the deceased was examined as PW-17. He deposed that on 10.02.2012, at about 11.00/11.15 pm, on hearing voices, he came out of his house where he saw Kamaljeet Singh and Ramanjeet Singh assaulting his brother with a *Gandasa*. Gurvinder Kaur was also assaulting him. Manpreet and Balvinder Kaur had caught hold of the deceased. As PW-17 was handicapped, he stated that he along with his sister, Jeet Kaur, started shouting. In between, Surender also reached at the spot and tried to help but Kamaljeet Singh and Ramanjeet Singh gave *Gandasa* blows to him too. He further deposed that Ramanjeet Singh and Manpreet ran after him and in order to save his life, he ran towards the house of Rajvinder. When he and Rajvinder came back to the spot, all the three accused had already fled away. In his cross-examination, the witness stated that his statement was recorded on 11.02.2012 at 5:30 am and the statement of his brother, Surender was recorded before that, at 3:00/4:00 am. He was confronted with his earlier statement (Ex.PW-17/DX-1) made to the police where he had not

mentioned about the presence of Jeet Kaur. He also admitted that his signatures were not present on any of the documents.

20. The next witness, Rajvinder Singh, brother of the deceased who was examined as PW-20, deposed that on 10.02.2012 at about 11:15/11:30, his brother Jasvinder had knocked at his door and told him “*Dono Bhai Mar Gaye Jaldi Chal*”. On reaching the spot, he saw Surrender and the deceased lying on the ground.

ANALYSIS

21. We have heard the arguments advanced by both sides. Ms. Shamsravish Rein, Advocate has argued for Kamaljeet Singh, Mr. Chetan Lokur, Advocate has argued for Manpreet, Ms. Dimple Vivek, Advocate has argued for Ramanjeet Singh and Mr. Amit Gupta, learned APP for the State. We have also carefully examined the trial court record. Now we shall proceed to discuss the pleas taken by learned counsel for the appellants to assail the impugned judgment of conviction.

WHETHER SURENDER, JEET KAUR AND JASVINDER WERE EYE WITNESSES

22. It has been contended by the learned counsel for the appellants that Surrender, Jeet Kaur and Jasvinder were not the eye witnesses of the incident. It was urged that in the *rukka* (Ex.PW-13/A), which was recorded on the basis of the statement of Surrender, the presence of Jeet Kaur and Jasvinder Singh was not mentioned and even as per the case of the prosecution, Rajvinder was not an eye-witness. They further contended that none of the above persons were made witnesses to any of the documents prepared or the seizures made during the course of investigation done on 11.02.2012.

23. The presence of Jasvinder has been disbelieved by the Trial Court on the ground that there were contradictions in his testimony and that of his brother, Rajvinder. On going through their testimonies, we find that the Trial court had rightly disbelieved the presence of Jasvinder at the spot at the time of the incident as he did not inform the name of the assailants to his brother Rajvinder, at the first instance.

24. We shall next examine as to whether Surender (PW-13) and Jeet Kaur (PW-16) were present at the spot. As per the testimony of Surender, in his initial statement made to the police (Ex.PW-13/A) which was recorded on 11.02.2012 at 3:00/4:00 am, i.e. after a gap of four hours, he did not mention about the presence of any of his siblings including Jeet Kaur, at the spot, at the time of the commission of the offence. The above statement of Surender was recorded after he was declared 'fit for statement' by the Doctor.

25. Indeed, it was Jeet Kaur, who had called up the PCR from her mobile phone. The said number is also reflected in the PCR form (Ex.PW-6/A). Jeet Kaur has deposed that when Rajvinder along with Jasvinder removed Narender and Surender in a champion scooter to BJRM hospital, she had remained at the spot. She also deposed that after the police had reached the spot, she had gone to BJRM hospital. The next morning, when she returned to her house, the police had recorded her statement along with the statement of her brother, Jasvinder. In her statement (Ex.PW-16/DX-1) made to the police, she did not mention the presence of Jasvinder at the spot. Learned counsel for the appellants contended that the prosecution did not bring on record any CAF (Customer Application Form) to prove that the mobile number, which was used to inform the police, belonged to Jeet Kaur. However, we find

that the appellants did not put any question to Jeet Kaur, during her cross examination, to doubt her ownership of the mobile phone number.

26. Surrender, brother of the deceased was also injured in the incident on 10.02.2012. In his statement made to the police, he did not mention the presence of either Jeet Kaur or Jasvinder at the spot. His statement was made on 11.02.2012 at 3:00/4:00 am. During his deposition, he mentioned that he saw his sister, Jeet Kaur standing inside the gate and watching the entire incident. He was confronted with his earlier statement where the factum of the presence of Jeet Kaur was not mentioned.

27. From the above discussion, it follows that although Jeet Kaur has stated that she remained at the spot after the incident and met the police officials, however, neither the PCR form nor do the testimonies of SI Krishan (PW-15) and Ct. Baljeet (PW-19), who were the first police officials to reach the spot, indicates her presence at the spot. Rather, it has come in the testimony of SI Krishan that when he reached the spot, he did not find anybody there. He tried to make enquiries but could not find anyone as no resident was prepared to state anything except for the fact that some public persons had removed the injured to BJRM hospital. More importantly, in his first statement recorded after about 4 hours of the incident, Surrender did not mention the name of Jeet Kaur.

28. In the light of the above, we are of the view that the factum of Jeet Kaur (PW-16) being an eye-witness, is not free from doubt.

29. Learned counsel for the appellants have also questioned the presence and the testimony of Surrender by contending that the injuries recorded in his MLC could not have been caused by the *Gandasa*. In this regard, reliance was placed by them on State of Bihar vs Bishwanath Rai, reported as **AIR 1997 SC 3818**.

30. Surender, brother of the deceased, has described in detail as to how when Manpreet alongwith the other accused (P.O.) had pinned down and caught hold of his brother, Ramanjeet Singh and Kamaljeet Singh gave *Gandasa* blows to the deceased. When he tried to save his brother, he was also injured in the same incident in which his brother, Narender was assaulted. The injuries suffered by the deceased were noted in MLC bearing No. 37626, prepared at 12.15 a.m. and contemporaneously, the injuries suffered by Surender were noted in a sequential MLC bearing No. 37627, prepared at 12.20 a.m. in the same hospital. Both were shown to be brought to the hospital by their other brother, Jasvinder.

31. Dr. Bhim Singh (PW-14) proved his opinion recorded in the post mortem report that the injuries suffered by the deceased were possible by the *Gandasa*. He also proved his opinion that the cut marks on clothes of the deceased were possible by the *Gandasa*.

32. Surender's MLC was also proved by Dr. Gopal Krishna. In the MLC, he was shown to have suffered lacerated wound in the upper part of left scalp region and two abrasions on the finger. The injuries were opined to be grievous. Surender deposed that in the process of trying to save his brother from the *Gandasa* blows given by the appellants, he too was assaulted by them.

33. Surprisingly, during his cross-examination, the defence counsel gave contradictory suggestions to Surender and Dr. Gopal Krishna regarding the injuries suffered by Surender. On the one hand, it was suggested to Surender that the injuries suffered by him were self-inflicted and on the other hand, a suggestion was given to Dr. Gopal Krishna that the injuries suffered by Surender were on account of a fall. The existence or genuineness of the MLC was never questioned or doubted by any of the appellants. Moreover, the testimony of Surender stands corroborated

by the injuries noted in his MLC. Dr. Bhim Singh also gave an opinion (Ex.PW-22/G) that the injuries suffered by Surender were possible by the weapon used for inflicting injuries mentioned in the post mortem of the deceased. In the cross examination, no question/suggestion was given on behalf of the appellants challenging the above opinion of Dr. Bhim Singh.

34. In light of the above discussion, we are of the view that the oral testimony of Surender regarding the assault committed by the appellants on Narender, stands duly corroborated by the testimonies of Dr Bhim Singh and Dr Gopal Krishna as well as the medical evidence brought on the record. It stands proved that the injuries suffered by Surender were during the same incident in which his brother was also assaulted. Reliance placed by learned counsel for the appellants on Bishwanath Rai (*supra*) is found to be misplaced as in the captioned case, the witnesses had made considerable improvements over their previous statements. Further, the evidence of the eye witnesses was disbelieved as it was alleged that they were attacked by a mob of 60 to 100 people but the two eyewitnesses had suffered only 3 injuries each, which was held to be inconsistent with the prosecution case.

35. Learned counsel for the appellants have also urged that the testimony of Surender ought to be disbelieved on the additional ground that he is an interested witness, being the brother of the deceased. In support of this plea, they have referred to a decision of the Supreme Court in Mahavir Singh vs. State of M.P. reported as **(2016) 10 SCC 220**.

36. Indeed, the evidence of an eye-witness, when he is related to the deceased, is to be scrutinized very carefully. Although, the presence of Jeet Kaur and Jasvinder at the spot has been found to be doubtful,

however, the presence of Surrender is free from any doubt. The incident had taken place at about 11 pm and the place of the incident was adjacent to his house. He suffered injuries in the same incident in which his brother was assaulted. The injuries were opined to be possibly caused by the same *Gandasa* which was used for causing injuries to the deceased. In the case of Mahavir Singh (supra), it was observed that there were contradictory statements of the prosecution witnesses coupled with unmatched medical evidence, delay in recording the statement of witnesses by the I.O. and absence of the ballistic report which factors were held to be fatal to the prosecution case. The above decision is of no help to the appellants as in the present case the ocular testimony of Surrender is well corroborated by the medical evidence on record. Reliance placed by the learned counsel for the appellants on the decision in case of Raju @ Balachandran and Ors. Vs State of T.N. reported as **(2012) 12 SCC 701** is also misplaced. In the captioned case, the witness was disbelieved as he was related and interested, but not injured. However, in the present case, Surrender is related and injured. The injuries were inflicted on him in the same incident in which the deceased was assaulted. Furthermore, the injuries on him were opined to be inflicted by the same weapon which was used for assaulting the deceased.

37. The law on the relevance of the testimony of an injured eye witness stands well settled. In Bhajan Singh Vs State of Haryana reported as **(2011) 7 SCC 421**, the Supreme Court has held as under:

“36. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and

efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness 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". Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein". (emphasis added)

38. On the basis of the above discussion, we can safely conclude that Surrender was a natural eye witness. He was present at the spot at the time of the incident when his brother was assaulted. He suffered injuries in the same incident. His testimony is therefore found to be truthful and reliable.

PRESENCE OF THE APPELLANTS AT THE SPOT

39. During the trial, Ramanjeet Singh and Manpreet did not set up any defence that they were not present at the spot. In fact, no such suggestion was given to any of the prosecution witnesses. Even during their examination under Section 313 Cr.PC, they did not raise any such defence.

40. However, Kamaljeet Singh did take the plea of *alibi* in the trial. During the cross-examination, it was suggested to the witnesses including Surrender that on the date of the incident, the appellant along with his wife, Gurbinder Kaur (P.O.) was present at the house of his in-laws in Amritsar (Punjab) as he had met with an accident there on 06.02.2012. To substantiate the said plea, accused no.3 had examined Malkeet Singh as DW-1 and himself as DW-2. Malkeet Singh, a Pharmacist, had brought the OPD register of Sardar Amrik Singh

Memorial PHC Hospital, Amritsar that contained an entry at Sl no. No.177 dated 06.02.2012 (Ex.DW-2/A) in the name of Kamaljeet Singh, aged 34 years, male with injuries (R Foot). The Trial Court observed that entries No.168 to 187 were the only entries in the entire register and that there were cuttings by putting fluid on the relevant page just above entry No.177. During his cross-examination by the learned APP for the State, the witness had replied that on 06.02.2012, he was not on duty and that the cutting above entry No.177, was done by Dr. Jorawar Singh Bhatia, In-charge of the hospital. Kamaljeet Singh examined himself as DW-2. He produced an OPD slip dated 06.02.2012 (Ex.DW-2/A) of the above hospital mentioning the injury allegedly suffered by him. He also produced an RTI reply (Ex.DW-2/B) received from Dr. Jorawar Singh, Medical Officer, In-charge of the said hospital. In this regard, the Trial Court had observed that the said RTI reply did not bear any signature and only the name of the Doctor was mentioned there. Malkeet Singh (DW-1) did not state anything about the OPD slip. Rather, he stated that he was not on duty on 06.02.2012.

41. A closer look at the above exhibits reveals that the OPD slip dated 06.02.2012 indicated that after an X-ray, a POP casting was done on the right foot of Kamaljeet Singh. However, neither any X-ray film nor any X-ray report was produced to prove the said injury and the treatment given. The OPD slip also did not advise any duration of time for the POP casting. Though the prescription showed that the patient was advised admission, however, no proof of admission was produced. More importantly, the appellant did not examine the concerned Doctor who had written the said prescription.

42. The plea of alibi sought to be taken by Kamaljeet Singh, the same remained unsubstantiated. The authenticity of the documents produced by him were rightly held to be doubtful by the Trial Court.

ARREST OF THE APPELLANTS

43. Learned counsel for the appellants next argued that the appellants were in fact arrested one day prior to the date shown in the arrest memo. It was further contended that as per the arrest memos, no information was given to the relatives of the appellants.

44. It has come in the testimonies of the police witnesses, namely Ct. Baljeet (PW-19), HC Rajender Singh (PW-21) and Insp. Harish Chander (PW-22) that Ramanjeet Singh and Manpreet were arrested on 13.02.2012, on the basis of secret information and on the identification of Surrender. The arrest memos of Ramanjeet Singh and Manpreet (Ex.PW-13/C and Ex.PW-13/D) were signed by both of them. In his testimony, Surrender had deposed on similar lines.

45. The prosecution examined Ct. Baljeet, HC Rajender Singh and Insp. Harish Chander to prove the arrest of Kamaljeet Singh on 12.09.2012. It has come on record that Kamaljeet Singh was arrested after he was declared a proclaimed offender (P.O). Kamaljeet Singh had denied his arrest and examined DW-3, DW-4 and DW-5 in support of his plea of *alibi*. DW-3 brought the records from 12.09.2012 to 17.09.2012 of the concerned P.S. at Amritsar which did not contain any entry showing the arrival of Delhi Police. The examination of DW-3 was irrelevant as it was nobody's case that Kamaljeet was arrested in Amritsar. DW-4 brought the attendance register from the Delhi Sikh Gurudwara Prabandhak Samiti for a month of September, 2012 to show the attendance entry of Kamaljeet from 01.09.2012 to 11.09.2012.

However, during his cross-examination, the said witness replied that he could not personally certify about the physical presence of accused no.3 in the Gurudwara on 11.09.2012. DW-5 stated that on 11.09.2012, Kamaljeet Singh was at Sarai Majnu Ka Tilla where he was arrested by the officials of Delhi Police. In his cross-examination, the said witness had stated that he was unemployed on the said date, i.e. on 11.09.2012.

46. Given the above position, the aforesaid defence witnesses were rightly disbelieved by the Trial Court as their testimonies did not cause any dent to the prosecution case.

47. We may also note that the appellants did not give any suggestion to any of the police witnesses that their signatures on the arrest memos were obtained forcibly. Nor did they lead any evidence to show that they were arrested one day prior to the date shown in the arrest memo.

RECOVERY OF THE WEAPON OF OFFENCE, A GANDASA

48. Ramanjeet Singh and Manpreet were arrested on 13.02.2012, pursuant to which Ramanjeet Singh had got recovered one *Gandasa* from the bushes near the *ganda nala*, Khadda Colony. The same was seized vide seizure memo Ex.PW-13/G. The site plan of the *Gandasa* was exhibited as Ex.PW-13/L. The said recovery was witnessed by Surender. During his deposition, Surender had identified the *Gandasa* (Ex.P-1). The testimony of Surender was corroborated by the testimony of the police witnesses namely, Ct. Baljeet (PW-19), HC Rajender Singh (PW-21) and Insp. Harish Chander (PW-22).

49. Learned counsel for the appellants have doubted the recovery on the ground that the owner of the factory was not examined but in our opinion, nothing would turn on this as it has come on record that the

recovery of the *Gandasa* was not effected from any factory, but from the bushes near the factory and the *ganda nala*.

50. Learned counsel for the appellants also urged that no public witness was joined in the recovery proceedings. To back the said plea, they cited Hem Raj & Ors Vs State of Haryana reported as (2005) 10 SCC 614. We are afraid, the above decision is not applicable to the facts of the present case. In the captioned case, it was held that one Kapur Singh who was available and had witnessed the crime, was not been examined. In the present case, PW-19, PW-20 and PW-22 were the police witnesses associated with the recovery. It has come in their testimonies that the recovery of the *Gandasa* was made at around 7:45 pm. It has also come in their testimonies that though the place of recovery was an open place, but no public person was present at that time and the nearby factory was also locked. Reference in this regard is made to Ajmer Singh Vs State of Haryana reported as (2010) 3 SCC 746, wherein the Supreme Court observed as follows:-

“20. We cannot forget that it may not be possible to find independent witness at all places, at all times. The obligation to take public witnesses is not absolute. If after making efforts which the court considered in the circumstances of the case reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated. The court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.” (emphasis added)

51. To the same effect is the decision of the Supreme Court in Pramod Kumar Vs State (GNCT) of Delhi reported as (2013) 6 SCC 588 wherein it was held as under:

“12.....The witnesses from the department of police cannot per se be said to be untruthful or unreliable. It would depend

upon the veracity, credibility and unimpeachably of their testimony.

13. This Court, after referring to *State of U.P. v. Anil Singh* 1989 SCC (Crl.) 48; *State, Govt. of NCT of Delhi v. Sunil* (2001) 1 SCC 652 and *Ramjee Rai v. State of Bihar* (2006) 13 SCC 229, has laid down recently in *Kashmiri Lal v. State of Haryana* (2013) 6 SCC 595 that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. ***If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinising the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust.*** This is also based on the principle that quality of the evidence weighs over the quantity of evidence.

14. Thus, the submission that the whole case should be thrown overboard because of non-examination of independent witness and reliance on the official witnesses cannot be accepted.....” **(emphasis added).**

52. Learned counsels for the appellants also urged that although as per the prosecution case, both Ramanjeet Singh and Kamaljeet Singh were shown to have inflicted injuries with *Gandasas* however, only one *gandasa* had been recovered at the instance of Ramanjeet Singh. It was urged that non-recovery of the second *Gandasa* was fatal to the prosecution case. In this context, the testimony of Dr. Bhim Singh, who proved the postmortem report, etc. is relevant. On a Court question, the said witness had answered:

“the injuries No.4 to 11 could be caused by the gandasa which are more or less of the same size and hence in my view only one gandasa was used to cause these injuries unless the second gandasa, if used, is of the same size and measurement”.

53. To this statement, only one suggestion was given on behalf of the appellants to the effect that the injuries could not have been caused by the *Gandasa*, which was denied. The *Gandasa* that was recovered, was sent to the FSL and though the grouping showed no reaction, but human blood was detected on it. In our view, non-recovery of the second *Gandasa*, cannot be treated to be fatal to the prosecution case.

MOTIVE

54. Learned counsel for the appellants have argued that because of the previous quarrel between Surender and Ramanjeet Singh, all the appellants have been falsely implicated in this case.

55. It is an undisputed position that there were previous disputes between the appellants and the family members of the deceased. In his testimony, Surender had deposed that one week prior to the incident, the Rummy (Ramanjeet Singh) had a quarrel with him in a barber shop and he had called up 100 number whereafter, both of them were taken to the police station. While they were in custody, Rummy @ Ramanjeet Singh had threatened to eliminate Surender and his family members. During the cross-examination of Surender, learned counsel for the appellant had also given a suggestion to the witness that there was a previous quarrel between him and Ramanjeet Singh. While answering the suggestion, the witness had admitted about the previous dispute and further stated that they were arrested by the police for breach of peace. He also stated that previously too, he had made complaints to the police on account of the threats given by Ramanjeet Singh. However, no action was taken by the police on his complaint.

56. During their examination under Section 313 Cr.PC, in response to Question No.57, all the appellants had individually replied that Surender

and Ramanjeet Singh (wrongly typed as Ramandeep) had a quarrel and both of them were booked under Section 107/151 Cr.PC. So, it is nobody's case that there wasn't a previous quarrel between the two.

57. We have already arrived at a conclusion that Surender's testimony is not doubtful and he was a natural witness present at the spot, who also suffered injuries in the same incident while trying to save his brother. The appellants in this case had a motive to commit the murder of the deceased as Ramanjeet Singh on the occasion of a previous quarrel, had threatened to eliminate the entire family.

DELAY AND OTHER DISCREPANCIES

58. Learned counsel for the appellants have urged that the delay of four hours in recording the statement of Surender also points towards deliberate false implication of the appellants in the present case.

59. The MLC of Surender indicates that he was admitted in the hospital at about 12:20 am on 11.02.2012. He had suffered injuries which were opined to be grievous. Dr. Gopal Krishna proved the MLC of Surender and deposed that the same indicated that after stitching and bandaging, the patient had been referred for further treatment to SR (Ortho) and SR (Surgery). Given the above circumstances, we are of the opinion that the delay in recording the statement of Surender stands well explained.

60. Learned counsels for the appellants next argued that non-mentioning of the names of the appellants in the initial information given to the PCR as well as in the 'history of assault', as recorded in the MLC also point towards deliberate false implication of the appellants.

61. We do not find any merit in the above plea. The initial information given by an informant to the PCR, is only a brief information passed on for urgent and speedy action. The first information given on the phone is not meant to be a detailed encyclopedia account of the incident. Time and again, it has been reiterated by the Supreme Court that telephonic information could be treated as an FIR under Section 154 Cr.PC. Reference in this regard is made to Ramsinh Bavaji Jadega vs. State of Gujarat (1994) 2 SCC 685 and Dhananjoy Chatterjee @ Dhana vs. State of West Bengal (1994) 2 SCC 220. Similarly, it has been held that at the time of recording of MLC, the primary duty of the Doctor is to treat the patient and not to find out as to who had caused the injury. Reference in this regard is made to Pattipati Venkaiah vs State of A.P. reported as (1985) 4 SCC 80 and Bhargavan and Ors.vs. State of Kerala (2004) 12 SCC 414. While reiterating the view taken in Pattipati (supra), in the case of Pardeep Khatri Vs State reported as (2014) SCC Online Del 2373), it was held by the Supreme Court that:

“32..... a doctor is not concerned as to who committed the offence because his primary effort is to save the life of the injured and thus it is irrelevant that the person who claims to be an eye witness and has brought the injured to the hospital has not disclosed the name of the assailant to the doctor.”

62. Learned counsels for the appellants urged that in the initial information given to the PCR, it was stated that a ‘kirpan’ was used by the assailants. Records reveal that the initial information was given by Jeet Kaur. Merely because the weapon of assault was wrongly described in the cryptic information, would not be a ground to treat the entire incident as doubtful.

63. Next, it was urged by the counsels for the appellants that grave prejudice has been caused to the appellants as the Trial Court had

examined PW-1 to PW-20 on the same date, i.e. on 06.09.2013. In this regard, reliance was placed on the decision of a co-ordinate Bench of this Court in Sunil @ Raghu Vs State reported as **2018 III AD Delhi 306**. No doubt a word of caution has often been given by the Supreme Court that the material witnesses who are examined on a particular day, ought to be cross-examined on the same day. Reference in this regard is made to decision in the case of Vinod Kumar vs. State of Punjab reported as **(2015) 3 SCC 220**.

64. Having gone through the Trial Court record, it transpires that on 20.01.2013, a prayer was made by Kamaljeet Singh to the Trial Court that he be provided an Advocate at State expense as he could not afford to engage one. On the same date, an *Amicus Curiae* was appointed for him while Ramanjeet Singh and Manpreet were present in court and were duly represented through their respective counsel. As charge had already been framed against Manpreet and Ramanjeet Singh on an earlier date, similar charge was framed against Kamaljeet Singh on 20.01.2013. It was also directed that the matter would come for PE (prosecution evidence)/further proceedings on 11.03.2013 and 12.03.2013. On 11.03.2013, the matter was adjourned to 03.05.2013.

65. On 03.05.2013, both, Ramanjeet Singh and Manpreet made a request that they should also be provided a counsel at State expense. On the same date, while noting that there was no clash of interest between the parties, the trial court appointed the very same *Amicus Curiae* for Ramanjeet Singh and Manpreet who was already appearing for Kamaljeet Singh. On the said date, at the request of the Investigating Officer, the Trial Court directed that as PW-9 to PW-15 and PW-18 to PW-21 were formal witnesses, they be examined by way of affidavit in terms of the provisions of Section 296 Cr.PC. The said order was passed

with the consent of the *Amicus Curiae*. With this order, the case was directed to be listed for recording the entire prosecution evidence four months later, i.e. on 06.09.2013

66. It was in the above background that PW-1 to PW-20 were all examined and cross examined on 06.09.2013. Moreover, out of 20 prosecution witnesses examined, 11 were formal in nature who were examined by way of affidavits. The record reveals that these witnesses were not cross examined substantially.

67. Notably, during this period, no objection was raised by any of the appellants to the above order of the Trial Court. Besides, the Trial Court had given sufficient time of over four months to the learned *Amicus Curiae* to prepare the entire prosecution evidence. In these peculiar facts and circumstances, we are of the view that no prejudice has been caused to the appellants. Not only, no objection was taken by them on 06.09.2013, no challenge or prejudice was claimed by the appellants thereafter or, even during the trial.

68. As for the plea that there was an anomaly as to who had prepared the unscaled site plan, SI Krishan Kumar (PW-15) had deposed that he had prepared the unscaled site plan at the instance of Jasvinder. However, it was neither signed by SI Krishan Kumar nor Jasvinder. In fact, the rough site plan was prepared by Insp. Harish Chander (PW-22). The unscaled site plan bears his signature. In his testimony, Insp. Harish Chander confirmed that he had prepared the rough site plan. Once the cross examination of Insp. Harish Chander reveals that no specific question was put to him that he did not prepare the rough site plan, we think it is too late in the day for the appellant to take such a plea.

69. It is worth mentioning that the order sheet of Crl. A. No.613/2016 filed by Manpreet reveals that on an application moved by the State under Section 391 read with 482 Cr.PC, the following order was passed by the High Court on 12.09.2018:

“Crl.M.A.10359/2018

1. *Having heard learned counsel for both parties, this Court finds that at this stage, the taking on record of copies of FIR No.417/2014 registered at PS SamaypurBadli and the consequent charge sheet which has been filed against the accused in that case is not going to prejudice any of the present Appellants as arguments anyway will be heard on the effect of the incidents spoken about in the said charge sheet on the present case. It is also noticed that although charges have been framed in the case arising out of FIR No.417/2014, the trial has not yet concluded.*
2. *Since only two documents are required now to be exhibited, the matter is sent to the trial Court for listing before it on 24th September 2018 for the limited purposes of the IO in the case arising out of FIR No.417/2014 being examined as a PW to exhibit the said documents. The said additional evidence will be put to the Appellant under Section 313 Cr.;PC for his supplementary statement and in relation thereto, if he so chooses, he will be permitted to lead defence evidence. The trial Court will conclude the said proceedings and sent the record of the additional evidence together with trial Court record back to this court no later than 1st October 2018.”*

70. In terms of the above order, the statement of Shri Sanjeev Kumar, ACP, Saraswati Vihar was recorded by the Trial Court in the present case who had exhibited a copy of FIR No.417/2014, PS Samaypur Badli, registered under Sections 302/307/34 IPC as Ex.CW-1/A and a copy of the main charge-sheet, supplementary charge-sheet with the documents were exhibited as CW-1/B (Colly). As per the said charge-sheet, Manpreet along with other fellow prisoners, while being lodged in Ward No.2, had assaulted and killed Rajvinder Singh (PW-20) who was also lodged in the same ward in connection with some other case. Manpreet

was examined under Section 313 Cr.PC on 25.09.2018 and the said exhibits and the circumstances of the said case were put to him which were denied.

CONCLUSION:

71. It is an admitted case that one week prior to the incident, a quarrel had taken place between Surender and Ramanjeet Singh, which was also reported to the police and because of this, Ramanjeet Singh had threatened to eliminate Surender and his family members. This circumstance was never challenged in the cross-examination. On the contrary, it was the admitted case of the appellants that both, Surender and Ramanjeet Singh were arrested for breach of peace on account of that quarrel. The appellants had also given a suggestion to Surender that there was animosity between their family and the family of the deceased, as the daughter of one of the relatives of the appellants was allegedly allured by the deceased. The said suggestion was denied by the witness.

72. From the above, it is clear that there was a previous enmity between the two families. The time gap between the earlier dispute and the date of the incident was only one week. In view of the threats given by Ramanjeet Singh to Surender to eliminate him and his entire family, it can be safely presumed that there was motive for the appellants to commit the crime.

73. The incident of assault on Narender was witnessed by his brother, Surender whose testimony has been found to be credible and trustworthy. Both, the deceased (Narender) and Surender (the injured brother of the deceased) were admitted in Babu Jag Jeevan Ram Hospital at about the same time, within one hour of the first information given to the PCR. The MLCs of both, i.e. the deceased as well as Surender show that they were brought by their brother, Rajvinder Singh. The said injuries on Surender

appeared on his left scapular region as well as on the fingers. The injuries could not have been self-inflicted, as suggested to the witness during his cross-examination. As per the Trial Court record, the deceased has been shown to be a resident of J-964, Gali No.2, Swaroop Nagar, Delhi which was also the residential address of Surender. The incident had taken place at the back-side gate of their house. The witness was injured in the same incident in which his deceased brother received fatal injuries resulting in his death. We are of the opinion that the testimony of this witness can be relied upon being a truthful witness and a natural witness, who was present at the spot.

74. The weapon of offence, i.e. the *Gandasa* was recovered at the instance of the Ramanjeet Singh. The said recovery was witnessed not only by the police witnesses namely, Ct. Baljeet, HC Rajender Singh and Insp. Harish Chander, but also by Surender. Though, no grouping could be obtained on the *Gandasa* in the forensic examination, however, human blood was detected on the same. Dr. Bhim Singh, who proved the post mortem report of the deceased, also proved his opinion with respect to the injuries and the cut marks on the clothes of the deceased and stated that they could have possibly been caused by the recovered Gandasa. The said witness also opined on the injuries suffered by the injured, Surender and stated that they could possibly be caused by the recovered Gandasa. The Gandasa blows on the deceased and the injured have been attributed to Ramanjeet Singh and Kamaljeet Singh and whereas the role attributed to the co-accused, Manpreet, Balvinder Kaur and Gurvinder Kaur (both P.Os) was that they had caught hold of the deceased. As per the postmortem report, a total 12 injures were inflicted on the body of the deceased, most of which were on the vital parts of his body, i.e., the head, face and chest. Injuries No.4 to 11 were opined to be sufficient to cause death in the ordinary course of nature. The incident had taken place

in the night of 10.02.2012, at about 11-11.15 p.m. The appellants came armed with Gandasas and Dandas. The recovered Gandasa was 4 ft in length. All the appellants played an active role in assaulting Narender (the deceased). The number of injuries, the seat of the injuries, the kind of weapon used in the assault amply prove that the appellants had come with a premeditation to commit the murder of Narender. The murder was committed with pre-planning and common intention of all the appellants. As a result, the conviction of the appellants punishable under Sections 302/34 IPC, are upheld.

75. The appellants had also caused injuries to Surender, opined to be grievous in nature. From the nature of injuries inflicted on the injured, we are of the view that they were caused by the appellants in furtherance of their common intention and with prior concert. Therefore, the conviction of the appellants punishable under Sections 326/34 IPC is upheld.

76. The impugned judgment dated 22.04.2016 and the order of sentence dated 23.04.2016 are upheld. Consequently, the three appeals filed by the appellants namely Ramanjeet Singh, Manpreet and Kamaljeet Singh are hereby dismissed. All the appellants who are in judicial custody, are directed to serve their remaining sentences, as awarded by the Trial Court.

77. A certified copy of this judgment be supplied to the appellants, free of cost, through the concerned Jail Superintendent as well as the Secretary, DLSLA. Trial Court record be returned forthwith alongwith a copy of this judgment.

(MANOJ KUMAR OHRI)
JUDGE

(HIMA KOHLI)
JUDGE

APRIL 26, 2019
dc/sm/na