

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-568-DB-2004 (O&M)

Reserved on : January 22, 2020

Date of Decision: July 15, 2020

Tirvender Kumar alias Titu

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Ashish Verma, Advocate for the appellant.

Mr. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 01/10.06.2004 rendered by the Sessions Judge, Yamunanagar at Jagadhri in Sessions Case No.2 of 2003, whereby, the appellant, who was charged with and tried for offence punishable under Section 302 of the Indian Penal Code (for short 'the IPC'), has been convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo RI for a period of three months.

2. The case of the prosecution in a nutshell is that on 28.10.2002, a telephonic message was received in the Control Room that a murder had been committed at Housing Board Colony, Sector 18, Jagadhri. On receipt of this message ASI Mewa Ram along with other police officials reached the

Housing Board Colony. On reaching the spot they found that dead body of a boy was lying on the bed and another boy (Rohit- brother of the deceased) was weeping. He was somewhat perplexed. However, after few minutes when he was consoled he got recorded his statement Ex.PA. He stated that he was a student of 10th class in Indian High School Govindpuri. His father expired about 13 years ago. They were three brothers. Kamal, who was younger to him, had died in December 2001. His elder brother Ravi worked in a Brass Factory at Mohali. For the last about 1-1¼ months he had been living with them at home. After the death of his father his mother Poonam had been serving in the Military Canteen, Golden Line Jagadhri. Some days ago, his uncle Tirvender Kumar @ Titu son of Sh.Hukam Chand who resided with them, took away the ornaments of his mother from the house and sold the same. This fact came to their knowledge 4/5 days ago. His uncle Tirvender Kumar was admitted in Kapoor Hospital because of an ailment. After discharge, he came to the house 1-2 days before the occurrence. In the morning on 28.10.2002 Tirvender Kumar and Ravi had a tiff with regard to the ornaments. The mother of the complainant was on duty. He was playing Cricket with some other children in the ground in front of their house. It was about 4.30 PM. Loud shouts were heard from their house. On hearing the shouts, he reached there. He went upstairs and saw that Tirvender Kumar assaulted his brother Ravi with knife which he was holding in his hand. The knife blow was given on the neck of Ravi. Ravi fell down on the bed. The complainant ran down due to fear. Tirvender Kumar also came down through the stairs and went away towards Sector-18. The complainant- Rohit shouted that his brother had been killed.

On hearing the noise, the other children ran away due to fear. Some one informed the police on telephone and immediately the police van reached at the spot. After that some one also informed his mother on telephone who also came back from the Canteen. He stated that his brother had been killed by his Uncle Tirvender by inflicting injuries on him. On the basis of the statement of Rohit, FIR Ex.PA/2 was recorded. SI Mewa Ram prepared rough site plan. Inquest report Ex.PL of the dead body was prepared. The dead body was sent for post mortem examination. The accused was arrested on 29.10.2002. On his disclosure statement knife Ex.P1 was recovered. On completion of investigation, challan under Section 173 Cr.P.C. was filed.

3. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded innocence. He stated that on 28.10.2002 in the evening time he came to know about the death of Ravi, upon which he along with his mother, sister and father went to the house of the deceased and found Poonam (mother of deceased) weeping. In the meantime, Ramesh Kumar, brother of Poonam came there and started abusing him and tried to catch hold of him by the neck. Then the Police took him to the Police Station. At that time, PW Rohit was not there. The case had been falsely planted on him at the instance of Ramesh brother of Poonam. He was kept in the Police Station illegally from 28.10.2002 to 30.10.2002 when he was produced in Court. Then he came to know that he had been falsely involved in the case. However, he led no evidence in his defence.

Hence, this appeal.

5. We have heard learned counsel for the parties and have gone through the judgment and record.

6. PW1 Dhanpal Singh Inspector deposed that on 30.11.2002 he was posted as SHO of Police Station City Jagadhri and had prepared the report under Section 173 Cr.P.C. in the case.

7. PW2 ASI Ram Sarup deposed about having received the Ruqa Ex.PA on 28.10.2002 from Mewa Singh ASI, on the basis of which the FIR Ex.PA/2 was recorded.

8. PW3 Constable Desh Raj deposed that on 28.10.2002 he had taken the Ruqa to the Police Station City Jagadhri and handed over the same to MHC. On 29.10.2002 after the postmortem examination of the deceased, the doctor handed over to him a sealed parcel which was further handed over to SI Mewa Ram.

9. PW4 HC Devi Dayal stated that on 29.10.2002 he was posted as Malkhana Moharrar in Police Station City Jagadhri. On that day, ASI Mewa Ram had handed over to him a sealed parcel containing chaddar, *chatai* and a knife with the seal 'MR'. On 11.11.2002 Mewa Ram ASI also deposited sealed parcels which were handed by the doctor. He, thereafter, handed over these articles to Constable Sher Singh for their deposit with the FSL which he deposited the same day.

10. PW5 Constable Sher Singh tendered in evidence his affidavit Ex.PD affirming that on 11.11.2002 he had deposited a sealed parcel handed over to him by HC. Devi Dayal with the FSL.

11. PW6 Constable Mulakh Raj stated that on 21.11.2002 while he

was posted as draftsman, he prepared the site-plan Ex.PE at the instance of Rohit Kumar.

12. PW7 ASI Satpal Singh deposed that on 30.10.2002 he joined investigation with SI Mewa Ram and EHC Surinder Kumar. Accused was brought out from the police lockup by SI Mewa Ram and was interrogated in his presence. During interrogation, he got recorded his disclosure statement Ex.PF, pursuant to which he got recovered the knife used by him in the commission of the offence from an almirah lying in his house. The sketch of the knife as prepared by SI Mewa Ram is Ex.PG. The knife was taken into possession vide memo Ex.PH.

13. In cross-examination he stated that the sealed parcel containing the knife was deposited by the IO with MHC at 2.00 PM on 30.10.2002 after reaching the Police Station. He admitted that there is overwriting in mentioning the date by the IO in Ex.PH. He denied the suggestion that no disclosure statement was made by the accused and no recovery was got effected by him.

14. PW8 EHC Surinder Kumar deposed that on 28.10.2002 special report of the case was handed over to him by ASI Ram Sarup and he delivered the same to Ilaqa Magistrate, S.P. and D.S.P. On 30.10.2002 he joined investigation with SI Mewa Ram and HC Satpal. On that day, accused were taken out of police lock-up and interrogated in his presence. Accused made disclosure statement Ex.PF, pursuant whereto he got recovered the knife which was taken into possession vide memo Ex.PH after preparing its sketch Ex.PG. He identified the knife Ex.P1 as the same which was got recovered by the accused. In cross-examination, he denied the

suggestion that no disclosure was made by the accused and no recovery was got effected by him.

15. PW9 Poonam Sharma widow of Pushap Raj deposed that on 28.10.2002, she was on duty in Military Canteen, Jagadhri. She received a telephonic message that her son Ravi was killed. After she reached her house, her younger son Rohit told her that Ravi had been killed by accused Tirvender Kumar, who was younger brother of her husband. She went to the first floor of their house and found her son lying dead on a Deewan. There was a sign of cut on his neck and blood was also present on his chest. His tongue was protruding. Four days before this occurrence, she came to know that the accused had removed gold ornaments belonging to her from her almirah in the house. One day before this occurrence, hot words were exchanged between her deceased son and the accused. Her son threatened the accused that he would lodge a report against him with the police for committing theft of ornaments. The accused threatened to see him if he dared to lodge the report. Her husband had died about 13-14 years ago. At that time, the accused was student of 7th or 8th standard and since then he had been residing with them. Her deceased son was employed in a private factory at Mohali. She had called him to the house about one and half month before this occurrence. The deceased also wanted to do some work at Jagadhri.

16. In cross-examination by Ld. counsel for the accused, she stated that her statement had been recorded by the Police. She did not remember as to whether in that statement she had mentioned that one day before this occurrence hot words were exchanged between the accused and her

deceased son on account of theft of ornaments. She was confronted with the statement Ex.DA wherein it was not so recorded. The only fact recorded was that the deceased had protested against the accused committing theft of ornaments and he had been killed by the accused due to that grudge. Her deceased son was born in the year 1982. He was about 20 or 21 years of age. He had studied upto 9th class. She admitted that at the end of the lane towards the south of their house there was a ground which was having some depression. Children from that lane usually played in that ground as well as in the ground in front of their house. Her father-in-law and mother-in-law were alive. They reside separately in Yamunanagar. She had informed her mother-in-law about the theft of ornaments by the accused four days before the occurrence. She had not told this fact to her father-in-law as he was hard of hearing. The telephonic message regarding the incident was received by her Manager and he in turn informed her about it. The message was received at about 5.00 PM when the office was about to be closed. She had come home by taking lift on a scooter of the Manager, which was driven by one staff member. When she reached the house, police was already present. Her brother Ramesh had reached after about 1½ hours of her reaching the house. She did not know as to who had informed her brother. The police had recorded her statement after arrival of her brother. She did not know as to when the statement of her son Rohit was recorded by the police as she was mourning the death of her son at the ground floor of the house. Her son Rohit was already present in the house when she reached there. Many people from the nearby houses had already gathered there. Her son Rohit was a student of 10th class. He used to attend a private school i.e. Indian

High School situated near Gaba Hospital. Sometimes, he used to go to School and sometimes he used to miss School. Except for one day before this occurrence, hot words were never exchanged between her son and the accused.

17. PW10 - Dr. D.P.Singh, Medical Officer, Civil Hospital, Jagadhri deposed that on 29.10.2002 at about 11.30 A.M. he alongwith Dr. Ramesh Kumar conducted the post mortem examination on the dead body of Ravi son of Pushap Raj Sharma, aged 19 years. The body was brought from Housing Board Colony, Sector 18, H.No.924-F, Jagadhri. As per police papers the death occurred at 4.30 P.M. on 28.10.2002.

The observations recorded by him were as under:-

“The length of the body was 5'-5”. There was no mark of ligature on neck. The body was moderately built, moderately nourished of a young male wearing yellow shirt, white banian, blue coloured pants, violet coloured underwear (striped). Eyes were closed. Mouth was semi open. Frothy red coloured fluid was coming out of mouth. Both nostrils were bleeding and clotted blood was present on outside nostrils. Rigor mortis was present all over the body. Shirt and banian were soaked with blood.”

The following injuries were found on the body:

“Scalp, skull and vertebrae were NAD. Membrances, brain spinal cord were NAD.

- A sharp wound 11 x 1cm x ½ cm on left side of chest below nipple placed obliquely from left side of sternum & going to left 3 cm below left nipple. The wound was red in colour.*
- A sharp wound 6cm x ¼cm x ¼cm on right shoulder placed obliquely red in colour.*
- A sharp wound 3 cm x ¼ cm x ¼ cm placed on right side of*

face 3cm from angle of mouth. Wound placed vertically and slightly obliquely.

- A sharp wound 2cm x 2cm on right side of neck, 1 cm from midline and 4 cm from thyroid cartilage. The wound was placed vertically and slightly obliquely. The wound was going deep about 4cm in trachea. On further section of neck and wound the underlying subcutaneous tissue muscles was ruptured. There was a rent in the trachea of 2 cm x 2 cm corresponding to wound at surface. The trachea was full of clotted blood.*

Walls ribs and cartilages were NAD. Plourae-right NAD, left was full of blood. Larynx and trachea was as described above. Right lung and left lung were pale. Pericardium was NAD, Heart-both chambers were empty. Large vessels were NAD. Abdominal wall was NAD. Peritoneum was NAD. Mouth, pharynx and oesophagus was as described. Stomach and its contents were containing small amount of semi-digested food material. Small intestines contained chyle and gases. Large intestines contained faecal matter and gases. Liver spleen and kidneys were pale. Bladder was NAD. Organs of generation external and internal were NAD. Muscles, bones and joints were as described.”

It was opined that the cause of death was asphyxia due to blood in trachea which was ante-mortem in nature and sufficient to cause death in normal course of events. The probable time that elapsed between injury and death was within few minutes and between death and post mortem within 24 hours.

18. PW10 proved the carbon copy of post mortem report Ex.PK and the Inquest Report Ex.PL. He deposed that the neck injury and other injuries

described in the post mortem report could be caused by knife Ex.P1 shown

to him in the court. The blade of knife Ex.P.1 was bent one. In his opinion the possibility of blade of knife Ex.P1 getting bent while causing injuries with this knife in the neck could not be ruled out. In his opinion blood in trachea was due to injury No.4 and hence in the opinion of the Board the asphyxia in this case was caused within few minutes of receiving injuries, and the same could be termed as instantaneous death.

19. PW11 Rohit Sharma son of Pushap Raj Sharma, aged 16 years, stated that on the day of occurrence he was a student of 10th class in Indian High School, Govindpuri. At present, he was taking private tuition. His father expired about 13 years ago. They were three brothers - Kamal, who was younger to him had died the previous year. His elder brother Ravi Sharma used to work in a brass factory in Mohali. About 1½ month before the occurrence, he had started staying with them in Housing Board Colony, Sector-18, Jagadhri. His mother Smt.Poonam Sharma used to work in Golden Line Canteen, Jagadhri after the death of his father. Accused Tirvender Kumar was his real paternal uncle. He used to reside with them in their house and used to stay with them and was also dining with them. He had stolen gold ornaments of his mother. This fact came to his knowledge 4-5 days before the occurrence. His uncle Tirvender Kumar was not feeling well and had been admitted in Kapoor Hospital. He had come to the house from the Hospital about 1-2 days before the occurrence. On 28.10.2002 his mother left for her work in the morning. There was a talk between his uncle Tirvender Kumar and his brother Ravi regarding the ornaments taken away by Tirvender Kumar. His brother told the accused that he should return the ornaments stolen by him. Thereafter, the accused left the house. In the

evening at about 4.30 PM, he (PW11) along with other children was playing cricket in the ground in front of their house. He heard loud voices coming from their residential house, which was on the first floor. He immediately went upstairs and saw that his uncle Tirvender Kumar was armed with a knife. He caused injury to his brother Ravi at his neck. On seeing the accused inflicting injuries to his brother, he (PW11) immediately came down as he was frightened. He shouted that his brother has been killed by his uncle. His uncle also got down from the stairs about 15-20 seconds thereafter and went towards Sector-18 HUDA. The Police reached there after about 15 minutes. He could not say as to who had informed the Police. His mother reached about 2 minutes after the arrival of the Police. He had narrated all the facts to his mother. As he was frightened he did not go upstairs again. He could not say as to whether his brother was still alive or had succumbed to his injuries. His statement Ex.PA was recorded by the Police in the room adjoining the room in which the dead body of his brother was lying.

20. In cross-examination he deposed that they reside in House No.924-F. The house had been purchased by them about 02 years ago on instalments. There was a road in front of their house and thereafter, there was a ground and after the ground there was another row of houses. The width of the ground was about 50 feet. Children residing in the neighbourhood who used to play with him were known to him. Their parents were also known to him. Avinash and Nitin from the neighbourhood were playing with him on that day. Nitin resided in H.No.925 and Avinash used to reside in H.No.927. His mother used to leave the house at about

8.05 AM and return at about 5.10 PM after her office closed at 5.00 PM. He used to leave for School at 8.20 AM and return at about 2.40 PM as the School used to close at 2.30 PM. On the day of the incident, he had not gone to the School. His maternal uncle Ramesh resides at Ambala. His maternal uncle had reached their house about 1½ hours after the Police had reached there. He did not become unconscious on that day. His mother also did not fall unconscious. Statement of his mother had been recorded before the arrival of his maternal uncle. On 28.10.2002 at about 8.15 AM there was a talk between his brother and the accused. However, they had not caused any injury to each other then. There were three rooms in their house. The accused used to sleep in the third room. He and his mother used to sleep in the second room. His brother used to sleep in the first room as he was fond of watching TV. He had himself seen the accused with knife in his hand and giving blow to his brother. Kitchen was attached with the second room of their house. His brother was weaker in health than the accused.

21. PW12 Mukesh Sehgal deposed that on 28.10.2002 on the police request, he had visited the house situated in Sector-18 and had taken four photographs Ex.P6 to P9 from different angles. He also proved the developed photographs as Ex.P10 to P13.

22. PW13 Ramesh Kumar deposed that he was employed in a private factory at Dera Bassi. Poonam Sharma was his sister. She resided in Housing Board Colony, Jagadhri. Her husband was employed in the Navy. He expired about 13-14 years ago. Her sister had three sons. The youngest son had expired in December, 2001. Her eldest son Ravi Sharma was employed in a factory at Mohali. He had come to live with his mother about

1¼ months before the occurrence. On 28.10.2002 he received a telephonic message that his nephew Ravi Sharma had a dispute with his uncle Tirvender Kumar. On receiving that message, he reached the house of his sister in Housing Board Colony on his scooter. He found his sister and nephew Rohit weeping. They told him that Tirvender Kumar accused had killed Ravi by inflicting injuries with knife. He went upstairs and found dead body of his nephew Ravi lying in a room. He was having injuries on his neck and chest. There was also blood stained *chaddar* and *chatai*. Police was present there. The *chatai* Ex.P14 and *Chaddar* Ex.P15 were taken into possession by the Police in his presence vide recovery memo Ex.PN. The accused was arrested by the IO at about 1.30 PM on 29.10.2002 on a kachha Rasta going from village Ratauli Road to Bank colony on his identification.

23. In cross-examination he stated that he had received a telephonic message at his residence at 5.15 PM. However, he could not say as to who had given him the message. When he reached the house of his sister, many people were present there. The Police was also present. He was told about the occurrence by his sister and his nephew. He had reached there at about 6.30 or 6.45 PM on 28.10.2002. The statement of his sister was recorded by the Police in his presence. However, the statement of Rohit was not recorded in his presence. He did not notice the presence of father-in-law and mother-in-law of his sister at her house when he reached there. The Police stayed at the house of his sister upto 11.00 PM.

24. PW14 Sub Inspector Mewa Ram deposed that on 28.10.2002 he was posted as Incharge, Police Post Rakshak Vihar, Jagadhri. A VT

message was received from the control room that a murder had been committed in Housing Board Colony, Sector-18 Jagadhri. On receiving the message, he along with police officials reached Housing Board Colony, Jagadhri. On reaching the residence of the complainant, he found that a dead body of a boy was lying on a bed. Another boy, who was brother of the deceased, was weeping. He was somewhat perplexed. However, after few minutes when he was consoled he got recorded his statement Ex.PA. The same was read over to him and he signed the same in token of its correctness. He made endorsement Ex.PA/3 and sent it to the Police Station for registration of an FIR. FIR Ex.PA/2 was recorded. He called photographer to the spot, prepared Inquest Report Ex.PL of the dead body. He inspected the place of occurrence and prepared rough site plan Ex.PO. He took the Chatai Ex.P14 and Chaddar Ex.P15 in possession vide memo Ex.PN. The dead body was sent for postmortem examination, statements of the witnesses were recorded. He searched for the accused. However, he could not be traced during the night. The next day i.e. on 29.10.2002 at about 1.30 or 2.00 PM accused was arrested by him from near Bank Colony on the kacha Rasta coming from Ratauli Road on the identification of PW Ramesh Kumar. On 30.10.2002, he interrogated accused in the presence of HC Satpal and EHC Surinder Kumar. The accused made disclosure statement Ex.PF pursuant where to, he got recovered a knife Ex.P1 from his residential house, which was taken into possession vide memo Ex.PH. He prepared sketch of the knife Ex.PG.

25. In cross-examination he stated that VT message was only to the effect that some murder had taken place in Housing Board Colony, Sector-

18, Jagadhri. He reached the house of the complainant at about 5.00 PM. When he reached the house, Poonam mother of the deceased was not present. She reached there about 10-15 minutes thereafter. About 10-15 neighbours were also present there. On enquiry the neighbours told him that murder was committed by Tirvender, who had run away from the house. After seeing the place of occurrence, he observed that there was some altercation in that room between the assailant and the deceased. Maternal uncle of the deceased had reached at about 7.00 PM. He had recorded the statement of Rohit by sitting in the room of the house. He had recorded the statement of the mother of the deceased at about 8.30 PM and statement of Ramesh at about 7.30 PM. He stayed at the house of the deceased upto 11.00 PM. He denied that there was any overwriting on Ex.PH while writing date under his signature, rather the same was due to pressure of ball-pen. He also denied that there was overwriting regarding the date under his signatures on Ex.PG. He explained that the same was also due to pressure of ball-pen.

26. From the evidence it emerges that the FIR was lodged on the statement Ex.PA of Rohit Sharma, the younger brother of the deceased. He stated that on 28.10.2002 at about 4.30 PM he was playing with other children in front of their house. He heard loud shouts from his house. On hearing the shouts, he reached there through stairs and saw that Tirvender Kumar assaulted his brother Ravi with knife which he was holding in his hand. The knife blow was given on the neck of Ravi. Ravi fell down on the bed. The complainant ran down due to fear. Tirvender Kumar also came down through stairs and went away towards Sector-18. The complainant

Rohit shouted that his brother had been killed. On hearing the noise, the other children ran away due to fear. Some one informed the police on telephone and immediately the police van reached the spot. After that some one also informed his mother on telephone who also came back from Canteen. He stated that his brother had been killed by his Uncle Tirvender by inflicting injuries to him. He reiterated the same version while deposing in Court as PW11.

27. PW9 Poonam Sharma, mother of the deceased while appearing in the Court deposed that on 28.10.2002 she was on duty in military canteen, Jagadhri. She received a telephonic message that her son Ravi was killed. After she reached her house, her younger son Rohit told her that Ravi had been killed by accused Tirvender Kumar, who was younger brother of her husband. She went to the first floor of their house and found her son lying dead on a Deewan. There was a sign of cut on his neck and blood was also present on his chest. His tongue was protruding.

28. PW13 Ramesh Kumar, maternal uncle of the deceased and the complainant Rohit Sharma deposed that on 28.10.2002 he received a telephonic message that his nephew Ravi Sharma had a dispute with his uncle Tirvender Kumar. On receiving that message, he reached the house of his sister in Housing Board Colony on his scooter. He found his sister and nephew Rohit weeping. They told him that Tirvender Kumar accused had killed Ravi by inflicting injuries with knife. He went upstairs and found dead body of his nephew Ravi lying in a room. He was having injuries on his neck and chest. There was also blood stained *chaddar* and *chatai*.

29. PW14 Sub Inspector Mewa Ram, the Investigating Officer of the case testified that on 28.10.2002 a VT message was received that a murder had been committed in Housing Board Colony, Sector 18 Jagadhri. On receiving the message, he along with police officials reached Housing Board Colony Jagadhri. On reaching the residence of the complainant, he found that a dead body of a boy was lying on a bed. Another boy who was brother of the deceased was weeping. He was somewhat perplexed. However, after few minutes when he was consoled he got recorded his statement Ex.PA. In his cross-examination, he stated that when he reached the place of occurrence, about 10-15 neighbours were also present there. On enquiry the neighbours told him that murder was committed by Tirvender, who had run away from the house.

30. The oral version regarding injuries inflicted on the deceased has been corroborated by the medical evidence. PW10- Dr.D.P.Singh opined that the cause of death was asphyxia due to blood in trachea which was ante-mortem in nature and sufficient to cause death in normal course of events. The probable time that elapsed between injury and death was within few minutes and between death and post mortem within 24 hours.

31. The accused was arrested on 29.10.2002. On his disclosure statement, knife Ex.P1 was recovered. As per FSL report, blood was detected on exhibit-3 (Knife).

32. PW10- Dr.D.P. Singh deposed that the neck injury and other injuries described in the post mortem report could be caused by knife Ex.P1 shown to him in the court. The blade of knife Ex.P.1 was bent . In his opinion the possibility of blade of knife Ex.P.1 getting bent while causing

injuries with this knife in the neck could not be ruled out. In his opinion blood in trachea was due to injury No.4 and hence in the opinion of the Board the asphyxia in this case was caused within few minutes of receiving injuries, and the same could be termed as instantaneous death.

33. Ld. Counsel for the appellant has argued that the accused was arrested on the day of occurrence itself i.e. 28.10.2002 and the alleged recovery of knife was effected on 29.10.2002 which is clear from the recovery memo Ex.PH and the sketch of the knife Ex.PG, which were prepared on 29.10.2002. Later on, the recovery was shown to have been effected on 30.10.2002. There was an overwriting on Exhibits PG and PH and the date 29.10.2002 was changed to 30.10.2002. It was thus, argued that the recovery was doubtful and the entire prosecution case was false.

34. This contention cannot be accepted. PW14 SI Mewa Ram has clearly deposed that the accused was arrested on 29.10.2002 at about 1.30 or 2.00 PM by him from near Bank Colony on the kacha Rasta coming from Ratauli Road on the identification of PW Ramesh Kumar. This fact has also been corroborated by PW13 Ramesh Kumar, on whose identification the accused was arrested.

35. PW14 SI Mewa Ram has deposed that on 30.10.2002, he interrogated accused in the presence of HC Satpal (PW7) and EHC Surinder Kumar (PW8). The accused made disclosure statement Ex.PF pursuant where to, he got recovered a knife Ex.P1 from his residential house, which was taken into possession vide memo Ex.PH. He prepared sketch of the knife Ex.PG. The disclosure statement made by the accused and the recovery of the knife pursuant thereto is corroborated by the statements of

HC Satpal (PW7) and EHC Surinder Kumar (PW8), who have signed the disclosure statement as also the recovery memos.

36. As regards the alleged overwriting, PW14 SI/IO Mewa Ram denied that there was any overwriting on Ex.PH while writing date under his signature, rather the same was due to pressure of ball-pen. He also denied that there was overwriting regarding the date under his signatures on Ex.PG. He explained that the same was also due to pressure of ball-pen.

37. It is also significant that neither PW14 nor PW7 and PW8 have been cross-examined by the accused on the point that the recovery was in fact, effected on 29.10.2002 and not on 30.10.2002 as deposed to by them. The aspect of alleged overwriting has been clarified by the IO. Even if his explanation about the overwriting being due to pressure of ball pen is taken to be a clumsy explanation, the fact of the disclosure statement made by the accused and the recovery of the knife pursuant thereto is corroborated by the statements of HC Satpal (PW7) and EHC Surinder Kumar (PW8), who have signed the disclosure statement as also the recovery memos. Even otherwise if there is any minor defect in investigation that cannot enure to the benefit of the accused if there is other credible evidence pointing to the guilt of the accused.

38. The prosecution has also proved the motive of the accused to commit the crime. PW11-Rohit Sharma in his deposition stated that the accused used to reside with them in their house and used to stay with them and was also dining with them. He had stolen gold ornaments of his mother. This fact came to their knowledge 4-5 days before the occurrence.

His uncle Tirvender Kumar was not feeling well and had been admitted in

Kapoor Hospital. He had come to the house from the Hospital about 1-2 days before the occurrence. On 28.10.2002 his mother left for her work in the morning. There was a talk between his uncle Tirvender Kumar and his brother Ravi regarding the ornaments taken away by Tirvender Kumar. His brother told the accused that he should return the ornaments stolen by him.

39. PW9 Poonam Sharma while appearing in Court stated that four days before this occurrence, she came to know that the accused had removed gold ornaments belonging to her from her almirah in the house. One day before this occurrence, hot words were exchanged between the deceased son and the accused. Her son threatened the accused that he would lodge a report with the Police for committing theft of ornaments and the accused threatened to see him if he dared to lodge the report. Though this fact was not recorded in her statement Ex.DA wherein the only fact recorded was that the deceased had protested against the accused committing theft of ornaments and he had been killed by the accused due to that grudge. But this would not detract from the version that the accused had stolen her gold ornaments about four days before the occurrence. Further in her cross-examination, she stated that she had informed her mother-in-law about the ornaments stolen by the accused, but she had not informed her father-in-law as he was hard of hearing. Her father-in-law and mother-in-law were staying separately in Yamunanagar.

40. The accused in his statement under Section 313 CrPC stated that on 28.10.2002 in the evening he came to know about the death of Ravi, upon which he along with his mother, sister and father went to the house of the deceased and found Poonam weeping. In the meantime, Ramesh Kumar,

brother of Poonam came there and started abusing him and tried to catch hold of him by the neck. At that time, PW11 Rohit Sharma was not there. The case had been falsely planted on him at the instance of Ramesh brother of Poonam. Then the police took him to the Police Station. There appears to be no truth in this assertion. Each part of this statement is proved to be wrong. PW14 Sub Inspector Mewa Ram the Investigating Officer testified that when he along with police officials reached the residence of the complainant in Housing Board Colony after receiving the message of the murder, he found that a dead body of a boy was lying on a bed. Rohit Sharma brother of the deceased was present there. He was weeping. He was somewhat perplexed. However, after few minutes when he was consoled he got recorded his statement Ex.PA. In his cross-examination, he stated that PW13 Ramesh Sharma, maternal uncle of the deceased had reached at about 7.00 PM. Thus, clearly the statement of PW11 Rohit Sharma was recorded by PW14 before PW13 Ramesh Sharma the brother of Poonam reached there. Accordingly, there was no opportunity for PW13 Ramesh Sharma to have tutored PW Rohit Sharma to falsely implicate the accused. This falsifies the defence version of the accused that he had been falsely implicated at the instance of Ramesh Sharma. Moreover, there was no reason for any prosecution witness including Ramesh Sharma (PW13) to falsely implicate the accused. The accused has not examined either his mother, father or sister who would be able to substantiate his assertion that he had gone to the place on learning of the death of Ravi and the police had taken him to the Police Station from there on 28.10.2002. PW13 in his cross-examination has specifically stated that when he reached the place of

occurrence, the father-in-law and mother-in-law of his sister (the father and mother of the accused) were not present.

41. The Ld. Trial Court has rightly rejected the contention urged on behalf of the accused that PW11 Rohit Sharma being minor (aged about 16 years) his testimony cannot be relied upon. His testimony has been found to be credible. He has withstood the test of cross examination. The medical evidence has corroborated his oral version.

42. Accordingly, the case against the appellant has been proved beyond reasonable doubt.

43. There is no merit in the appeal and the same is dismissed.

44. Vide order dated 06.11.2008, the sentence of the appellant was ordered to be suspended during pendency of the appeal. Accordingly, the police is directed to take the appellant into custody to undergo remaining sentence imposed by the trial Court vide judgment and order dated 01/10.06.2004.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No