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

Judgment reserved on: 10.01.2020
Judgment pronounced on: 31.01.2020

+ **CRL.A. No. 15/2011**

INDER PAL & ANR.

..... Appellants

Through: Mr. Fahim Khan, Mr. Shoaib Khan
and Mr. Aditya Tanwar, Advs

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for State
with Insp. Vikram Singh, PS Sangam
Vihar

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SANGITA DHINGRA SEHGAL, J

1. Present appeal is directed against judgment dated 20.12.2010 and order of sentence dated 22.12.2010 passed by the learned Additional Sessions Judge, Special Judge NDPS, South & South-East District, Saket Courts, New Delhi in Sessions case No. 89/2007 arising out of FIR No. 514/2007 registered under Sections 302/307/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') at Police Station Sangam Vihar, New Delhi whereby the learned Sessions Judge found the appellants-accused guilty and sentenced them as follows:

“.....I sentence the convict Indrawati to RI for a period of seven years and convict Inderpal to RI for a period of five years and also to a fine of Rs.5000/- each

for the offence punishable U/S 304/34 (II) IPC. They both are also sentenced to RI for a period of three years each and a fine of Rs.3000/- each for the offence punishable U/S 308/34 IPC. In case of non-payment of fine they shall further undergo RI for a period of two months and one month each respectively. Both the sentences shall run concurrently.....”

2. The brief facts of the case, as mentioned by the learned Trial Court are reproduced as under:

“.....On 03.06.2007, at about 10.37 PM one DD No.29A Ex. PW-11/A was recorded at the PS regarding the above incident and the same was assigned to ASI B.D.Khan/PW-11, who had arrived at the spot alongwith Ct. Kamlesh Kumar / PW-9. It was revealed to them that the injured had already been taken to AIIMS Hospital and in the meanwhile they had also received one other DD No. 47B Ex.PW11/B in that regard. SI O.P. Thakur/PW-21 had also reached there alongwith Ct. Ishwar Singh/PW-14 and then PW-11/ASI B.D.Khan and PW-21/SI O.P.Thakur had both reached AIIMS Hospital and had obtained the MLCs of deceased Shakuntala, who was declared brought dead, and of the injured Sh.Kunwar Pal, Geeta and Vicky.

3. It is also mentioned in the chargesheet that the injured Sh.Kunwar Pal was declared fit for making the statement and the IO/PW-21 SI O.P Thakur had recorded his statement Ex.PW1/A in which he had stated that at about 10 PM in the night after taking his meals he had come out of his house for some fresh air when the accused Inderpal, who was residing in front of his house, had started abusing him on the point of some flow of water of his house in the drain and the foul smell emanating therefrom and the accused had grappled with him. In the meanwhile, the wife of the accused Inderpal, i.e., the co-accused Indrawati, and his son Raju had started pelting bricks/stones from the roof of their house and the

accused Indrawati had hit two stones on the head of his wife Shakuntala (since deceased) and she became unconscious at the spot. The son Vicky and daughter Geeta of the complainant had also come out of their house on hearing the noise of the quarrel and the accused Raju had hit on the head of his daughter Geeta with a stone from the roof of his house and the complainant Sh.Kunwar Pal had also received some injuries in the abovesaid quarrel. It was also stated by him that previously also there had been some quarrels and exchange of hot words between their families on the point of the above drain and the accused Inderpal was drunk at the time of above incident.

4. The IO /PW-21 and PW-11 had then both returned back at the spot and the IO/PW21 had made endorsement Ex.PW21/B on the above statement of the complainant Sh.Kunwar Pal and got a case registered at the PS under the above Sections, through PW-14, Ct. Ishwar Singh. During investigation conducted at the spot, the scene of offence was got photographed by the crime team, the blood sample, earth control and two pieces of stone and brick were seized vide seizure memo Ex.PW14/A, all the three accused persons were arrested and their disclosure statement were recorded. The dead body of the deceased Shakuntala was also got postmortem and handed over to her relatives after identification, statements of the witnesses were recorded and the rough as well as the scaled site plan of the scene of crime were prepared/ got prepared. The IO had also subsequently obtained the opinion from the department of death of the deceased having been caused by the above two pieces of the stone and the brick and had then got all the exhibits of the case examined from the FSL, Rohini. Since the accused Raju was found to be a juvenile, he was chargesheeted separately and he is facing trial before the Juvenile Board. After recording the statements as well as the supplementary statements of some witnesses, obtaining result on the MLCs of the above three injured and after

completing the other formalities of the investigation, the above two accused persons were chargesheeted for the said offences.”

3. Charge sheet in this case was filed against the accused persons on 24.08.2007 and after compliance of the provisions of Section 207 Cr.P.C, cognizance thereof was taken. A prima facie case for offences punishable under Sections 302/307/34 IPC was also found to be made out against both the accused persons and charges for the said offences were also accordingly framed against them on 12.11.2007.
4. In order to bring home the guilt of the accused persons, the prosecution examined 25 witnesses in all. After the conclusion of the prosecution evidence, all the incriminating evidence brought by the prosecution on record was put to both the accused and in their statements recorded under Section 313 Cr.P.C, both the appellants i.e. Inderpal and Inderwati denied the same to be correct while claiming themselves to be innocent and to have been falsely implicated in this case by the complainant and his family members. They had claimed that the complainant and his family members had attacked their house by pelting stones and they had received injuries out of the same. The accused had chosen to lead evidence in their defence and examined 3 witnesses.
5. Learned counsel for the appellants opened his submissions contending that the witnesses examined by the prosecution to establish its case i.e. PW-1 (Sh. Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Ms. Geeta) are interested witnesses and

their testimonies cannot be relied upon to convict the present appellants.

6. The counsel for the appellants further argued that the trial court failed to take into consideration the contradictions and improvements in the testimonies of the prosecution witnesses. Arguing on the same point, the counsel for the appellants contended that the contradictions and improvements in the testimony of the prosecution witnesses are not such which could have been ignored by the trial court as they go to the root of the case of the prosecution, consequently, falsifying the story put up by the prosecution.
7. In addition to the aforesaid, the learned counsel argued that the trial court failed to take into consideration that as per the testimonies of both PW-2 (Vicky @ Dal Chand) and PW-3 (Geeta) the death of the deceased Shakuntala was caused because of a fall due to push given by PW-2 (Vicky @ Dal Chand) while she was trying to stop him from inflicting blows on the person of the accused Inderpal and his son Raju.
8. The counsel for the appellants further argued that the trial court failed to look into the fact that there was no electricity at the spot at the time of incident, hence, the prosecution witnesses could not, in any probability, identify the accused persons. He further argued that the two public witnesses i.e. PW-4 (Shyam Nanda) and PW-10 (Smt. Chameli Devi) have not supported the case of the prosecution and turned hostile.
9. Concluding his arguments on behalf of the appellants, the counsel argued that the prosecution failed to prove any motive on the part of

the appellants to commit the said act and has also failed to fulfill its duty of proving the case beyond reasonable doubt, the benefit of which should go to the appellants and they should be acquitted of the charges under Section 304 Part II read with Section 34 as well as Section 308 read with Section 34 of the Indian Penal Code.

10. Rebutting the contentions of the appellants, Ms. Aashaa Tiwari, learned APP for the State submitted that the impugned judgment is based on proper appreciation of the facts and evidence and warrants no interference by this Court; that the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.
11. The learned APP further argued that injuries on the person of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) as well as the injuries on the person of deceased were inflicted by the present appellants in furtherance of the common intention of all of them. Learned counsel further submitted that the material witnesses i.e. PW-1 (Sh. Kanwar Pal Singh), PW-2 (Vicky) and PW-3 (Ms. Geeta) have supported the case of the prosecution, though there exist certain minor contradictions and improvements in their deposition, but the same are not such which go to the root of the prosecution case. In support of her argument, she placed reliance on *Mritunjoy Biswas vs. Pranab alias Kuti Biswas and Anr.* reported in **(2013) 12 SCC 796**.
12. Learned APP further contended that though PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) are

related witnesses but the same cannot be the sole basis to reject their testimonies in their entirety. In support of her contention, she placed reliance on ***Jodhan vs. State of M.P.*** reported in (2015) 11 SCC 52.

13. Concluding her arguments, the learned APP for the state contended that the presence of the bricks/stones in the house of the deceased stand established from the testimony of PW-2 (Sh. Vicky @ Dal Chand) which proves the case of prosecution.
14. We have heard the learned counsel for both the sides and have also perused the entire material available on record.

TESTIMONIES OF THE PROSECUTION WITNESSES

15. At the outset, we deem it necessary to refer to the depositions of the material witnesses i.e. PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta). PW-1 (Kanwar Pal Singh) in his examination-in-chief has deposed that: -

“On 03.06.2007, at about 10 PM, I started from my house for walk after taking the meal, accused Inderpal who was under the influence of liquor started abusing me and shouted as to why I had not closed the drainage where dirty water is collected and smelling and thereafter he caught hold me. Smt. Inderawati w/o Inderpal and their son Raju Yadav started pelting bricks and stone from the roof on us along with their four daughters. I sustained injury. My son Vicky @ Dal Chand sustained injury. My daughter Geeta and Smt. Shakuntala also came out hearing our noise. Accused Inderawati gave pelted two stones/brick on my wife Shakuntala while Raju pelted stone on my daughter Geeta. I tried to apprehend them and I was given teeth bite on my finger by accused persons. Someone informed the police. Police reached at the spot.”

In his cross-examination, the witness deposed as under: -

“I had given a statement to the police regarding the accident. In my statement to police Ex.PW1/A. I had not stated to the police that along with Smt. Indrawati w/o accused Inderpal and Raju Yadav S/o Inderpal, four daughters of the accused Inderpal were also pelting stones. I had stated to the police in my statement Ex.PW1/A that the accused persons had bit my finger but I had not named any of the accused, who had bit (confronted with statement Ex.PW1/A where it is not stated that accused persons had bit the finger of the witness). I had stated to the police in my statement that I received injuries on my finger while I was trying to prevent further quarrel.

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*I cannot name the persons, who started pelting stones from the roof of house of accused Inderpal immediately after accused Inderpal grappled with me. I had not seen the persons pelting stones as I was forced to retreat to my house. It is correct that my house as well as house of accused Inderpal are both single storied houses. The roof should be approximately at a height of 12 feet. I am not able to see the roof the house of accused Inderpal while I am in my house. **It is wrong to suggest that because of darkness I was not able to identify the persons, who had pelted stones. I had seen accused Inderpal, his wife Shakuntala Devi and his son Raju pelting stones. I had not seen and cannot name the other persons, who were also pelting stones.** I had stated to the police in my statement that my son Vicky had received injuries on his head as well as on the back. (confronted with statement Ex. PW1/A where it is not specifically stated what injuries were received by Vicky.*

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It is also wrong to suggest that then wife of accused Inderpal came outside her house after hearing cries of accused Inderpal and tried to save him. Vol. wife of

accused Inderpal was in the shop at that time and he was under the influence of liquor.

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It is wrong to suggest that my son Vicky pushed my wife and in the process my wife fell down and hit against a stone lying in the gali and received injuries. Vol. I had seen wife of accused Inderpal hitting my wife with stone. It is wrong to suggest that no family member of accused Inderpal including his wife Indrawati and son Raju had pelted stones on my family members including my wife."

16. PW-2 (Vicky @ Dal Chand) in his examination-in-chief has deposed that: -

*".....After about 4-5 minutes I heard noise of quarrel and I along with my mother, sister Geeta also came out, meanwhile we saw that Inderpal under the influence of liquor was beating my father and **when we intervened accused Inderawati and Raju along with other three started pelting stone on us.** My sister Geeta and mother Shakuntala sustained head injury due to pelting stones/bricks by Inderawati and Raju. Smt. **Inderawati pelted two stones on the head of my mother while Raju had pelted stone on the head of my sister Geeta by pointing their head. They pelted stone on our house also. I and my father also sustained injury. Inderpal also pelted stone taking the same from the Gali itself. The accused Inderpal, Inderawati and Raju along with their daughters/sister assaulted us with the pre-planning with intention to deprive us from our life."***

In his cross-examination, PW-2 (Vicky @ Dal Chand) stated that:

*"Police had recorded my statement after this incident when I identified the dead body of my mother. **I had stated to the police in my statement that I saw accused Inderpal beating my father while being under the influence of liquor (confronted with statement Ex.PW2/A where it is not so recorded).** **I had stated to***

the police in my statement that accused persons had pelted stones from their house top inside our house.

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It is wrong to suggest that I pushed my mother aside when she tried to intervene because of which she fell down on the ground and received injuries as her head struck against stones and bricks lying in the gali.

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It is incorrect to suggest that my mother had received injuries due to a fall after being pushed by my brother Vicky.”

17. The daughter of the deceased Ms. Geeta was examined as PW-3, who deposed as follows:

*“On 03.06.2007, I was present at my house. At about 10 PM, my father had gone out of the house after taking dinner and heard his loud voice of quarrel. **On which I, my mother Shakuntala Devi and brother Vicky came out of the house. I saw accused Inderpal (present in Court) grappling with my father and his wife Indrawati and pelting bricks and stones from the roof on my father.** We also reached there and Inderwati continued to pelt bricks and stones. I also sustained injuries. My brother Vicky also received injury. My father received injury in his hand. Raju son of Indrawati and Inderpal gave bricks below. **Indrawati thrown stones on my mother and my mother expired at the spot after sustaining head injury.** Some neighbour informed the police. Police came there and we were taken to the hospital. The accused persons also sustained injuries but I cannot tell how they sustained injuries.*

In her cross-examination, she deposed as under:

My statement was recorded by the police relating to this case. I had stated to the police in my statement that when I came outside my house after hearing the noise, I saw accused Inderpal grappling with my father Kawarpal

(confronted with statement Ex.PW3/A where it is not so recorded). We are living in this house for a period of about eight months prior to the date of incident. I do not know the names of the persons who were having houses in vicinity. Our house and the house of the accused Inderpal are opposite and facing to each other. I do not know the persons who are residing in the houses near to the house of accused Inderpal. Even before the date of incident, accused Inderpal and his family members were known to me and I came to know their names at the time of the incident. There was no interaction between the family of the accused and us at any time during the period. It is correct that nali which was the cause of the quarrel had been constructed to some extent and some work was still proceeded in the nali. It is correct that some material required for constructing the nali was lying in the gali. I cannot tell the exact width of the gali but it was a reasonable normal size gali. There was no electricity or light in the gali. I do not know how accused Inderpal or his son had received injuries in the incident. I do not know if during the quarrel my brother Vicky had hit accused Inderpal with farsa while he was caught hold by my father and other person. No one from the locality had come on the spot at the time of quarrel.”

18. The bare perusal of the aforesaid testimonies reflects that PW-1 (Kanwar Pal Singh) has stated that ‘.... thereafter he caught hold me. Smt. Inderawati w/o Inderpal and their son Raju Yadav started pelting bricks and stone from the roof on us along with their four daughters.’ The said fact finds corroboration from the testimony of PW-2 (Sh. Vicky @ Dal Chand) wherein he has deposed that “we saw that Inderpal under the influence of liquor was beating my father and when we intervened accused Inderawati and Raju along with other three started pelting stone on us” and PW-3 (Geeta) wherein

she has deposed that 'I saw accused Inderpal (present in Court) grappling with my father and his wife Indrawati and pelting bricks and stones from the roof on my father. We also reached there and Inderwati continued to pelt bricks and stones'.

19. Hence, PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) have in unison stated that it was Inderpal who was quarrelling with the complainant i.e. PW-1 (Kanwar Pal Singh). It is further evident that the stones were pelted by the wife of Inderpal, who is another accused in the present case. It is also on record that the pelting of stones continued even after the complainant had taken refuge in his house which is evident from the testimony of PW-2 (Sh. Vicky @ Dal Chand) wherein he has deposed that Smt. Inderawati pelted two stones on the head of my mother while Raju had pelted stone on the head of my sister Geeta by pointing their head. They pelted stone on our house also."
20. From the perusal of the aforesaid testimonies it is further evident that a fight took place between the Respondent no.1 and the deceased and later on hearing the sound of the deceased when PW-2 (Vicky @ Dal Chand) and PW-3 (Geeta) came out of the house they were attacked by the Respondent no.2 and his son, who was tried as Juvenile separately, from the roof of their house with bricks and stones which led to the death of the deceased i.e. wife of the complainant. It is further evident from the testimonies of these witnesses that the death of the wife of the complainant has occurred due to injuries suffered by her from pelting of bricks from the roof of the house of the Respondents.

MEDICAL EVIDENCE

21. Having perused the testimonies of the material witnesses, we deem it appropriate to refer to the medical evidence on record. Dr. Sukhdeep Singh who was examined before the court as PW-18, proved the post-mortem report on record as **Ex. PW-18/A**. PW-18 (Sukhdeep Singh) in his deposition before the court stated as under:

“On 04.06.2007, I conducted postmortem examination on the body of Shakuntala W/o Mr.Kunwar Pal, aged 40 years, female. Following findings were recorded: -

- 1. Rigor Mortis was present.*
- 2. Postmortem lividity was present on that, except on the pressure areas in supine position and was fixed.*
- 3. Following antemortem external injuries were seen.*
 - a. A lacerated wound, 5 cm in length, gaping 1 cm, placed longitudinally along the sagittal suture in the mid line, starting from a point 13 cm above the root of nose and 6 cm above the hair line, margins of the wound are irregular and rough.*
 - b. A lacerated wound, reverse L shaped with placed 12 cm to the back from the left eye brow and 3 cm away from the mid line, vertical limb of the wound was 2x.4 millimeter, horizontal limb of the wound was 1.5 cm x .2 millimeter, the lateral end of the limb was placed 14 cm above the mastered process of left side, margins of the wound were irregular, ragged, uneven. Edges of the wound were irregular and rough.*

Internal injuries

Head: Sub Scalpular extra vastation of blood seen below injury no. a and b, fracture of the skull along the sagittal suture line, with sutural

separation upto a distance of 6 cm and fracture of the skull along the coronal suture, continuing upto the temporal bone on left side, sub-arachnoid and sub-dural haemorrhage found on the base of cerebellum and brain stem, posterior aspect of left occipital pole, parietal region of left and right cerebral hemispheres.

Abdomen:

500 ml of yellowish fluid containing dal and rice grains found.

Brief History:

10 numbers of papers were submitted to me by the IO of the case at the time of the inquest which were duly initiated by me.

Time since death was about 28 hours.

Cause of Death was Cranio-Cerebral injury as a result of blunt force impact, which was sufficient to cause death in ordinary course of nature.

The postmortem report is Ex.PW18/A is in my hand writing and which bears my signature at point A.

Subsequent opinion regarding weapon of offence:

Application was received in the department of Forensic Medicine submitted by Inspector Mukesh Kumar PS Sangam Vihar dated 25.06.2007 in relation to case FIR No. 514/2007 date 04.06.2007.

Following documents and a parcel were received.

- 1. Application.***
- 2. Photocopy of postmortem report no. 665/07.***
- 3. Road Certificate.***
- 4. A sealed pullanda of white colour, printed in Hindi 'Golden Chakki Atta' bearing one seal marked 'MK'.***

On opening the sealed pullanda, marked 'MK' two bricks were found, one was red brick and other concrete brick.

i). *Red Bricks:- Half Broken, 16 cm x 11.5 cm x 6.5 cm with imprinted numbers 7, 8 on one surface on brick.*

ii). *A concrete stone: - Irregular in shape, 18 cm X 11 cm x 7 cm.*

Dimension are maximum length, breadth and height.

Opinion : - After examination weapon of offence and findings in the postmortem report no. 665/07. I am of the considered opinion that injury No. 1 and 2 of the postmortem report could be produced by brick no. 1 – red brick or brick no. 2 – concrete. The weapon was duly packed, sealed and handed over to IO alongwith the sample of the seal of Department of Forensic medicine, AIIMS, New Delhi. My report is Ex.PW18/B which is in my handwriting and bears my signature at point A.

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The brick received was not fresh one, but I do not remember if any mud or dust clung on it. In a situation where the red brick or the concrete brick which were received for examination are placed on surface and a person falls thereon, the kind of injuries received by the deceased will not be produced. It is correct that in my postmortem report, I had not mentioned that any of the brick was having blood. It is correct that it is not possible to determine whether the injuries was caused by those very bricks or some other object, but the object has to be similar. It is incorrect to suggest that I am deposing falsely. It is wrong to suggest that I have given an incorrect opinion at the instance of the IO to fill up the lacuna of the prosecution case.”

22. Dr. Y. Keerthi Rao who conducted the medical examination of PW-2 (Vicky @ Dal Chand) was examined as PW-6. He deposed as follows:

“On 03.06.2007, I examined Vicky S/O Kuwarpal, 19 years male.

On local examination I found: -

- 1. 4x0.5 cm over the posterior scalp*
- 2. 1x.5 cm laceration over right toe.*
- 3. Mild tenderness over the thoracic spine.*

*The nature of injuries is simple sharp and blunt
The MLC is Ex.PW6/A.*

On 04.06.07, I examined Kuwarpal Singh vide MLC Ex.PW6/A. As per MLC, the nature of injuries was simple blunt. There was injury 2X5 mm, laceration over the tip of the lateral three fingers of right land. The MLC is Ex.PW6/B.”

23. PW-10 (Dr. Ankur) who appeared in the witness box on behalf of Dr. Kamlesh deposed as under:

“ I am deputed by MS AIIMS hospital to depose on behalf of Dr. Kamlesh, who was working in the hospital as Radiologist and has left the hospital and his present whereabouts are not known to the hospital authority. I have seen the x-ray report No.17455 dated 4.6.07 of Inder Pal. As per the x-ray report, no fracture was seen. The x-ray report Ex.PW10/A is in the hand of Dr. Kamlesh which bears his signatures at point A.”

24. PW-15 (Dr. Tej Prakash Sinha) who appeared in the witness box on behalf of Dr. T. N Umesh deposed as under:

“ I have seen the MLC of Geeta Ex.PW15/A which is in the hand writing of Dr.Umesh and bears his signature. As per MLC the nature of injury is simple blunt. As per MLC there was laceration over the scalp of Geeta measuring into 3 x 0.5 cm.”

25. From the testimony of PW-18 (Dr. Sukhdeep Singh) it is evident that the cause of death was the ***result of blunt force impact, which was sufficient to cause death in ordinary course of nature*** which could be caused by the bricks which were seized vide ***Ex. PW-24/A***. Further, from the testimonies of PW-6 (Dr. Y. Keerthi Rao), PW-10 (Dr. Ankur) and PW-15 (Dr. Tej Prakash Sinha) it is evident that the injuries on the person of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) were caused by blunt objects.
26. Hence, from the conjoint reading of the aforesaid testimonies along with the medical evidence on record, it is established that the cause of death of the deceased as well as the injuries received by the prosecution witnesses including PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) was due to the acts of pelting of bricks by the appellant Inderpal and Inderwati, in furtherance of their common intention. This fact further counters the contention that the death of the appellants was due to the fall caused by the push given by PW-2 (Vicky @ Dal Chand) during the scuffle.

INTERESTED AND RELATED WITNESSES

27. Learned Counsel for the Appellants has submitted that PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) are related to the deceased being the husband, son and daughter respectively and are interested witnesses, hence, their testimonies cannot be relied upon. On the question of the reliability of the testimonies of the interested witnesses, the Apex Court in

Khurshid Ahmed vs. State of Jammu and Kashmir reported in **AIR 2018 SC 2457** has held as under: -

“26. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the Accused [See: Harbans Kaur and Anr. v. State of Haryana 2005 CriLJ 2199].

27. If the evidence of an eyewitness, though a close relative of the victim, inspires confidence, it must be relied upon without seeking corroboration with minute material particulars. It is no doubt true that the Courts must be cautious while considering the evidence of interested witnesses. In his evidence, the description of the incident by PW9 clearly portrays the way in which the Accused attacked the deceased causing fatal head injury as propounded by the prosecution. The testimony of the father of deceased (PW9) must be appreciated in the background of the entire case.

28. In our opinion, the testimony of PW9 inspires confidence, and the chain of events and the circumstantial evidence thereof completely supports his statements which in turn strengthens the prosecution case with no manner of doubt. We have no hesitation to believe that PW9 is a 'natural' witness to the incident. On a careful scrutiny, we find his evidence to be intrinsically reliable and wholly trustworthy”

28. Further, In ***Sudhakar v. State*** reported in **(2018) 5 SCC 435** the apex court held as under:

“17. It would be appropriate to look at the legal position with regard to evidence of related and interested witnesses. In Sarwan Singh v. State of Punjab (1976) 4 SCC 369, This court observed: the evidence of an interested witness does not suffer from any infirmity as

such, but the court requires as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once the approach is made and the court is satisfied that the evidence of the interested witnesses have a ring of truth such evidence could be relied upon even without corroboration”.

It is settled law that there cannot be any hard-and-fast rule that the evidence of interested witnesses cannot be taken into consideration and they cannot be termed as witnesses. But the only burden that would be cast upon the courts in those cases is that the courts have to be cautious while evaluating the evidence to exclude the possibility of false implication. Relationship can never be a factor to affect the credibility of the witness as it always not possible to get an independent witness.”

29. Accordingly, applying the aforesaid dicta of the Apex Court to the present case, the testimonies of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) cannot be rejected on the sole basis of them being interested or related witnesses. Hence the contention raised by the learned counsel that the testimonies of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) holds no ground.

CONTRADICTIONS IN THE TESTIMONIES OF PROSECUTION WITNESSES

30. Learned Counsel for the Appellants have further argued that even if the testimonies of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) are taken into account, still, there are material contradictions and improvements in the version put forth by the material witnesses, i.e. PW-1 (Kanwar Pal Singh), PW-2 (Vicky @ Dal Chand) and PW-3 (Geeta) making the same unreliable. The

perusal of the aforesaid testimonies reflects that even though there exist certain minor improvements in the testimonies of the aforesaid witnesses including the presence of the sisters of the appellant at the roof top, but no undue weightage can be given to them as they do not shake the case of the prosecution. In order to strengthen the preceding finding, we deem it appropriate to refer to the dicta of the Apex Court in ***Lal Bahadur and Ors. vs. State(NCT of Delhi)*** reported in **(2013) 4 SCC 557** wherein the Apex Court has held that:

*“19. So far as the contradictions and inconsistencies in the evidence of the prosecution witnesses, as pointed out by the counsel for the Appellants, are concerned, we have gone through the entire evidence and found that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. Not only that, the witnesses have consistently deposed with regard to the offence committed by the Appellants and their evidence remain unshaken during their cross-examination. Mere marginal variation and contradiction in the statements of the witnesses cannot be a ground to discard the testimony of the eye-witness who is none else but the widow of the one deceased. Further, relationship cannot be a factor to affect credibility of a witness. In the case of **State of Uttar Pradesh v. Naresh and Ors. (2011) 4 SCC 324**, this Court observed:*

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions

amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. **However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.** The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." (Ed: As observed in *Bibhuti Nath Goswami v. Shiv Kumar Singh* (2004) 9 SCC 186 p.192. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide *State v. Saravanan* (2008) 17 SCC 587, *Arumugam v. State* (2008) 15 SCC 590, *Mahendra Pratap Singh v. State of U.P.* (2009) 11 SCC 334, and *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra* (2010) 13 SCC 657.]

31. Hence there exists no iota of doubt to disbelieve the **findings of the trial court** wherein it has held as under:

“Both PW-2 & PW-3 have also stated specifically that when they had arrived at the seen of offence they had

found the accused Inderpal grappling with their father and giving beatings to him. They also corroborate the claim of PW-1/complainant that the accused Indrawati was on the roof of her house at that time and was pelting stones, along with her son Raju. Though it has also come on record during the statement of PW-1 and PW-2 that the daughters of the accused Inderpal and Indrawati were also with the accused Indrawati in pelting of the stones, but their above depositions are liable to be ignored being beyond the contents of their previous statements and being improvements. However, it has been specifically deposed by all the above three witnesses that the accused Indrawati had pelted/thrown two stones/bricks on the head of the deceased Shakuntala and the accused Raju had hit with the stone on the head of PW-2 Geeta and PW-2 has further stated that the same were thrown while pointing out their heads. PW-2 has also stated that the accused Inderpal had also pelted stones on them after taking the same from the gali itself. PW-3 has further stated that her mother died at the spot and it has also come in the statements of other PWs that she was taken to hospital and was declared brought dead there. They also corroborate each other that the complainant/PW-1, PW-2 and PW-3 had all sustained injuries in the above incident of pelting of stones on them by the accused persons. Thus in view of the consistent and corroborative depositions made by all the above three witnesses it can be said that the injuries on the person of the complainant/PW-1, PW-2 and PW-3 and also injuries on the persons of above Shakuntala leading to her death subsequently were inflicted by the two accused persons, either individually or along with the other co-accused, but in furtherance of the common intention of all of them.”

IDENTIFICATION OF THE APPELLANTS

32. The counsel for the appellants has argued that it is a matter of record that there was no electricity at the spot which made it impossible for

the prosecution witnesses to have identified the appellants as the aggressors. It is on record that both the appellants as well as the deceased were neighbours having adjoining houses. They were not unknown or strangers to each other. In relation to the present argument we tend to rely on the decision by us in the case **CRL.A. 379/2019 titled as Akash @ Bhole vs. State** wherein similar issue was dealt by this Court in detail. The operative portion of the discussion in Crl.A. 379/2019 is reproduced as below:

*“48. PW-11 (brother-in-law of the deceased) in his testimony has deposed that ‘Volunteer, there was electricity coming from an iron grill at the roof and light was coming from that iron grill also. Again said, light was coming from nearby houses at the place of occurrence but there was no bulb or tube light at the place of occurrence’. It is relevant to point out that the date i.e. 28.04.2010, on which the incident took place, was a full moon night. **The presence of natural light at the place of incident makes it plausible for the witnesses to have actually witnessed the incident. Further, it is imperative to note that the Supreme Court time and again has emphasized that it is possible in full moonlight to identify the accused.** The Hon’ble Supreme Court in the case of Karnail Singh and Ors. vs. State of Punjab reported in AIR 1971 SC 2119, has held as under:*

*“On the night between 28th and 29th July 1969, there was the full moon. On the night of occurrence the moon was up at about 9-35 P. M. and about the time of occurrence there was bright moon-light. **Moreover, the accused persons were all known to the eye-witnesses which makes problem of identification much easier.** The peepal tree or its shadow also did not then cause obstruction to the vision. The contention of the*

appellants that in moonlight visibility does not go beyond about 36 feet on a full moon-light is met by the fact that there were quite a few electric lights in the vicinity of the spot. We do not think there is any substance in the argument that light was not sufficient.”

49. Reference can also be made to ***Israr vs. State of U.P.*** reported in ***AIR 2005 SC 249*** wherein the Apex Court has held as under:

*“19. Coming to the plea relating to non-probability of identification, the evidence of PW-3 is very relevant. He has stated that the occurrence took place at the time of isha prayers which are concluded at about 9.30 p.m. There was light of the moon as well as of the neighboring houses and the electric poles in the lane. The date of occurrence was 11th day of Lunar month and the place of occurrence is near the mosque as well as many houses close by. Therefore, identification was possible. **Further a known person can be identified from a distance even without much light.** The evidence of PW-3 has also been corroborated by the evidence of others. Evidence of PWs 3 to 5 proves that identification was possible.”*

50. Hence, it is evident from the record, that on 28.04.2010, it was a full moon night, moreover there was street light and light was also coming from the nearby houses. **Additionally, the appellants were known to PW-6 (father of the deceased) and PW-11 (brother-in-law of the deceased) and were not strangers or unknown to PW-6 and PW-11, which made the identification of the appellants easier.** Hence the argument raised by counsel for the appellants that PW-6 and PW-11 could not have witnessed the incident is without force.”

(emphasis supplied)

33. In addition to the aforesaid, we deem it appropriate to refer to the **findings of the trial court** in this regard:

“The house of both the families were located just opposite each other and they might have been very well acquainted with and aware of the faces and physiques of all the family members of the other party. Though it has been stated by them that there was dark at that time, but there is nothing to suggest that the darkness was so thick so as to prevent them even from identifying the well-known faces of their neighbours.”

(emphasis supplied)

34. Hence, having discussed the position of law in relation to identification of the assailants where there is paucity of light, we are of the considered view that due to the relations shared by the appellants and the deceased along with the PW-1 (Kanwar Pal Singh), PW-2 (Vicky @ Dal Chand) and PW-3 (Geeta) i.e. being the neighbour of each other, it would not have been difficult for the prosecution witnesses to have identified the assailants. Hence, the contention of the appellants is answered in the negative.

MOTIVE

35. During the course of arguments, an apprehension was expressed by the learned counsel for the Appellants that motive is of paramount importance and absence of motive, in a case of direct or circumstantial evidence is critical to the version of the prosecution.

However, in the present case there is enough evidence to show that the incident took place due to trivial issue of flow of water from

the house of the complaint in the drain because of which foul smell was emanating.

Moreover, in the present case the conviction passed against the appellants is under Section 304 Part II whereby the circumstances show that the incident took place due to sudden quarrel hence the argument raised by the learned counsel for the Appellants in relation to motive is of no significance.

However, it is a settled legal proposition that even if the absence of motive as alleged, is accepted, the same is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case where there is trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. (*Ref. Yogesh Singh v. Mahabeer Singh reported in (2017) 11 SCC 195*), (*Ref . Khurshid Ahmed Vs State Of Jammu And Kashmir reported in 2018 7 SCC 429*). In the present case also there is direct and reliable evidence in relation to occurrence of the incident, hence, not proving the motive for commission of the offence does not hold much relevance.

CONCLUSION

36. Placing reliance on the testimonies of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta), read along with the medical evidence on record, the prosecution has been able to establish that it was due to the acts of the appellants committed in furtherance of the common intention of both, the death of the deceased and the injuries on the person of PW-1 (Kanwar Pal Singh), PW-2 (Sh. Vicky @ Dal Chand) and PW-3 (Geeta) took

place. The contention that the witnesses are interested and related witnesses or that there exist improvements and discrepancies in their testimonies has already been dealt above and holds no ground to acquit the present appellants.

37. The prosecution having proved its case beyond all reasonable doubt, we find no infirmity in the judgment passed by the learned Trial Court and see no cogent reason to interfere with the same. The conviction of the appellants under section 304 Part (II) read with section 34 of the Indian Penal Code and section 308 read with section 34 of the Indian Penal Code is upheld. Accordingly, the appeal is dismissed.
38. Copy of the judgment be sent to the Jail Superintendent, Tihar Jail.
39. Trial Court record be sent back along with a copy of this judgment.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

JANUARY 31, 2020
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