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

*Reserved on: 26<sup>th</sup> February, 2020*

*Pronounced on: 12<sup>th</sup> March, 2020*

+ CRL.A.45/2002 & Crl. M.A.10587/2019 (under Section 7-A, of Juvenile Justice (Care & Protection of Children) Act, 2002 read with Section 482 of Cr.PC on behalf of the appellant)

DALIP KUMAR ..... Petitioner

Through: Mr. Satish Sharma, Advocate

versus

STATE OF DELHI ..... Respondent

Through: Mr. Ravi Nayak, APP for State.  
Inspector Vipin Kumar, ATO,  
P.S. Nangloi.

+ CRL.A. 315/2002

RAM PARVESH ..... Appellant

Through: Mr. Satish Sharma, Advocate.

versus

STATE ..... Respondent

Through: Mr. Ravi Nayak, APP for State.  
Inspector Vipin Kumar, ATO,  
P.S. Nangloi.

+ CRL.A. 470/2002

SHAMBHU DASS ..... Appellant

Through: Mr. Satish Sharma, Advocate.

Versus

THE STATE ..... Respondent

Through: Mr. Ravi Nayak, APP for State.  
Inspector Vipin Kumar, ATO,  
P.S. Nangloi.

**CORAM:**  
**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

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**J U D G M E N T**

**C. HARI SHANKAR, J.**

1. The appellants Dalip Kumar, Ram Parvesh and Shambhu Dass (who shall be referred to, hereinafter, for the sake of felicity, as 'Dalip', 'Ram' and 'Shambhu' respectively) are in appeal, before us, against common judgment, dated 26<sup>th</sup> November, 2001 and order on sentence, dated 14<sup>th</sup> December, 2001, passed by the learned Additional Sessions Judge (hereinafter referred to as 'the learned ASJ'), whereby each of them has been convicted, under Section 302, read with Section 34 of the Indian Penal Code, 1860 (IPC), for having committed the murder of Barun Singh (referred to, hereinafter, as 'Barun'), and, consequently, sentenced to suffer rigorous imprisonment for life.

**The impugned judgment**

2. The case set up by the prosecution, as accepted by the learned ASJ, is as follows. On 13<sup>th</sup> March, 1998, Umesh Singh (PW-8) visited the deceased Barun, at his residence, on the occasion of Holi. He found an altercation, taking place, between Barun and Shambhu, resulting from a markedly trivial request, by Barun, to Shambhu, to lower the volume of the tape-recorder being played by him. Shambhu brought, with him, Dalip and Ram, the other two appellants before us. The fight, between Shambhu, Dalip and Ram on the one part, and

Barun, on the other, intensified. Shambhu went to his room and returned with a knife. Ram held Barun, while Shambhu stabbed him, resulting in Barun losing consciousness. Umesh tried to intercede, but was also beaten up by the appellants. Umesh, thereafter, raised an alarm, resulting in the arrival, at the spot, of the neighbours. Shambhu dropped the knife and fled from the spot, whereas Dalip and Ram were apprehended by the neighbours. Barun was taken to the Sanjay Gandhi Hospital (hereinafter referred to as “the Hospital”), where he was declared brought dead. Thus, as found by the learned ASJ, Dalip, Ram and Shambhu had, in concert, committed the murder of Barun, with the fatal stab wound having been administered by Shambhu.

3. The witnesses, on whom the prosecution chiefly relied, before the learned ASJ, were Umesh Singh (PW-8) and Anil Kumar (PW-12). The prosecution sought to contend that both these witnesses were eye-witnesses to the incident. While holding that the presence of Anil Kumar (PW-12), at the spot at the time of occurrence was not conclusively proved, the learned ASJ has found Umesh Singh (PW-8) to be a credible eyewitness, whose deposition, which – as the learned ASJ finds – had remained consistent, in the investigation as well as during trial, successfully withstood cross-examination. On the basis of the deposition of Umesh Singh (PW-8), seen in juxtaposition with the evidence of Dr. K. L. Sharma (PW-2) – who had conducted the post-mortem on Barun – to the effect that Barun had suffered an abdominal stab injury, from which blood was oozing out even at the time of conducting of his post-mortem, and which was sufficient in the ordinary course of nature to cause death, and that the knife, seized

from the spot of occurrence and produced before him, was capable of causing the said injury, the learned ASJ held that the twin facts, of the death of Barun having been homicidal in nature, and having been caused by the appellants Dalip, Ram and Shambhu, with Shambhu administering the fatal stab wound, stood conclusively proved.

4. The appellants also attempted to plead, before the learned ASJ, that, as the occurrence had taken place in the heat of the moment, the conviction of the appellants, if at all, ought to have been under Section 304, rather than Section 302, of the IPC. The learned ASJ has, however, rejected the said submission, relying, for the purpose, on the fact that Shambhu had gone back to his residence and returned with a knife, with which he stabbed Barun, while Dalip and Ram held him down. This fact, the learned ASJ holds, made out a clear case for conviction, of the appellants, under Section 302, read with Section 34, of the IPC.

5. Given the gravity of the offence, and the manner in which it was committed, the learned ASJ has proceeded to sentence all the appellants, before us, to rigorous imprisonment for life.

### **The Evidence**

6. Having thus set out in the case of the prosecution, as accepted by the learned ASJ in the impugned judgment, in précis, as it were, we proceed to an overview of the evidence in the case.

7. The prosecution led the evidence of 18 witnesses numbered, however, PW-1 to PW-16, as HC Sh. Bhagwan and Umesh Singh (the star witness of the prosecution, purportedly an eye-witness to the incident) were both numbered PW-8 and ASI Pratap Singh and Insp. P. S. Kansal were both numbered PW-16. We point this out for clarity, as we do not propose to tinker with the numbering of the various prosecution witnesses, as assigned by the learned ASJ.

8. Of the various prosecution witnesses,

- (i) PW-1 S. I. Ravi Kumar, PW-4 Const. Surender Singh, PW-8 HC Sh. Bhagwan, PW-10 Const. Jitender, PW-14 Insp. S. S. Ramela, and ASI Pratap Singh and Insp. P. S. Kansal (both designated PW-16) were the Police witnesses, involved with the investigation at one point or the other,
- (ii) PW-2 Dr. K. L. Sharma was the Sr. Chief Medical Officer, at Dr. N. C. Memorial Hospital, who conducted the post-mortem on the deceased Barun,
- (iii) PW-15 M. K. Sharma was the Record Clerk at the Hospital, who proved the MLC of Barun, and
- (iv) PW-8 Umesh Singh and PW-12 Anil Kumar were the supposed eye-witnesses to the incident (though the learned ASJ has rejected the testimony of PW-12 Anil Kumar, holding that his presence on the spot was doubtful).

9. Other witnesses, cited by the prosecution, are not of significance.

### A few guiding principles

**10.** This is a peculiar case, in which the conviction, of the appellants, rests entirely on the testimony of a sole eye-witness, namely PW-8 Umesh Singh. There is no supportive medico-legal or forensic evidence. There are no other eyewitnesses to the incident, or, even if there were, they have not been co-opted as witnesses by the prosecution. There is no supporting circumstantial evidence.

**11.** As the entire case of the prosecution rests on the evidence of PW-8 Umesh Singh – rather, on his testimony during trial – we would be required, at the very outset, to examine what, exactly, Umesh Singh said; firstly, in his statement during investigation, recorded under Section 161 of the Code of Criminal Procedure, 1963 (Cr.P.C.) and, later, during trial.

**12.** We have, in doing so, to bear some basic principles of appreciation of evidence in mind.

**13.** Seeing is believing, and, therefore, the evidence of an eyewitness, if credible, constitutes, needless to say, the best possible evidence. There is wealth of judicial authority for the proposition that conviction may rest on the sole testimony of an eyewitness, *sans* any other evidence, provided, always, the evidence of the eyewitness is absolutely credible<sup>1</sup>.

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<sup>1</sup> *Vadivelu Thevar v. State of Madras*, AIR 1957 SC 614; *Brijbasilal v State of M.P.*, 1991 SCC (Cri) 546, *Edward v. Insp. of Police*, (2015) 11 SCC 222, *Sudip Kumar Sen v. State of West Bengal*, (2016) 3 SCC 26 and *Gulab v. State of M.P.*, (2019) 14 SCC 802

**14.** As the value of evidence increases, however, so does the rigour and strictness of the scrutiny to which the evidence is required to be subjected. While, therefore, upholding the principle that conviction can rest on the sole testimony of an eye-witness, without any supportive evidence whatsoever, the Supreme Court has, been at pains to also hold that, in all such cases, the credibility of the evidence of the eye-witness is required to be conclusively established<sup>2</sup>. For this, the court is required to assess, among other things, the evidence of the eye-witness, as tendered during investigation, when compared with his evidence during trial, and to examine whether the evidence, tendered during trial, is cogent and coherent, and free from any disabling inconsistencies, as well as the extent to which the evidence of the eye-witness is consistent with the evidence of other witnesses, tendered during trial. While embarking on this exercise, needless to say, the court is required to be mindful of the distinction between minor, and major, inconsistencies, and may only take cognizance of those inconsistencies which dent the case of the prosecution. At the same time, inconsistencies, even if minor, may, if they are sufficiently large in number, substantially weaken the credibility of the testimony of the witness concerned.

**15.** In the ultimate eventuate, these are all factors of which the criminal court is bound, by oath, to be duly sensitised. At all times, the court is required to be alive to the fact that the facts, cumulatively seen, and the evidence, holistically assessed, may exonerate the accused, or may cast doubt on his guilt, and to the legal position that,

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<sup>2</sup> State of Maharashtra v. Dinesh, (2018) 15 SCC 161

in either case, the accused is entitled to acquittal. Even so, the court is not required to bend backwards in order to acquit, in view of the position, now entrenched in the law, that criminal justice administration frowns as much on the acquittal of the guilty, as on the conviction of the innocent<sup>3</sup>.

### Returning to the evidence

**16.** Given the importance of the evidence of PW-8 Umesh Singh, this Court deems it appropriate to extract, *in extenso*, his statement, recorded during investigation under Section 161 of the Cr.P.C., on the basis whereof the *rukka* (Ex. PW-1/A) was prepared by PW-16 ASI Pratap Singh, as well as his testimony during trial.

### Section 161 statement of PW-8 Umesh Singh

**17.** In his statement, recorded during investigation by ASI Singh (PW-16) under Section 161 of the Cr.P.C., PW-8 Umesh Singh deposed thus (as translated from the vernacular):

“Statement of Sh. Umesh Singh s/o Sh. Jamun Singh r/o Kalon Village, P.S. Ladonia, Distt. Madhubani Bihar, present address Building of Devi Lal Vill. Mundka Delhi. Age 35 years

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I state that I reside at the above address with my family and earn my living by plying a cycle rickshaw. Today, on the occasion of Holi, I was in my residence, from where, at about 12:30 PM, I visited the room of my nephew Barun s/o Chandrashekar, r/o Village Saharwar, P.S. Ladaniya, Distt.

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<sup>3</sup> **State of Madhya Pradesh v. Chhaakki Lal, (2019) 12 SCC 326** – which digests several earlier authorities

Madhubani, presently residing in the building owned by Dayanand at Rajendra Lakra Marg, Phirni Road, Vill. Mundka, Delhi, to play Holi. While we were partaking of food and drinks in the said room, his neighbour Shambhu, who was a resident of Bihar and was known to me earlier, as he owns a tea stall, *started playing the tape recorder at a high volume. At this, Barun told him to lower the volume of his tape recorder.* Shambhu, refused, stating that he would play the tape recorder at that volume, and taunted Barun to do what he could. On a quarrel erupting, Shambhu came with two of his friends, Dalip and Ram Parvesh, who were known to me earlier, and they entered into a scuffle (*'hathapaai'*) with Barun and myself. *During the scuffle, Shambhu brought a knife from his room.* Dalip and Ram Parvesh caught hold of both the hands of Barun and Shambhu stabbed my nephew Barun in his left lower abdominal region below the navel. When I tried to free my nephew, the three of them rained blows on me and *as a result of which I suffered a slight head wound, which I got treated, privately. When I shouted for help, several Bihari boys, who used to stay in the neighbouring rooms, left their rooms, where they were celebrating Holi, and came outside.* Blood was flowing freely from the stomach wound suffered by my nephew Barun, who lost consciousness as a result. Shambhu dropped the knife on the spot and fled. *His two companions, Dalip and Ram Parvesh were apprehended on the spot with the help of the other Bihari boys.* Barun was taken by his friend, Sushil Kumar, on a rickshaw, to Sanjay Gandhi Hospital for treatment. *At this point you arrived at the spot, and I handed over, to your custody, Ram Parvesh and Dalip as well as the bloodstained knife. Shambhu and Barun had been on bad terms since several days, and used to fight over trivialities.* We never reported the matter to the police, but tried to get them to reconcile their differences. However, *Shambhu used to threaten that he would not leave Barun and would eliminate him.* He, along with his two companions Dalip and Ram Parvesh entered into a conspiracy to commit a murderous assault, using the knife, on my nephew Barun, and they wounded him with the intent of taking his life. I am a witness against all three of them, and request that they be proceeded against, according to law. My statement has been read over and explained to me, and is correct.”

(Emphasis supplied)

Testimony of PW-8 Umesh Singh during trial

18. The examination-in-chief of Umesh Singh, deposing as PW-8 during trial, and his cross-examination, were as under:

“PW-8 Umesh Singh s/o Jamun Singh, age-35 years, rickshaw puller, r/o Yadav Nagar, Vill. Samay Pur Badli

On S.A.

Barun deceased was the son of my sister. He died on the Holi of year 1998. At that time I was residing in village Mundka. Barun was also residing in Mundka but separately from me. Barun was residing in the factory of Bittoo. At about 12 noon on the day of Holi I had come to meet Barun Singh and take to food with him. We took food together. Accused Shambhu pr. in court was also residing in Mundka just across one gali from the factory of Bittoo. Accused Shambhu came to the room of Barun Singh. *Stereo was being played by Barun Singh in his room. Accused Shambhu immediately after coming increased volume of stereo.* Barun asked him to reduce the volume. Accused refused and said ‘Main Nahi Karoonga Tu Kya Karlega’. *In the meanwhile accused Ram Parvesh and Dalip present in the court also arrived, and caught hold of the hands of Barun Singh. In the meanwhile many persons collected at the spot.* Accused Shambhu went to his room and came back with a knife. Accused Shambhu gave blow of knife on the stomach of Barun Singh. I intervened. *Somebody hit a brick on my head.* I raised hue and cry. People caught hold of Ram Parvesh and Dalip on the spot. Accused Shambhu had ran away from the spot leaving the knife there. I telephoned the police. Barun Singh after receiving stabbing fell down. Sushil another worker took Barun to hospital. *Police came at about 12.30 p.m. Again said between 1:30 or 2 p.m.* I produced accused Ram Parvesh and Dalip before the police. and also pointed out the knife lying at the spot.

Police prepared the sketch of the knife. I have seen the sketch Ex. PW 4/D bears my signature at point B. Police recorded my statement. I identify my signature on Ex. PW 8/A at .... Deceased was wearing pant and shirt at the time

of incident which was blood stained. Some blood had also fallen down on the floor. Police has encircled the blood and has taken as sample of the blood and earth. Same were seized by the police and my signatures were taken on the paper which is Ex. PW 8/B and C respectively both are signed by me. Knife was kept in a cloth but I do not remember what was done. I have seen the memo Ex. PW 4/C which bears my signatures. I can identify the knife and cloth.

At the stage of a sealed envelope having seal of FSL opened. A knife and a cloth opened parcel containing seal of ALS are recovered. I have seen the knife carefully. It is the same knife. Knife is Ex. P. 1.

At this stage another parcel is opened sealed with seal of FSL. The shirt of Barun is Ex. P.2, *baniyan* is Ex. P.3 and underwear is Ex. P.4. I am identifying underwear as I have seen him wearing underwear of this colour.

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by Sh. Gagan Preet, *Amicus curiae* for all three accused.

My statement was recorded by police at about 2 p.m. *My shirt also receive blood stains of Barun Singh when I tried to rescue him.* Police did not take my shirt into possession. Incident took place inside the room of Barun Singh. *Many persons had seen the incident.* Anil was not present at the time of incident but he had come later on. I did not go with Barun to hospital as *I was bleeding.* Anil had gone alongwith Sushil to hospital. I did not go to P. S. I was not taken to hospital for medical examination by police. *I personally went to a private hospital.* I do not remember whether police sealed the knife and given the seal to me. It is correct that my statement was recorded at P. S. again said at the spot. I had turned to P. S. on that day at about 6:30 p.m. At that time I saw one Nandu alongwith accused Ram Parvesh and Dalip at P.S.

CQ. At the time of stabbing down, he was being caught hold of by accused Dalip and Ram Parvesh. They had not released Barun Singh for about 5 to 10 minutes until he was stabbed by Shambhu.

Faces of almost everybody were covered with colours on that day as it was the day of Holi. *It is correct that it was difficult to identify the faces of the persons present at the spot.* I knew all the three accuseds from before the incident. Accused Shambhu was running tea stall. again said *I did not know accused Dalip and Ram Parvesh previous to the incident.* I did not know their parentage. It is correct that their faces were covered with colours, of different shades. *Both the accuseds were identified by other persons present on spot by their names.* It is correct that Dalip had told me at the P.S. that I have wrongly implicated him in this case. Police had asked me today whether I remembered my statement or not I told that I remember but I should be told a little bit about the incident. police man had read over my statement to me.

I had not told the police in my statement that accused Shambhu had lovely played his stereo. Confronted with portion A to A on Ex. PW 8/A where it is so recorded.

*I did not tell police that incident had taken place at chowk.* Volunteered quarrel had started in the room of Barun Singh and *was stabbed in the chowk.* Confronted with point B to B where it is stated that accused had been quarrelling at the chowk. I had told to police that accused Shambhu has come alongwith Dalip and Ram Parvesh, after Barun Singh had objected to play the deck at high volume. Barun Singh had been trying to evade himself from the clutches of accused persons. *I do not know whether there was quarrel previously between Shambhu and Barun. I did not tell police that I and Barun did not file complaint against Shambhu and had solved the problem ourselves.* It is wrong to suggest that I was not present at the spot. It is also wrong that accused Dalip and Ram Parvesh were not arrested from the spot but were brought to P.S. by the police. It is incorrect that accused Shambhu did not come to the room of deceased. It is incorrect that I also did not know Shambhu and have named him falsely.”

(Emphasis supplied)

### Police witnesses

19. Of the various Police Witnesses, the witnesses who were associated with the present investigation, since its inception, were PW-1 SI Ravi Kumar, PW-16 ASI Pratap Singh and PW-16 Insp. P. S. Kansal.

20. PW-1 SI Ravi Kumar confirmed having received a message, at 1:37 PM on 13<sup>th</sup> March, 1998 (which was Holi), from the wireless operator, regarding an incident of a boy having been stabbed at Rajinder Lakra Marg, in village Mundka, and having marked the message to PW-16 ASI Pratap Singh.

21. PW-1 also confirmed that, at 5:20 PM on the same day, i.e. 13<sup>th</sup> March, 1998, PW-4 Const. Surender Singh had brought the *rukka* (Ex. PW-1/A), which had been sent, to him, by ASI Pratap Singh (PW-16) and that, on the basis of the said *rukka*, he had registered FIR No. 149/98, against the appellants, under Sections 302 and 323, read with Section 34 of the IPC.

22. PW-1 was not cross-examined, despite grant of opportunity.

23. The *rukka* (Ex. PW-1/A) reveals that it was recorded, therein, by PW-16 ASI Pratap Singh, that, at the time when he reached the spot where the incident had occurred, he found blood splattered on the floor of the Chowk in the building. It further records that he was made to understand that Barun had already been taken to the hospital,

whereupon he left PW-4 Const. Surender Singh at the spot and proceeded to the hospital, from where he collected the MLC of Barun (Ex. PW-15/A), in which it was recorded that he had been brought dead. Thereafter, ASI Pratap Singh records on the *rukka* (Ex. PW-1/A), that he returned to the spot of occurrence, where he met Umesh Singh (PW-8), who claimed to have been an eyewitness to the occurrence, and proceeded to record his statement, under Section 161 of the Cr.P.C. It is further recorded, therein, that Umesh Singh (PW-8) produced, before PW-16 ASI Pratap Singh, a knife, alleged, by him, to be the weapon of offence. The *rukka* records the dimensions of the knife, and the fact that ASI Pratap Singh (PW-16) sealed the knife with his seal 'PS', which was, thereafter, handed over to PW-4 Const. Surender Singh. It is finally recorded, in the *rukka* (PW-1/A) that Umesh Singh (PW-8) produced, before ASI Pratap Singh (PW-16), the appellants Dalip and Ram, whom he took into custody. These facts, records ASI Pratap Singh in the *rukka*, indicated that an offence, under Sections 302 and 323, read with Section 34 of the IPC, appeared to have been committed, and that he, accordingly, forwarded the *rukka*, to PW-1 SI Ravi Kumar, who registered FIR on the basis thereof.

**24.** PW-16 ASI Pratap Singh testified, in his examination-in-chief during trial, that, on 13<sup>th</sup> March, 1998, Const. Sunita, from the PCR, informed the duty officer at PS Nangloi, that a boy had been stabbed near village Mundka, at Rajinder Lakra Marg, which was recorded in DD No. 13/A and sent through Const. Surender Singh (PW-4), whereafter the case was assigned to him. He further deposed that, on

receiving the said information, he proceeded to the spot of occurrence, which was in a building owned by Dayanand and that, on reaching the spot, he found that a great deal of blood had been spilt on the ground, and that the injured Barun had already been taken to the Hospital, whereupon he left PW-4 Const. Surender Singh to guard the spot and proceeded to the Hospital, from where he obtained the MLC of Barun (PW-15/A). Thereafter, he returned to the spot of occurrence, where he met PW-8 Umesh Singh, who claimed to be an eyewitness to the incident. He recorded the statement of Umesh Singh, under Section 161, Cr.P.C. (Ex. PW-8/A). He further deposed that Umesh Singh produced, before him, a bloodstained knife, of which he prepared a sketch (PW-4/B), in the presence of Const. Surender Singh (PW-4) and Umesh Singh (PW-8), whereafter he sealed the knife, using his seal 'PS', and took the knife into possession *vide* Memo Ex. PW-4/C. The seal, after being used, it was testified, was handed over to Const. Surender Singh (PW-4). PW-16 further deposed that Umesh Singh also produced, before him, the appellants Dalip and Ram, claiming that they were the assailants. He identified the appellants, who were present in Court. PW-16 further deposed that he, thereafter, made an endorsement, on the *rukka*, for registration of FIR under Sections 302 and 323, read with Section 34 of the IPC, against the appellants, and sent the *rukka*, through PW-4 Const. Surender Singh, to the Police Station for registration of FIR, which was duly registered. The investigation was, thereafter, handed over to the SHO, PS Nangloi, Insp. P. S. Kansal (also PW-16), who had reached the spot by then. PW-16 ASI Pratap Singh further testified that he produced the appellants Dalip and Ram Parvesh before Insp. P. S. Kansal, in the

presence of Umesh Singh (PW-8), and that Insp. P. S. Kansal took them into custody. It was further testified by PW-16 ASI Pratap Singh, during trial, that Insp. P. S. Kansal seized a sample of the bloodstained earth *vide* Seizure Memo Ex. PW-8/B.

**25.** PW-16 ASI Pratap Singh further testified, during trial, that, on 14<sup>th</sup> April, 1998, Shambhu was arrested from a spot near the tea shop at Rajinder Lakra Marg, by Insp. P. S. Kansal and that, consequent thereupon, Shambhu lead the Police team to the house of Dayanand and pointed out the spot where the incident had occurred, *vide* Pointing Out Memo Ex. PW-16/C. He identified the knife, shown to him in Court, as the knife that had been produced, before him, by PW-8 Umesh Singh, in a bloodstained condition.

**26.** ASI Pratap Singh was cross-examined by the *amicus curiae* appearing on behalf of the appellants Ram and Shambhu, as well as by learned Counsel appearing for Dalip. During the course of the said cross-examination, ASI Pratap Singh acknowledged that Dalip and Ram had been produced, before him, by PW-8 Umesh Singh and that, *at the time, no one else was present*. He also agreed that, *at the time when he first visited the spot of incident, he did not find Umesh Singh, or any other eye-witness to the incident, present, and did not see any of the appellants at the spot, in the custody of any independent witness or otherwise*. He also confirmed that he had not sent the knife, produced before him by Umesh Singh, for forensic examination to any fingerprint expert. He denied all other suggestions, put to him, to the effect that he was falsely implicating the appellants.

27. Insp. P. S. Kansal, also testifying during trial as PW-16, confirmed that, at 1:40 PM on 13<sup>th</sup> March, 1998, he had received information regarding the incident of stabbing that had taken place at Rajinder Lakra Marg and that, following thereupon, he reached the spot at 2:30 PM, to find that Barun had already been removed to the Hospital. He further deposed that he, thereupon, went to the Hospital and returned to the spot, to find ASI Pratap Singh recording the statement of PW-8 Umesh Singh, on the basis whereof ASI Pratap Singh drew up the *rukka*, which was sent, for registration of FIR, to the Police Station, through PW-4 Const. Surender Singh. He confirmed that he had taken up the investigation from that point and that ASI Pratap Singh had handed over, to him, parcels sealed with the seal of ASI Pratap Singh ('PS'), which he seized *vide* Seizure Memo Ex. PW-4/C. He also confirmed having taken samples of the bloodstained earth found on the spot, and having recorded the statements of PW-8 Umesh Singh and PW-12 Anil Kumar. He testified, further, that the appellants Dalip and Ram had been produced, before him, by ASI Pratap Singh, and that he had interrogated and, thereafter, arrested the appellants, whom he identified in Court. He confirmed having sent the body of Barun for post-mortem, and having collected the MLC (Ex. PW-15/A) as well as the post-mortem report (Ex. PW-2/A) of Barun. He further confirmed the fact that, on 14<sup>th</sup> April, 1998, he arrested the appellant Shambhu, and that, on 28<sup>th</sup> April, 1998, the investigation was handed over to PW-14 Insp. S. S. Ramela.

28. Insp. P. S. Kansal was cross-examined, but nothing substantial emerged therefrom.

29. Const. Surender Singh, testifying as PW-4 during trial, confirmed having proceeded to the spot, in the house of Dayanand, where Barun had been stabbed, at about 1:40 PM on 13<sup>th</sup> March, 1998, consequent to DD No. 13A (Ex. PW-4/A), recording the receipt of information regarding the stabbing of Barun, having been marked to ASI Pratap Singh (PW-16) for enquiry and investigation. He confirmed that, on reaching the spot, they found blood splattered on the ground, and that they were informed that Barun had already been taken to the Hospital. ASI Pratap Singh (PW-16) proceeded to the Hospital, leaving him to guard the spot, and, on returning after some time (at about 4 PM), handed over, to him, the *rukka* (Ex. PW-1/A), for the purpose of registration of FIR under Sections 302 and 323, read with Section 34 of the IPC. PW-4 further testified that he, thereupon, proceeded to the Police Station and had the FIR (Ex. PW-1/B) registered, and that he returned to the spot of occurrence and handed over, to ASI Pratap Singh, the FIR and a copy of the *rukka*. PW-4 corroborated the statement, of the other Police Witnesses, regarding the production, before PW-16 ASI Pratap Singh, of the knife, by Umesh Singh (PW-8), and the preparation, by ASI Pratap Singh, of a sketch of the knife (Ex. PW-4/B), on which he appended his signature. He also confirmed that the knife was sealed by ASI Pratap Singh, using his 'PS' seal, and that the seal was, thereafter, handed over to him. The knife was seized *vide* Seizure Memo Ex. PW-4/C.

**30.** PW-4 Const. Surender Singh was cross-examined. During cross-examination, he confirmed that, when he had reached the premises where Barun had been stabbed, at about 2 PM, he did not find anyone having been apprehended. He deposed that PW-8 Umesh Singh met them on the spot, and that the sketch and seizure memo of the knife was prepared before drawing up of the FIR. At the same time, he accepted that the sketch and the seizure memo bore the number of the FIR, rather than that of the DD.

**31.** Further confirmation, regarding sealing and seizure of samples, depositing of the samples with the FSL and obtaining the reports thereof, was provided by the depositions, during trial, of PW-8 HC Sh. Bhagwan, PW-14 Inspector S. S. Ramela and PW-10 Const. Jitender.

**32.** HC Sh. Bhagwan, the *Moharrir* Head Constable (*Malkhana*) the “MHC(M)” being in charge of the *Malkhana*, where the seized goods were deposited before their dispatch for investigation and testing, testified as PW-8, and deposed, during trial, that, on 13<sup>th</sup> March, 1998, PW-16 ASI Pratap Singh had deposited, with him, a package, bearing his seal ‘PS’, allegedly containing the knife with which Barun had been stabbed. He also confirmed that, on 24<sup>th</sup> May, 1998, PW-14 Inspector S. S. Ramela had obtained, from him, the said parcel, in order to secure an opinion, regarding the knife, after obtaining which he returned the parcel to him, sealed, this time, with the ‘KLS’ seal of the doctor who had tendered the opinion, namely Dr. K. L. Sharma (PW-2). He further confirmed that, on 26<sup>th</sup> May,

1998, he sent all the parcels, through PW-10 Const. Jitender, to the FSL, for analysis, and deposed that, during the period when the parcels were in his custody, they remained intact, and were never tampered with.

**33.** PW-8 was not cross-examined, despite grant of opportunity.

**34.** The fact of depositing, of the four sealed parcels, two of which bore the 'PC' seal and two the 'KLS' seal, with the FSL, on 26<sup>th</sup> May, 1998, after obtaining the parcels from the MHC (M) on the same day, was also confirmed by Const. Jitender, deposing, during trial, as PW-10. He, too, affirmed that, during the period the parcels had remained in his custody, they were not tampered with. He was not cross-examined, despite grant of opportunity.

**35.** Inspector S. S. Ramela, deposing as PW-14 during trial, confirmed having been placed in charge of the investigation on 12<sup>th</sup> May, 1998. He also confirmed having dispatched the above-mentioned four parcels, two of which bore the 'KLS' and two the 'PC' seal, to the FSL, through PW-10 Const. Jitender. He further confirmed, in his testimony, that, on 23<sup>rd</sup> May, 1998, he had obtained the sealed parcel of the weapon of offence, duly sealed with the 'PC' seal, from the MHC (M), and had submitted an application (Ex. PW-14/A), for obtaining medical opinion in respect thereof. On the said request being allowed, he testified that he had taken the parcel to the Civil Hospital and handed over to PW-2 Dr. K. L. Sharma, who had tendered his opinion (Ex. PW-14/B) with respect thereto and returned

the knife, to him, after affixing his seal ('KLS') thereon. Thereafter, he deposed, he had deposited the knife, sealed with the 'KLS' seal, which the MHC (M). He, too, affirmed that, during the period when the parcel had remained in his custody, it was not tampered with. PW-14 was not cross-examined, despite grant of opportunity.

#### Other witnesses

**36.** The MLC of Barun (Ex. PW-15/A) was approved by PW-15 M. K. Sharma, who was the Record Clerk at the Hospital. Dr. K. L. Sharma, who was the Chief Medical Officer at the Hospital and had conducted the post-mortem of Barun, testified as PW-2. He confirmed having conducted the post-mortem on Barun on 14<sup>th</sup> March, 1998, and that Barun had been brought to the Hospital by PW-16 Inspector P. S. Kansal at about 12:10 PM on the said day. He also confirmed that the shirt, the *baniyan* and the underwear of Barun were blood smeared. He proved the post-mortem report prepared by him (Ex. PW-2/A), as well as the contents thereof, and reiterated, during trial, that, in his opinion, the cause of death of Barun was haemorrhagic shock consequent on a solitary stab injury, which was ante mortem and sufficient to cause death in the ordinary course of nature. He also opined that Barun had died within 20 minutes of infliction of the said injury and that over 24 hours had passed since his death. PW-2 was not cross-examined, despite grant of opportunity.

**37.** PW-2 was recalled for examination, with the leave of the Court, regarding the opinion, tendered by him with respect to the knife, on the application (Ex. PW-14/A) submitted by PW-14 Inspector S. S.

Ramela. He proved his opinion (Ex. PW-14/B), which was that the said knife, or any other such like weapon, could have inflicted the injury, which resulted in the death of Barun. He identified the knife, in court, as the knife which had been shown to him on 23<sup>rd</sup> May, 1998, and on which he had tendered his opinion. He also prepared a sketch of the knife (Ex. PW-14/B), and confirmed the fact that the sketch prepared by Police (Ex. PW-4/B) had never been shown to him for comparison.

**38.** It becomes necessary, at this point, to specifically allude to the evidence that has emerged, with respect to the knife, with which, allegedly, Barun was stabbed. The Seizure Memo, whereunder ASI Pratap Singh (PW-16) seized the knife, which had been handed over to him by Umesh Singh (PW-8), on 13<sup>th</sup> March, 1998, refers to the knife as bloodstained. However, the FSL report (Ex. PX) records that, on the knife, which had been submitted to the FSL for analysis, and to which the report refers as 'Exhibit 3', *no blood could be detected*. Similarly, PW-2 Dr. K. L. Sharma, too, in his opinion regarding the knife, as tendered on 23<sup>rd</sup> May, 1998 (Ex. PW-14/B), does not refer to any blood being found thereon. ASI Pratap Singh (PW-16) too, when shown the knife in court, testified that the knife was the same "which (he) had taken into possession *when it was produced in bloodstained condition* by Umesh Singh". Apparently, therefore, the knife, when produced in Court, was not bloodstained.

**39.** The only remaining witness, of consequence, was Anil Kumar Singh, the brother of the deceased Barun, who testified, during trial,

as PW-12. Though, during his evidence during trial, Anil Kumar Singh claimed to be an eyewitness to the stabbing of Barun, the learned ASJ has rightly rejected his testimony as unworthy of credence, as his very presence, at the time and place of occurrence, was doubtful. A reading of the testimony of Anil Kumar Singh would justify this finding of the learned ASJ as, according to the said witness, the entire occurrence took place, not at the room of Barun, but at the house of one Ramcharit, his maternal uncle. This, the learned ASJ rightly holds, completely discredited the evidence of Anil Kumar Singh, as an eyewitness to the stabbing of Barun. It is not necessary, therefore, to refer, in any further detail, to the testimony of Anil Kumar Singh, who deposed as PW-12.

Depositions of appellants under Section 313, Cr.P.C.

**40.** Following the conclusion of the recording of evidence of the various prosecution witnesses, the depositions of the appellants before us, under Section 313, Cr.P.C., was recorded by the learned ASJ. All the appellants denied having ever been involved, in any manner, in the stabbing of Barun or, for that matter, even having been present in the room of Barun on the day of incident. They professed ignorance regarding the results of the forensic investigation, the MLC of Barun, or his post-mortem report. They insisted that the case being foisted against them was false, and that the witnesses, who had deposed against them were interested witnesses. They did not choose to lead any defence evidence, though they claimed not to have been present at the time of incident.

### **Rival Submissions**

**41.** Advancing submissions on behalf of the appellants, Mr. Satish Sharma, learned Counsel attempted to question the credibility of PW-8 Umesh Singh, as an eye-witness to the incident. He submitted that the conduct of PW-8 was unusual as, if his nephew had been stabbed, there was no reason for him to send him to hospital with someone else, instead of himself taking him for treatment. He also pointed out that the report, of the FSL (Ex. PX) was that no blood had been found on the knife, which was alleged to be the weapon of offence. Blood, he pointed out, had been found only on the clothes sent to the FSL for analysis, which were all of the deceased Barun himself. He emphasised the fact that, in his cross-examination, PW-8 Umesh Singh had admitted that it was difficult to identify the faces of the persons present in the room at the time of the alleged incident, and that he had identified the appellants solely because other neighbours, who had arrived at the spot, referred to them by name. In any event, he submitted, there was no justification for the conviction of Dalip or Ram. He sought to submit that the testimony of PW-8 Umesh Singh, during trial, was contradictory to the statements of other witnesses, including PW-4 Const. Surender, who, in his deposition, did not refer to the production, before the Police, of Dalip or Ram. Especial emphasis was laid, by Mr. Sharma, on the cross-examination of PW-4 during which he admitted that, when the Police reached the site of occurrence, they did not find any person having been apprehended. This, he submits, was directly contrary to the testimony of PW-8. Mr. Sharma took us through the testimony of PW-16 ASI Pratap Singh, to

emphasise that it belied, in its entirety, the version put forth by PW-8 Umesh Singh, in his evidence. In sum and substance, Mr. Sharma sought to contend that the prosecution could not be said to have established the guilt, of the appellants, beyond reasonable doubt.

**42.** Arguing *per contra*, Mr. Ravi Nayak, learned APP, submitted that the law specifically envisioned conviction as being sustainable even on the sole testimony of a credible eyewitness, and exhorted us, therefore, not to interfere with the impugned judgment of the learned ASJ. In his submission, the version of the incident, as explained by PW-8 Umesh Singh, initially during the recording of his statement under Section 161, Cr.P.C. and, thereafter, during trial, was coherent and credible, and inconsistencies between the two statements, if any, were minor and of no consequence. In all material particulars, Mr. Nayak would submit, the two depositions, of PW-8 Umesh Singh, corroborated each other. He emphasised the fact that PW-8 Umesh Singh, and the Police Witnesses, chiefly PW-16 ASI Pratap Singh, were *ad idem* regarding blood having been present on the knife, at the time but it was produced by Umesh Singh. Apropos the reliance, by Mr. Sharma, on the examination-in-chief of PW-4 Const. Surender Singh, to the effect that, when the Police reached the spot, they did not find anyone having been apprehended, Mr. Nayak draws our attention to the fact that, later during the course of the same deposition, PW-4 denied the suggestion that Dalip and Ram were not arrested from the spot. Regarding the testimony, during trial, of PW-16 ASI Pratap Singh, Mr. Nayak seeks to point out that the said witness had clearly stated, in his examination-in-chief as well as, later, during cross-

examination, that Dalip and Ram were produced, before the Police, by PW-8 Umesh Singh. Mr. Nayak points out, further, that Section 134 of the Indian Evidence Act, 1872, clarified, unambiguously, that no particular number of witnesses were required, in any case, to prove a fact. He also points out that, in view of the MLC report of Barun, the fact that his death had been caused by the single abdominal knife wound, suffered by him, was beyond doubt. A holistic examination of the facts, and available evidence, submits Mr. Nayak, would bear out the correctness of the impugned judgment of the learned ASJ, and would demolish the attempt, of the appellants, to assail the same. Mr. Nayak, however, acknowledges the fact that Dalip was a juvenile at the time of commission of the offence and, therefore, submits that he could be granted the benefit thereof.

### **Analysis, and the sequitur**

**43.** Analysing the evidence during the trial, in the light of well settled principles regarding appreciation of evidence – to which some reference has already been made, in paras 10 to 15 *supra* – we are unable to convince ourselves that the prosecution has been able to prove the involvement of the appellant, before us, in the stabbing of Barun, on 13<sup>th</sup> March, 1998, beyond reasonable doubt.

**44.** The case is entirely dependent on the testimony of PW-8 Umesh Singh. There is no forensic, or medical evidence, which would link any of the appellants with the stabbing of Barun. For reasons best known to the prosecution – rather, to the I/O investigating the matter – the knife, with which Barun was allegedly stabbed, was never sent for

examining the presence of fingerprints thereon, as was candidly conceded by ASI Pratap Singh, testifying as PW-16 during trial. As a result, the opportunity of securing the best evidence, which could possibly have clinched the issue of whether the appellants – specifically Shambhu – were involved in the killing of Barun, was allowed to go abegging.

**45.** Again, for reasons which remained totally inexplicable, the I/O did not choose to co-opt any of the neighbours of Barun, as prosecution witnesses, or record their statements during investigation, despite Umesh Singh, the star witness of the prosecution, having deposed, both in his examination-in-chief as well as in his cross-examination, that the boys staying in the neighbouring rooms were eye-witnesses to the incident.

**46.** The result is that, owing to the extremely unsatisfactory manner in which investigation was conducted in the present case, we are left with the sole testimony of Umesh Singh (PW-8), and have, therefore, to determine whether the conviction of the appellants would sustain, on the basis of the said testimony alone.

**47.** We are constrained to hold that the answer, to this poser, has necessarily to be in the negative. While, on the evidence available, and the analysis thereof, we may not be in a position to hold that the innocence of the appellants is conclusively established, we find, equally, the evidence woefully insufficient to hold their guilt as having been definitively proved. More specifically, we are unable to

hold, for reasons which would become apparent presently, that the testimony of PW-8 Umesh Singh commands the requisite credibility, to be sufficient, as the sole evidence, to convict the appellants of having committed the murder of Barun.

**48.** If we proceed, chronologically, through the events on the fateful day of 13<sup>th</sup> March, 1998, and the recital, thereof, by PW-8 Umesh Singh, we find his testimony to be replete with inconsistencies, both within itself as well as vis-à-vis his deposition under Section 161, Cr.P.C., as also opposed to the testimony of the Police witnesses, who have deposed in the case. We may demonstrate this position, thus:

- (i) The tape-recorder: There are, in the testimony of PW-8 Umesh Singh during trial, vis-à-vis his testimony under Section 161, Cr.P.C. during investigation, serious inconsistencies regarding the playing of the tape recorder, the volume of which appears to have acted as a flashpoint for the altercation between Shambhu and Barun. According to the testimony of PW-8 during trial, he was having food, with Barun, in his room, where Barun was playing *his* stereo. Shambhu came to Barun's room and, immediately thereafter, increased the volume of the stereo, which was being played by Barun. Barun requested Shambhu to reduce the volume of the stereo, which was refused by Shambhu, leading to the quarrel between them.

As against this, in his deposition under Section 161, Cr.P.C., PW-8 Umesh stated that, while he, and Barun, were having food in Barun's room, Shambhu started playing the tape recorder at a high volume, to which Barun objected, and requested Shambhu to tone down the volume of the tape recorder. Shambhu refused and came to Barun's room with Dalip and Ram. As against this, there is no reference, in the statement of the appellant, under Section 161 of the Cr.P.C., to Shambhu having ever come to the room of Barun prior thereto, or to the tape recorder having been played *by Barun*, the volume of which was increased by Shambhu, who had come to Barun's room.

The deposition of PW-8, under Section 161, Cr.P.C., and his testimony during trial are, therefore, discordant with respect to (a) the ownership of the tape recorder, (b) the identity of the person who was playing the tape recorder before its volume is increased, (c) the location of the tape recorder, and (d) the location of Shambhu, at the time when he increased the volume of the tape recorder. Inasmuch as the volume at which the tape-recorder was being played, supposedly acted as the catalyst that sparked off the fight between the appellants, on the one hand, and Umesh Singh (PW-8) and Barun, on the other, which culminated in the killing of Barun by Shambhu, any ambiguity or equivocation, in the testimony of Umesh Singh, with respect thereto, assumes significance.

(ii) Arrival of Dalip and Ram on the scene: Carrying the point further, the statement of Umesh Singh, during investigation under Section 161, Cr.P.C., is also discordant with his testimony during trial, regarding the entry, on the scene, of the appellants Dalip and Ram. In his statement, under Section 161, Cr.P.C., PW-8 Umesh Singh deposed that, consequent on the disagreement between Barun and Shambhu, regarding the volume at which the tape recorder was being played, Shambhu arrived at the spot with his friends Dalip and Ram (the exact words used, in vernacular, are “*isi baat ko lekar Shambhu apne anya do saathi Dalip Kumar va Ram Parvesh ko lekar aaya*”), whereas, in his examination-in-chief during trial, PW-8 testified that the quarrel between Barun and Shambhu had already started and “*in the meanwhile* accused Ram and the Dalip present in the court also arrived”. On the issue of whether Shambhu arrived at the room of Barun with his friends Dalip and Ram, i.e. the appellants before us, or whether they arrived at the spot during the currency of the quarrel between Shambhu and Barun, too, there is discordance in the testimony of PW-8 during trial, vis-à-vis his statement under Section 161, Cr.P.C.

(iii) Where did the incident occur? Again, regarding the place where the actual fight, involving Shambhu, Barun, PW-8 Umesh, Dalip and Ram, began, PW-8 testified, during trial, that Dalip and Ram arrived *at the room of Barun* and caught hold of his hands, whereas, in his statement under Section 161, Cr.P.C., PW-8 deposed that the fight (*‘haathapaai’*) began *in the chowk*

*of the building.* In his cross-examination, PW-8 deposed that the incident had taken place *inside the room of Barun* and, almost immediately thereafter, amended his statement to say that *the quarrel started in the room of Barun, but that he was stabbed in the Chowk of the building.*

(iv) Arrival of the neighbours: PW-8 deposed, during trial, that the boys staying in the neighbouring rooms had arrived *after the scuffle, between Shambhu and Barun had started, but before Shambhu went to his room and retrieved his knife.* This was, to an extent, supported by his subsequent deposition, in cross-examination, that “many persons saw the incident”. As against this, in his statement under Section 161 of the Cr.P.C., PW-8 Umesh Singh stated that the neighbours had arrived *after Barun was stabbed, he himself, i.e. Umesh Singh, was belaboured by Dalip, Ram and Shambhu, and he raised a hue and cry.* Significantly, as would be noted hereinafter as well, PW-4 Const. Surender Singh and PW-16 ASI Pratap Singh, in their testimony during trial, deposed that, *when they reached the spot, they found neither Umesh Singh, nor any of the appellants, apprehended by any independent witness, present there,* and that ASI Pratap Singh came across Umesh Singh only when he returned from the hospital. If the testimony of Umesh Singh, as tendered during trial, were to be treated as true, several imponderables would result. For one, it is, *ex facie*, difficult to believe that the neighbours, who had gathered at the spot during the initial quarrel between Shambhu and Barun,

patiently waited and watched while Shambhu went to his room, returned with his knife, stabbed Barun in the abdomen, with Dalip and Ram holding Barun down all the while, and swung into action only after Umesh Singh himself had been assaulted, and had raised a hue and cry – which is what happened, if the testimony, of PW-8 Umesh Singh, during trial, were to be believed. Moreover, if, in fact, many neighbours arrived during the scuffle, and witnessed the murder of Barun why did the I/O not record the statement of any neighbours, or co-opt the neighbours who had witnessed the incident, as prosecution witnesses? There is no ready answer.

(v) Arrival of the Police: Insofar as the arrival of the Police was concerned, PW-8 deposed, in his examination-in-chief during trial, that the Police had arrived at 12:30 to 1 PM, whereupon he produced the appellants Dalip and Ram before them, and handed over the knife with which, allegedly, Barun had been assaulted. *Per contra*, in his deposition under Section 161 of the Cr.P.C., during investigation, PW-8 Umesh Singh maintained that the neighbours had arrived at the spot, and had got hold of Dalip and Ram, thereafter Sushil had taken Barun to the Hospital, *and that it was at this stage that the police arrived*, and he handed over, to them, Dalip and Ram. In stark contradiction, both PW-4 Const. Surender Singh, as well as PW-16 ASI Pratap Singh, testified, during trial, that, *when they reached the place of occurrence, they did not find anyone to have been apprehended by any independent witness, and did*

*not find Umesh Singh at the spot, either. Rather, maintained PW-16 ASI Pratap Singh, it was only when he returned from the Hospital, later, that he met Umesh Singh. Even at that stage, according to the testimony of ASI Pratap Singh, no independent witness was present when Umesh Singh produced, before him, the appellants Dalip and Ram. These are significant contradictions, as, if the testimony of ASI Pratap Singh were to be believed – and there is no reason why his testimony should be accorded any less credibility than that of PW-8 Umesh Singh; if anything, as a disinterested witness, the testimony of PW-16 ASI Pratap Singh would be entitled to greater weight – the entire sequence of events, prior to the return, from the hospital, of ASI Pratap Singh, is shrouded in obscurity. On the one hand, PW-8 Umesh Singh deposed that a quarrel had erupted between Shambhu and Barun; Shambhu had arrived with a knife, with which he stabbed Barun; in the melee, the appellant, too, sustained injuries and, during this time, the neighbours arrived and witnessed the incident and, thereafter, apprehended Dalip and Ram, at which time the police arrived. On the other, Const. Surender Singh and ASI Pratap Singh maintained that, when they arrived at the spot, they neither found Umesh Singh, nor any of the appellants, apprehended by any independent persons, present there. ASI Pratap Singh went on to depose that, even at the stage when, after his return from the Hospital, he met Umesh Singh, who produced Dalip and Ram before him, no one else was present. The appellants, in their statements under Section 313 of the Cr.P.C., denied the*

entire incident, as well as their presence in the room of Barun at the time. In view thereof, the significance of the aforementioned inconsistency, between the deposition of PW-8 Umesh Singh, and that of PW-16 ASI Pratap Singh, cannot be gainsaid.

(vi) Injuries suffered by Umesh Singh: While, in his statement under Section 161, Cr.P.C., as well as in his testimony in examination-in-chief during trial, *PW-8 Umesh Singh made no mention of the injuries suffered by him, or of his having bled at any point of time*, in cross-examination, he testified that *he was bleeding and that, in fact, there were bloodstains on his shirt*. This version is not supported by any of the Police Witnesses. In fact, PW-16 ASI Pratap Singh, on being queried, specifically testified that he did not remember whether the shirt of Umesh Singh was, or was not, bloodstained, but confirmed that *he had not taken the shirt for being subjected to forensic examination*. The deposition, of Umesh Singh, that he had undergone treatment, for the injuries suffered by him, “privately”, is also not supported by any documentary material, such as the prescription of a doctor, or other evidence of his having undergone private treatment. It is also difficult to understand why, if Umesh Singh actually suffered a head injury, his MLC was not conducted; significantly, *the learned ASJ has found the allegation of the appellants having inflicted simple hurt on Umesh Singh not to have been proved* and has, accordingly, acquitted the appellants of the charge under Section 323, IPC.

(vii) The knife: In cases of homicide and murder by stabbing, the weapon of offence assumes considerable importance. In the present case, the knife, with which, allegedly, the offence had been committed, was stated, by Umesh Singh (PW-8), in his testimony during trial, to have been “bloodstained” – though, in his statement under Section 161, Cr.P.C., he does not say so. ASI Pratap Singh, deposing as PW-16, also testified, during trial, that the knife, handed over to him by Umesh Singh, was bloodstained. Mysteriously, however, the FSL report (Ex. PX) specifically states that *no blood was detected on the knife* which was submitted to the FSL for examination. The testimony of PW-8 HC Sh. Bhagwan, PW-10 Const. Jitender, and PW-14 Insp. S.S. Ramela, who handled the sealed parcel, containing the knife, at various points of time, none of which was tested by cross-examination despite grant of opportunity, bear out the fact that *the knife was not tampered with*, from the time it was sealed by ASI Pratap Singh with his seal ‘PS’, till the time it reached the FSL bearing, by that stage, the ‘KLS’ seal of Dr. K. L. Sharma (PW-2). *The absence of blood on the knife, therefore, would also cast doubt on the issue of whether the knife was, in fact, actually the weapon with which the offence was committed, especially as the only evidence, to that end, was the testimony of PW-8 Umesh Singh, the knife itself never having been subjected to fingerprint examination.* We may rely, in this regard, on the following passage, from ***Bhusai v. State of U.P.***<sup>4</sup>:

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<sup>4</sup> (1970) 3 SCC 460

“With regard to the question of blood not being found on the dagger, the High Court considered that this fact had no importance, because it is quite possible that, in the long time that passed while Mohammad Akhtar carried the dagger from the place of occurrence to the Hospital and thence to the police station, the blood may have been wiped off. On the face of it, this can be no explanation for absence of blood on the dagger. If Mohammad Akhtar adopted the extraordinary course of carrying the dagger with him even to the hospital when taking Abdul Haq there, he would surely have taken care to see that the blood on the dagger remains intact and does not get wiped off. In fact, the conduct of Mohammad Akhtar in taking the dagger with him to the Hospital itself seems to be suspicious, particularly when, according to him, the assailants were captured and were left behind at the scene of occurrence. The alternative explanation that the blood had disintegrated by the time the scrapings from the dagger could be tested by the Chemical Examiner and the Serologist is also improbable, because the Serologist in his report was quite definite that there were no traces of blood in the scrapings. If he had failed to find the blood due to disintegration, he would have said so in his report, as is usual in such cases where the Serologist feels that there was blood, but, due to disintegration, proper test could not be applied, so that he could not certify its presence.”

The medical opinion, dated 23<sup>rd</sup> May, 1998 (Ex. PW-14/B), regarding the knife, as obtained from PW-2 Dr. K. L. Sharma, too, is of no help either way, as PW-2 merely opined, in a markedly ambivalent vein, that the fatal abdominal injury sustained by Barun, *could* have been caused by the said knife, or *any such like weapon*.

Lack of clarity regarding the weapon with which an offence of murder is committed, it is trite, acts as an inherently disabling

factor, for the case sought to be set up by the prosecution. Specific reference may be made, in this context, to the judgment, of a Division Bench of this Court in ***Ram Karan v. State***<sup>5</sup>, in which it was held that, in view of the report, of the FSL, to the effect that no blood was found on the knife, which was alleged to be the weapon of offence, the very recovery of the knife, as the weapon with which the offence had been committed, became doubtful, resulting in entitlement, of the accused, to acquittal.

(viii) Prior relations between Shambhu and Barun: Here, again, there is stark contradiction, between the statement of PW-8 Umesh Singh, as recorded under Section 161 of the Cr.P.C., and his testimony during trial. In his statement, recorded under Section 161, Cr.P.C., Umesh Singh specifically stated that *Shambhu and Barun had been on bad terms since several days, and were prone to fight over trivialities, and that, as they were both Biharis, efforts were made to have the matter reconciled, instead of reporting it to the Police*. Even so, stated Umesh Singh in his testimony under Section 161, Cr.P.C., *Shambhu used to threaten that he would not leave Barun, and would eliminate him*. While, in his examination in chief, PW-8 did not refer to the existence, or non-existence, of any earlier animosity between Shambhu and Barun, in cross-examination, PW-8 *executed a complete volte face on his deposition under Section 161, Cr.P.C., not only denying knowledge of any pre-*

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<sup>5</sup> 2012 SCC OnLine Del 5485

*existing animosity between Shambhu and Barun, but also denying having ever told the Police that he, and Barun, chose not to file any complaint against Shambhu, for his indiscretions, and had solved the problem themselves.* This, again, is a significant aspect, impacting, as it does, substantially, the aspect of motive, for the commission of the crime in question. While existing rivalry, with Barun, might have predisposed Shambhu to murderously assault him, in the absence of any such earlier animosity between them, it is difficult to comprehend murder being committed merely because of the volume at which a tape recorder was being played. Even otherwise, the inconsistency, between the statements of Umesh Singh, under Section 161 of the Cr.P.C., and, later, during trial, on the nature of the pre-existing relationship between Shambhu and Barun, which is pivotal to the issue of whether Shambhu did, or did not, murder Barun, is too stark to be ignored.

(ix) Familiarity of Umesh Singh with the appellants: Regarding his familiarity with the appellants, too, the depositions of PW-8 Umesh Singh have been vacillating. During the course of trial, in cross-examination, Umesh Singh asserted, first, that he knew all the three appellants before the incident and, later, resiled by asserting that he did not know Dalip or Ram, but that they had been identified by other persons, present on the spot, by name. *Per contra*, in his earlier statement, under Section 161, Cr.P.C., PW-8 Umesh Singh deposed that he knew all the three appellants, i.e. Shambhu,

Dalip and Ram, earlier. This factor, again, is significant as, in cross-examination during trial, PW-8 accepted that, as it was Holi, the faces of the assailants, who assaulted Barun and himself, were covered with colour, and were difficult to identify. The involvement, at least of Dalip and Ram, in the incident, would also become doubtful, if, as PW-8 testified in cross-examination during trial, he did not know who they were, and merely identified them on the basis of the statements of the neighbours.

**49.** We are unable, in the face of the aforementioned factors, which, individually and cumulatively, completely erode, in our view, the credibility of the testimony of PW-8 Umesh Singh, as tendered during the trial. The very recovery, of the weapon of offence, is cast in doubt, owing to the absence of any blood having been detected, thereon during the course of FSL examination. The place where the quarrel took place, and where Barun was allegedly stabbed, is also uncertain. In the face of the somersaulting, by PW-8, during the course of trial, on his earlier statement, regarding pre-existing animosity between Shambhu and Barun, it is not possible to discern any reasonable motive, as would provoke Shambhu to murder Barun.

**50.** In juxtaposition with the above, the two most important features, of the testimony of PW-8 Umesh Singh, during trial, which militate against treating the testimony as sufficient to maintain the conviction of the appellants, are the presence of the neighbours, and the position which was found by the Police – specifically, PW-4

Const. Surender Singh and PW-16 ASI Pratap Singh – when they arrived at the scene. If the testimony of PW-8, during trial, is to be accepted, it would mean that the neighbours had gathered at the spot during the initial stages of the scuffle between Shambhu and Barun and *that it was while they were so present, and witnessing the incident, that Shambhu left the room, proceeded to his room, returned with a knife, and proceeded to violently stab Barun, using the knife, resulting in Barun falling unconscious, with an open abdominal wound from which blood was profusely flowing.* Even then, Shambhu managed to drop the knife and free from the spot, and it was only at this point that the neighbours, *who had been silently watching till then,* were galvanised into action, and apprehended Dalip and Ram. If this were so and, as PW-8 maintained during cross-examination, there were many who had witnessed the incident, it defies comprehension that the I/O did not choose to interact with or co-opt as prosecution witnesses, the said neighbours. As against this, the statement of Const. Surender Singh and ASI Pratap Singh was that, when they reached the spot at about 2 PM, they did not find Umesh Singh there, nor did they find anyone having been apprehended. Rather, according to ASI Pratap Singh, he met Umesh Singh, for the first time, only when he returned from the hospital, and it was only then that Umesh Singh produced, before him, the appellants Dalip and Ram – at which time, too, according to ASI Pratap Singh, there was no one else on the scene. The appellants, for their part, completely denied, in their statements under Section 313, Cr.P.C., having ever been at the spot, any involvement in the stabbing of Barun. The very happening of the incident, and the manner in which it transpired, therefore, is cast in

serious doubt, as a result of the stark dissonance between the testimonies of PW-8 Umesh Singh, on the one hand and PW-4 Const. Surender Singh and PW-16 ASI Pratap Singh, on the other.

**51.** In the face of the aforesaid, it becomes impossible for us to treat the testimony of PW-8 Umesh Singh, during trial, as sufficiently credible, as to constitute a justifiable basis, to maintain the conviction of the appellants. We are, therefore, of the view that the prosecution has failed to marshal sufficient credible evidence, as would suffice to convict the appellants, before us, of having committed offences under Section 302, with or without the aid of Section 34 of the IPC.

**52.** We may profitably refer, in this context, to a recent decision of the Supreme Court, in *Jagdish v. State of Haryana*<sup>6</sup>, which specifically held, in circumstances which, facially at least, mirror those of the case before us, that it was unsafe to base conviction, on a charge of murder, on the sole testimony of an eyewitness, especially when the eyewitness was related to the deceased.

**53.** Additionally, the following passage from *Dinesh*<sup>2</sup>, merits reproduction, *in extenso*:

“In *Joseph v. State of Kerala*, (2003) 1 SCC 465 : 2003 SCC (Cri) 356, this Court has observed that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. In *State of Haryana v. Inder Singh*, (2002) 9 SCC 537 : 2003 SCC (Cri) 1239, this Court has laid down that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the

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<sup>6</sup> (2019) 7 SCC 711

Court. In *Ramnaresh v. State of Chhattisgarh*, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382, this Court, after taking note of the aforementioned two judgments, observed that “the principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eyewitness to the crime. All that is needed is that *the statement of the sole eyewitness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime*”. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement (*Seeman v. State*, (2005) 11 SCC 142: 2005 SCC (Cri) 1893).”

(Emphasis supplied)

The evidence of PW-8 Umesh Singh, we are constrained to hold, falls way short of the rather exacting standards, to which the afore extracted passage refers.

54. We are, therefore, of the opinion that, in convicting the appellants on the basis of the sole evidence of PW-8 Umesh Singh, who claimed to be an eyewitness to the murder of Barun, the learned ASJ has erred in failing to examine, holistically, all the aspects of the case, which, comprehensively reviewed, completely discredit the testimony of Umesh Singh as sufficient to justify, on its sole strength thereof, the conviction of the appellants before us.

55. We may note, before concluding this judgment, that, consequent on receipt of a report, dated 21<sup>st</sup> January, 2020, it emerges

that Dalip, one of the appellants before us, was a juvenile on 13<sup>th</sup> March, 1998, when Barun was stabbed and died. He would, therefore, in any case be entitled to the benefit of juvenility; however, as we find all the appellants, before us, to be entitled to acquittal, albeit by extending, to them, the benefit of doubt, we deem it unnecessary to enter into this aspect.

### **Conclusion**

**56.** In view of the above discussion, these appeals succeed and are allowed. The impugned judgment, dated 26<sup>th</sup> November, 2001, and order on sentence, dated 14<sup>th</sup> December, 2001, passed by the learned ASJ, whereby the appellants stand convicted for having committed offences under Section 302, read with Section 34 of the IPC, and sentenced, consequently, to rigorous imprisonment for life, are quashed and set aside. The appellants are acquitted of the charges against them. Bail Bonds, if any, executed by the appellants, would stand discharged.

**57.** The record of the learned ASJ be returned forthwith.

**C. HARI SHANKAR, J.**

**SIDDHARTH MRIDUL, J.**

**MARCH 12, 2020**

**HJ**