

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

% **Reserved on : 10.09.2020**
Pronounced on : 24.12.2020

+ **CRL.A. 351/2020 & CRL.M.(BAIL) 7644/2020**

SONU@ HEMRAJAppellant

Through: Mr. S.B. Dandapani, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Ashish Dutta, APP with SI Prince,
P.S. Sangam Vihar.

+ **CRL.A. 395/2020 & CRL.M.(BAIL) 7821/2020**

MUKESH @ HADDIAppellant

Through: Mr. B. Badrinath, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Ashish Dutta, APP with SI Prince,
P.S. Sangam Vihar.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By this common Judgment, we shall dispose of the above mentioned two appeals which have been filed against the Judgment dated 01.10.2019 and order on sentence dated 23.12.2019 passed by the Addl. Sessions Judge-

03, South-East District, Saket Court, New Delhi vide which both the said appellants have been convicted for the commission of offence U/s 302/394/397/34 IPC and appellant Mukesh @ Haddi has also been convicted for the offence U/s 25 Arms Act and both the said appellants have been sentenced for life imprisonment and fine of Rs. 10,000/- each for the offence U/s 302 IPC and in default of payment of fine, simple imprisonment for one month. Further both the appellants have been sentenced to rigorous imprisonment for a period of 8 years and fine of Rs. 10,000/- each for the offence U/s 394 IPC and in default of payment of fine, simple imprisonment for one month. Further both the appellants have been sentenced to rigorous imprisonment for a period of 10 years for the offence U/s 397 IPC. Appellant Mukesh @ Haddi has also been sentenced to rigorous imprisonment for a period of 3 years and fine of Rs. 5000/- for the offence U/s 25 Arms Act and in default of payment of fine, simple imprisonment for 15 days. All the sentences have been directed to run concurrently.

2. In brief, the facts of the case are that on 28/29-11-2010, DD No. 62-B regarding stabbing of a boy near Government School, C-Block, Sangam Vihar was received as PS Sangam Vihar which was marked to SI Bharat Singh. IO along with other police staff reached in front of C-73, Sewa Sadan, C-Block, Sangam Vihar, New Delhi where SI Bharat Singh along with Ct. Vijay Narayan met him.

3. IO was informed that injured had already been shifted to hospital. IO went to AIIMS Trauma Centre. The injured was declared brought dead by

the doctor. IO collected MLC of deceased and thereafter, IO came back to the spot. IO made endorsement on DD No. 62-B for registration of FIR and same was handed over to Ct. Vijay Narayan for registration of FIR. On the basis of rukka present FIR was registered.

4. Thereafter, investigation was carried out and during investigation, the name of deceased was revealed as Roshan. IO recorded the statements of witnesses namely Shashi and eyewitness Akhil. Thereafter, IO along with other police staff went in search of accused persons and eye witness Akhil also went along with them. IO along with Akhil, Gaurav Katheria and other police staff reached near Shri Ram Sweet Shop, where eyewitness Akhil and injured Gaurav Katheria identified three boys who were standing near aforesaid shop on Bandh Road. IO apprehended all the said three boys and interrogated them. Thereafter, all the three accused were arrested in the present case. Their personal search were conducted and their disclosure statements were recorded by the IO and further investigation went underway.

5. After the completion of the investigation, the charge sheet was filed against accused persons namely Mukesh @ Haddi, Sonu @ Hem Raj (present appellants) and Vijay Kumar in the court of Ld. M.M., who after complying with the provisions of Section 207 Cr.P.C., committed the case to the Court of Sessions for trial.

6. Vide order dated 13.10.2011 charges were framed against accused Mukesh @ Haddi, Sonu @ Hem Raj (present appellants) and Vijay Kumar for the offences under Section 302/397/394/34 IPC and against appellant Mukesh @ Haddi for the offence under Section 25 Arms Act to which they pleaded not guilty and claimed trial. Amended charges against all accused namely Mukesh @ Haddi, Sonu @ Hem Raj (present appellants) and Vijay Kumar were also framed on 03.01.2013. Thereafter, vide order dated 03.01.2013 accused Vijay Kumar was declared juvenile and he was sent to Juvenile Justice Board.

7. In order to prove its case, the prosecution examined 29 witnesses. We have heard the Ld. counsels for the appellants, Ld. APP for the state and have also gone through the records of the case.

8. It is urged by the Ld. counsel for appellant Sonu @ Hemraj that the IO has initiated investigation on a wrong premise because the first message about the incident was received from mobile No. 9266065167 which belonged to one Munir Alam, who could be an eye witness or offender himself. He further urged that from the spot, IO found a Nokia mobile phone at the back of which No. 9289505974 and the name of Roshan (deceased) was written but the IO has failed to obtain the call details/location chart of this phone. He further urged that PW 18 and PW 20, who according to the prosecution are the star witnesses of the case are planted and tutored witnesses and no reliance can be placed upon them. He further urged that the IO has not conducted the investigation fairly and no

public person and local residents were joined when the appellant pointed out the place of occurrence or got the alleged robbed articles and weapon of offence recovered.

9. The submissions of the Ld. counsel for the appellant Mukesh @ Haddi are also somewhat similar to those of the Ld. counsel for the appellant Sonu @ Hemraj. He has also urged that PW 18 and PW 20 are the planted witnesses and he further urged that seizure of wallets and knife are not reliable and doubtful and the investigation is defective and innocent persons have been implicated. To support his contentions, he placed reliance upon the following judgments:

- (a) Shankarlal Vs. State of Rajasthan, 2004 (10) SCC 632.
- (b) Harbeer Singh Vs. Sheeshpal & Ors., 2016 (16) SCC 418
- (c) Yakub Abdul Razak Memon Vs. State of Maharashtra, 2013 (13) SCC 1
- (d) Ram Bali Vs. State of UP, 2004 (10) SCC 598.
- (e) Krishna Vs. State, 2020 SCC Online Del 93.

10. On the other hand, Ld. APP for the State has supported the impugned judgment and stated that there is no infirmity in the impugned judgment and order on sentence. He further submitted that PW 18 is a reliable and injured eye witness, who received injury on the intervening night of 28/29.11.2010, at Holi Chowk. He further urged that PW 18 was robbed of his purse at the

point of knife and he even identified appellant Sonu as one of the robbers. He further urged that all the accused persons were arrested on the identification of PW 18 and PW 20. Ld. APP further submitted that other eye witness i.e. PW 20 has categorically deposed about stabbing of deceased Roshan and also about the arrest of accused persons. He further urged that nothing could be extracted from the cross examination of these two star witnesses so as to make them untrustworthy.

11. It is further submitted by the Ld. APP that PW-22 SI Bharat Singh when reached the spot found one Nokia mobile phone. On this mobile phone, number 9289505974 was written on one side of the battery and name of deceased Roshan was written on the other side of the battery which was handed over by him to IO inspector JD Meena who had also reached the spot. Ld. APP further urged that during the investigation it was revealed that from this mobile phone PCR call at number 100 was made at about 1:27 a.m. which has been corroborated by PW 28 by stating that a call was received at 1:26 a.m. from mobile No. 9266065167 and the caller informed that he had been stabbed near Govt. School, Sangam Vihar. He further urged that the deceased was using SIM having mobile No. 9266065167 from his mobile instrument Nokia which no doubt, belonged to Munir Alam, but that cannot be the reason to doubt the call made by him. He further urged that mobile No. 9289505974 has no connection with the case, so there was no need for the IO to go into the details of this number. He further urged that 10 years back the SIM cards and Mobile phones were sold by the

shopkeepers without any detailed verification. He further urged that CAF of mobile No. 9266065167 has been proved as Ex. PW 29/G with ID proof and the CDR of this phone from 26.11.2010 to 29.11.2010 has been proved as Ex. PW 29/H alongwith location chart. He further urged that the recoveries made at the instance of the appellants are believable and the same cannot be doubted.

12. The material witnesses in this case are PW 18 and PW 20 and we will discuss the testimonies of these two witnesses in the later part of the judgment.

13. As far as the contention of the Ld. counsels for the appellants that the IO has initiated investigation on a wrong premises because the first message about the incident was received from mobile No. 9266065167 belonging to one Munir Alam who has not been examined by the IO has no force in it. On the date of the incident i.e. the intervening night of 28/29-11-2010, PW 28 was posted at CPCR, PHQ. He has deposed that at about 1:26 a.m. a call was received from mobile No. 9266065167 and the caller informed that he has been stabbed at C-Block, near Govt. School, Sangam Vihar. He filled the PCR form regarding the said information and informed the police control room, on the basis of which DD No. 62 B was recorded. He proved the PCR form as Ex. PW 28/A.

14. The information regarding the incident which was recorded vide DD No. 62-B was marked to SI Bharat Singh, who reached the spot and found

one Nokia mobile phone, on which number 9289505974 was written on one side of the battery and name of Roshan (deceased) was written on the other side of the battery. PW 29 Inspector J.D. Meena, who is the IO of the case also reached the spot and came to know that the injured has been removed to hospital by PCR. SI Bharat Singh handed over the said Nokia mobile phone to PW 29 Inspector JD Meena (IO). PW 29 took the mobile phone and while on the way to the hospital, he checked the same and came to know that a call at 100 Number was made from this phone at about 1:27 a.m. which finds corroboration from the testimony of PW 28. PW 22 has also deposed that last call was made to PCR at 1:27 a.m. from Nokia phone which was found at the spot. PW 22 has further deposed that on the reverse side of mobile battery a number was written as 9289505974 and name of Roshan was also written on the battery. However, on further investigation it was revealed that the number 9266065167 belonged to one Munir Alam. IO then collected the CAF and CDR details of the mobile No. 9266065167. The CAF form is Ex. PW 29/G which is in the name of one Munir Alam and the CDR of this mobile Number is Ex. PW 29/H.

15. No doubt, the mobile No. 9266065167 is in the name of one Munir Alam and the IO has failed to examine Munir Alam as a witness in this case but in our opinion, no advantage of this can be given to the appellants. The caller on No.100 claimed that “he” had been stabbed. He also gave his location. At the location the deceased was found and the mobile phone was also found there from which number 100 had been called. No other person

injured or dead was found much less Munir Alam. If we were to go by the arguments of the Ld. defence counsels that the said was either a witness or the offender in this case, then we fail to understand as to why he will leave his mobile phone at the spot and create evidence against him. It is further pertinent to mention here that if the phone as alleged by the Ld. defence counsel belonged to Munir Alam, why Munir Alam would write Roshan on one side of the battery of the phone. As far as the mentioning of mobile No. 9289505974 which was found written on the battery has no bearing on this case as this number was simply written on the back side of the battery. The picture which emerges is that on the date of the incident, deceased was carrying a Nokia mobile phone having SIM of mobile No. 9266065167- issued in the name of one Munir Alam from which he made a call at No. 100 about his being stabbed. The CDR which is Ex. PW 29/H also proves that the location of this mobile No. 9266065167 on the date of the incident was in Sangam Vihar area where the incident took place. We find force in the arguments of the Ld. APP that about 10 years back, when the incident happened, the SIM cards were sold at random without much verification, so, deceased Roshan was using this SIM in his mobile instrument. Maybe he got the SIM from the vendor issued in the name of Munir Alam, or Munir Alam - at some stage gave the SIM for use to the deceased. In the factual background of this case, these issues are not at all relevant. Moreover, no suggestion has been given by the Ld. counsel for the appellants to PW 18, PW 20 and PW-29 (IO of the case) during their cross examination that Munir Alam was either an eye witness or the offender himself who

committed the offence in the present case. Both the appellants have also not stated anything in their statements recorded U/s 313 Cr.P.C that it was Munir Alam who was either the witness, or the offender in the present case. Therefore, it was deceased Roshan who had made a call at No. 100 from his Nokia mobile phone in which he was having SIM card in the name of Munir Alam, and he reported his own injury.

16. The Ld. Trial Court while convicting the appellants has believed the testimonies of the eye witnesses and has also relied upon the recoveries effected in the present case.

17. The main thrust of arguments of the Ld. counsel for the appellants is that the two witnesses i.e. PW 18 and PW 20 are planted witnesses and recoveries effected at the instance of the appellants are also planted and the Ld. Trial Court has misdirected itself by relying on these two witnesses. During the course of the arguments, it was also argued by the Ld. counsels for the appellants that the police falsely implicated the appellants as police was clueless about the assailants and nothing has been explained by the IO as to how he zeroed on the appellants as the culprits of this case.

18. In order to appreciate the arguments of the Ld. counsels for the appellants that initially the police was clueless, and it is not explained by the IO as to how he zeroed on the appellants as the accused in this case, we have perused the case diary of this case, which a criminal Court can do in any

case which is under enquiry or trial in such Court, and use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

19. As per Section 172 of the Code of Criminal Procedure, every police officer making an investigation in a case shall, day by day, enter his proceeding in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, place or places visited by him, and a statement of the circumstances ascertained through his investigation.

20. After going through the case diaries, we found that the IO had definite leads about the culprits of this case and followed those leads, investigated the case on the lines of those leads and zeroed on the appellants as the culprits.

21. According to the prosecution, the deceased used to work as a waiter and on the date of the incident, after finishing his waiter job he was on his way back to his house alongwith Akhil (PW 20). In this regard, PW 15 and PW 16 are the relevant witnesses.

22. PW 15 is Shashi Kumar. He has deposed that he was a student of class 11th and used to work as a waiter in the marriage parties. He further deposed that as he was experienced, he used to arrange other boys as waiter in the parties organized by PW 16 Wahid. He has further deposed that on 28.11.2010, he had arranged Akhil (PW20), Roshan Kumar (since deceased) and two other boys for a party arranged by Mohd. Wahid at Sangwan

Baratghar and Rs. 150/- was to be given to each boy. He further deposed that he did not go to Bharatghar on that day as he had to attend the marriage function of his cousin. He further deposed that on the next day when he came to school, he came to know that Roshan Kumar was murdered.

23. This witness was not cross examined by the Ld. counsel for the appellants, so his testimony to the effect that he arranged Akhil (PW20), Roshan Kumar (since deceased) and two other boys for a party arranged by Mohd. Whaid (PW 16) at Sangwan Baratghar on 28.11.2010 has gone un rebutted and unchallenged.

24. PW 16 Mohd. Wahid has deposed that on 28th November, he did not remember the year at about 10-11 a.m., he made a call to Shashi (PW 15) to make arrangement of 4 boys for working as waiters in the marriage party. He further deposed that at about 5:00 p.m., 4 boys namely Akhil (PW20), Roshan and two other boys came to him and thereafter he alongwith those 4 boys went to Sangwan Baratghar. He further deposed that at about 1:00 a.m., the said boys left Sangwan Baratghar. He further deposed that after 7-8 days he came to know from PW 15 that Roshan Kumar was murdered in the night of 28-29.11.2010, so nobody was willing to work as waiter.

25. The following leading question was put by Ld. APP to this witness with the permission of the Court to which he answered as follows:

“It is correct that Roshan Kumar was having a bag with him when he departed from Sangwan Baratghar.”

26. This witness was also not cross examined by the Ld. counsel for the appellants and his testimony has also gone unrebutted and unchallenged. So from the testimonies of PW 15 and PW 16, it is clear that deceased Roshan Kumar was working as a waiter and on 28-29.11.2010, he alongwith Akhil went to Sangwan Baratghar to work as a waiter and left at about 1:00 a.m. after finishing the work. It is also evident from the testimony of these two witnesses that on the date of the incident deceased Roshan Kumar was having a bag with him, when he left Sangwan Baratghar. Therefore, by virtue of the testimonies of these two witnesses, the prosecution has been able to prove that Roshan Kumar (deceased) left Sangwan Baratghar on the intervening night of 28-29.11.2010 alongwith Akhil (PW20) and two other boys and met with the incident.

27. The Ld. Trial Court while convicting the appellants had believed the version of PW 18 and PW 20. It has been observed by the Ld. Trial Court that both these witnesses have correctly identified the appellants and has also observed that minor embellishments and inconsistencies or some minor contradictions appearing in the testimonies of the witnesses do not destroy the case of the prosecution, rather they only add to the truthfulness of their version.

28. In the light of the above, we shall now examine the testimonies of PW 18 and PW 20 who are the star witnesses of the case of the prosecution.

29. PW 18 Gaurav Katheria had deposed that at about 8/9:00 p.m. on 28.11.2010, he left the house of his sister from Amroha for his house at Sangam Vihar. On 29.11.2010, at about 1:00-1:15 a.m., when he reached at Holy Chowk, Gali No. 5, he found three persons came there and crossed him. According to this witness, assailant Vijay put knife on his neck and appellant Mukesh told him to hand over whatever he was having. Appellant Mukesh also took search of his body and appellant Sonu took his purse from the back pocket of his pant. Thereafter, appellant Mukesh asked him about his bag and he told that there was nothing which was beneficial to them in his bag. Appellant Mukesh was having a weapon looking like a knife and he gave a blow from the said weapon on the left temporal portion above the left ear of PW 18. Thereafter, the appellants allowed him to go from there. He has further deposed that at that time, he did not realize that he had received serious injury on his temporal region but when he reached home, he felt some pain. On the next morning, he saw that his pillow was blood stained but he did not give any complaint about the incident. On 30.11.2010, his friend Shailesh Ponia came to his house and then he disclosed all the facts to him. So on 01.12.2010, he went to police station Sangam Vihar to lodge complaint regarding the incident and the police took him to AIIMS Trauma Centre, where he was medically treated. Thereafter they returned to the police station and police told him to inform them whenever, he saw any of those assailants.

30. He further deposed that as he was hungry, he decided to take some snacks at Shriram Sweets and he saw all the three assailants standing near momos shop. He called SI Brahm Dutt, who reached there alongwith the police staff and at his instance, appellant Sonu, appellant Mukesh @ Haddi and accused Vijay were arrested. During his testimony in the Trial Court, he identified all the three assailants and also identified the case property consisting of one purse, one I Card in the name of Gaurav Katheria of Prayas Institute for Economic Empowerment, Tuglakabad, Delhi which are exhibited as Ex. P-3.

31. PW 18 was extensively cross examined on behalf of the appellants and in his cross examination he was unable to tell as to how many times his statement was recorded. He further stated in his cross examination that he had not given his railway ticket to the IO because it was taken away by the assailants alongwith his purse. He further stated that he had not mentioned the name of Vijay as one of the person who had put knife on his neck as he did not know his name at that time, although he had given his description as he was the shortest amongst the three. He further stated that he had not handed over his blood stained pillow to the police and the police did not include any other independent public witness during the proceedings when the accused persons were arrested. He denied the suggestion that he had concocted a false story at the instance of the police or that no injury was caused to him during the incident.

32. It has been vehemently argued by the Ld. defence counsels that PW-18 has not immediately reported the matter to the police and kept quiet for 2 days, therefore, according to them he is a planted witness. We do not agree with this contention of the Ld. counsels for the appellants. PW 18 has categorically assigned roles to the appellants and one of the appellant viz Sonu was known to him. There is no denial from the side of the appellant Sonu, that PW 18 was not known to him. It is to be kept in mind that anybody having faced such an incident, must have been traumatized which is very natural for anyone coming face to face with such a situation, where one is encircled by three armed persons in the dead of the night and suffering a knife injury and robbed. So his keeping quiet is quite natural and does not make him an unreliable witness and one cannot loose sight of the fact that people react differently under a given circumstance. Some shows boldness to report the matter immediately to the authorities, and some let go the things in order to avoid unnecessary hassles.

33. We cannot lose sight of the fact that both PW18 & PW20 come from very humble backgrounds. It is a fact - of which we can take judicial notice that it is not easy for a poor person-who is a nobody, to go to the Police and make a complaint or report a crime without himself being subjected to suspicion; often indifference and; maybe harassment. The poor strata have no, or feeble voice which often goes unheard. This impression-which has taken root, can easily discourage a common man from reporting a crime-whether he is a victim or only a witness. The police force has a lot of work

to do in this area to build confidence amongst the masses and give them the comfort that their voices shall be heard and actioned, and they shall not face harassment, indifference, disappointment or rejection, if they take courage of reporting a crime. In the instant case, according to PW 18, it was his friend Shailesh Ponia who persuaded him to lodge a complaint and on his backing PW 18 gathered courage and reported the matter to the police. We do not find anything wrong or unnatural in the conduct of this witness and his delayed reporting does not make him an unreliable or planted witness. More so, his testimony finds corroboration with the medical evidence in regard to the injuries received by him on the night of the incident. PW 27 Dr. M. Sukumar has deposed that the patient i.e. Gaurav Katheria was having laceration wound over left front temporal region and his MLC has been exhibited as Ex. PW 27/A. So, the ocular testimony of this witness finds support from the medical evidence and there is no reason to disbelieve him.

34. It is also argued by the Ld. counsel for the appellants that PW 18 has stated in his cross examination that he has given a written complaint to the police regarding the incident naming accused in the complaint but there is no such complaint on record which shows that he is an unreliable witness. No doubt, there is no written complaint on record given by this witness. This does not necessarily mean that he did not give a complaint and he is lying. The complaint may not have been diarised or placed on record. It is also pertinent to mention here that the incident had taken place on the

intervening night of 28-29.11.2010 and his cross examination was conducted on 05.08.2014 i.e. about 4 years after the incident. So, during this long period this witness might have mixed up some facts. However, he is very categorical that his statement was recorded by the police and has also stated that he had given the description of the appellants in his statement U/s 161 Cr.P.C. to which there is no cross examination. He has also deposed about the identity of appellant Sonu and also about the articles which were snatched from him about which we will discuss in the later part of the judgment. Therefore, from the discussion mentioned hereinabove, we do not find that this witness is a planted witness, or that no incident happened with him on the intervening night of 28-29.11.2010.

35. Another material witness is PW 20, namely, Akhil. He deposed that on 28.11.2010, he was studying in 11th standard and used to work as a waiter with a caterer. On the intervening night of 28/29-11-2010 at about 1:00-1:30 a.m., he was returning home from his work and was accompanied by his friend Roshan-deceased. When they reached at Bandh Road, he saw three boys standing there but they continued to walk. He further deposed that thereafter one tall boy came and caught hold of him and his friend from the collars of their shirt. On this, he and his friend Roshan objected and the tall boy suddenly stabbed Roshan in his abdomen and he somehow extricated himself and ran away and reached his house.

36. Next morning in the school, he came to know that Roshan passed away. He further deposed that in the evening of 30.11.2010 his statement

was recorded by the police. Thereafter on 01.12.2010, he again joined the investigation. On that day, one more boy was with them who had also suffered a similar incident in the said area. He further deposed that police took them at the spot of occurrence at Bandh Road, where all the three assailants were present and they were identified by him. Thereafter they all were arrested and their personal search was conducted.

37. In his cross examination, he stated that he was studying in Government School at the time of occurrence and the name of his employer at that time was Sanghwan Farm House. He further stated that he did not mark any attendance at his employer's office as there was no such system for waiters marking any attendance and the identity card was also not issued. He further stated that there were 7-8 waiters employed at Sanghwan Farm House. He further stated that direction of his house and the house of Roshan was different but some part of their route from Sanghwan Farm House to their respective houses are common. He categorically stated that there are street lights at the spot of occurrence which were operational. He further stated that deceased Roshan was studying in his school. He further stated that after reaching home, he had not conveyed information about the incident to anyone over telephone. He further stated that after reaching the school, he came to know about the death of Roshan. According to this witness, police had come to him for inquiries but he has not contacted the police of his own, which came to his house in the evening of 30.11.2010 and recorded his statement. He further stated that there was no public person at

the spot of occurrence. He admitted it to be as correct that he had pointed out the spot at Bandh Road as the place where the incident took place. He further stated that all the assailants were apprehended by the police at Bandh Road and public persons were present when he had identified the assailants. He denied the suggestion that no incident took place as alleged. He further denied that appellant Mukesh @ Haddi was pointed out by him at the instance of the police.

38. We may firstly note that PW 15 Shashi Kumar and PW 16 Mohd. Wahid have corroborated each other and categorically deposed that Roshan (since deceased) alongwith PW-20 Akhil had worked as waiter at Sangwan Baratghar on the intervening night of 28/29-11-2010 and left at about 1:00 a.m. alongwith PW 20 and two other boys, after which the incident in question took place. As already discussed hereinabove, there is no challenge to the testimonies of these two witnesses, therefore, what emerges is that PW 20 Akhil was with deceased Roshan on the date of the incident.

39. We have already opined the probable reasons for PW18 and PW20 not reporting the matter immediately to the police. Moreover, PW 20 Akhil is a school going boy of class 11th who must have been traumatized and shaken by the incident in which his friend was stabbed and lost his life. It was only when the police during the investigation contacted him on 30.11.2010, he gave his statement. In our opinion, his not reporting the matter immediately to the police does not make him an unreliable witness. In his testimony, he has given graphic details of the entire incident as to how

one tall boy came and caught hold of him and his friend from their collars. He has categorically stated that when he and his friend Roshan (since deceased) objected to this, the said tall boy stabbed Roshan in the stomach and this witness extricated himself and ran away from there. There is nothing in the cross examination which could render the testimony of this witness unbelievable. Therefore we have no hesitation in accepting the case of the prosecution that PW 20 Akhil is an eye witness to the incident which happened with deceased Roshan on the fateful night of 28/29-11-2010.

40. It was next argued by the Ld. defence counsel that IO has not joined public witnesses during the investigation and also at the time when the appellants pointed out the place of occurrence. As far as the question of non joining of public witnesses is concerned, no doubt, the IO has not joined the public witnesses but that by itself does not falsify the entire case of the prosecution. The testimony of the official witnesses cannot be thrown away simply on the ground that IO failed to join public witnesses. Experience has shown that public witnesses are reluctant to join the investigation. Even otherwise, the non joining of public witness by the IO can only be said to be a fault on the part of the IO which cannot be the sole basis for disbelieving the entire case of the prosecution and the testimony of the believable official witnesses. Conviction can be recorded on the sole testimony of police officials without corroboration from a public witness, if it inspires

confidence. In this regard reliance can be placed upon ***Tahir Vs. State (1996)*** 3 SCC 338, in which the Hon'ble Supreme Court has held as follows:

“no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the creditworthiness of the prosecution case.”

41. As far as the contention of the Ld. counsel for the appellants that no public witness was joined at the time of pointing out of the place of occurrence is concerned, in our opinion, this contention has also no force in it because the place of occurrence was already known to the police prior to their coming to the spot alongwith the appellants and preparation of pointing out memo.

42. The arrest memo of appellant Mukesh @ Haddi is Ex. PW 10/C which has been witnessed by PW 10 Ct. Hariom, PW 18 Gaurav Katheria, PW-20 Akhil and PW 21 SI Tika Ram (Retd.), which has been prepared by PW 29 Insp. J. D. Meena. The personal search memo of appellant Mukesh

@ Haddi is Ex. PW 10/D. Appellant Sonu @ Hemraj was arrested vide memo Ex. PW 10/E and his arrest memo has also been witnessed by the witnesses mentioned hereinabove and his arrest memo has also been prepared by the IO PW 29 Inspector J.D Meena. The personal search memo of appellant Sonu @ Hemraj is Ex. PW 10/F.

43. We have perused the testimonies of all the witnesses of arrest and they have corroborated each other on all material aspects. Ld. counsels for the appellants have failed to point out anything in their testimonies so as to show that the arrest was not made in the manner as stated by the witnesses. It has not been suggested to PW 18 Gaurav Katheria and PW 20 Akhil that the appellants were not arrested as stated by the witnesses or that they were lifted from their houses as was sought to be argued by the counsels for the appellants. No evidence in defence has been led by the appellants to prove that they were lifted from their respective houses.

44. In his statement U/s 313 Cr.P.C., appellant Sonu @ Hemraj has not even stated that he was lifted from his house. Similarly, appellant Mukesh @ Haddi has also not stated in his statement U/s 313 Cr.P.C. that he was lifted from his house, when question regarding his manner and place of arrest was put to him. Therefore, we have no reason to disbelieve the version of the prosecution witnesses as far as the question of arrest of the appellants is concerned.

45. As far as the question of non joining of public witnesses at the time of arrest of appellants is concerned, PW 18 Gaurav Katheria and PW 20 Akhil accompanied by the police party and in our opinion, there was no need for the IO to join more public witnesses because it is the quality of the evidence and not the quantity which is essential.

46. According to PW 29 who is the IO of the case, the appellants took them near Govt. School Sangam Vihar and pointed out the place where they had thrown the purses after taking out money. According to PW 29, appellant Sonu @ Hemraj took out one leather purse of black colour from the garbage and handed over the same to him. During the checking of the purse, one I-card of Roshan Jha (deceased) with photo was found. Appellant Sonu also took out another leather purse of brown colour from the garbage and the same was handed over to him. During the checking, it was found to contain one I-card with photo of PW 18 Gaurav Katheria. Thereafter, IO alongwith Ct. Hariom, ASI Tika Ram and appellants went to house No. A-120, Devli Extention, Sangam Vihar, where appellant Mukesh @ Haddi took them to ground floor in a room. The said house was rented house of Vijay, friend of appellants and appellant Mukesh @ Haddi took out blood stained knife and handed over the same to him. He prepared the sketch of the said knife and it was accordingly seized. The recovered purses were seized vide memo Ex. PW 10/L and the knife was seized vide seizure memo Ex. PW 10/N. The seizure memo of purses Ex. PW 10/L has been witnessed by PW 21 S.I. Tika Ram and PW 10 Ct. Hariom and the seizure

memo of knife in question has also been witnessed by PW 10 Ct. Hari Om and PW 21 SI Tika Ram. The testimonies of both these witnesses are consistent in regard to the recovery effected on the pointing out of the appellants. They were cross examined at length by the counsel for the appellants but nothing could be elicited from their cross examination to make them unreliable. They both have corroborated each other in regard to the place of recovery of the purses and the knife. They both denied the suggestion that the recoveries have been placed upon the appellants.

47. The counsels for the appellants have argued that no public witnesses were joined at the time of effecting the recoveries. We have already discussed hereinabove that non joining of public witnesses by the IO is not mandatory in all circumstances and can, at the highest, be said to be a fault on his part, but simply because the IO has failed to join the public witness or there is some fault in the investigation, the same is insufficient to discredit the entire case of the prosecution. In the cross examination of the recovery witnesses, the Ld. defence counsels had failed to point out any material contradiction which can be said to be such which could discredit the entire recoveries effected at the instance of the appellants.

48. There is one more aspect of the case of the prosecution. The case rests on the sole testimony of the eye witness who is PW 20 Akhil. We are conscious of the fact that when there is a sole eye witness, his evidence is to be accepted with an amount of caution, and in the light of other material available on record. His testimony should be confidence inspiring and

beyond suspicion. We have discussed the testimony of PW 20 at length, which leaves no doubt in our mind, that on the fateful night of 28/29-11-2010 he was with Roshan (since deceased) when the incident in question took place, therefore, we find no reason to disbelieve his testimony.

49. We have gone through the judgments relied upon by the Ld. counsel for the appellant Mukesh @ Haddi. There is no dispute with regard to the propositions of law laid down in the said judgments but each criminal case revolves on its own facts and circumstances. In **Shankarlal Vs. State of Rajasthan** (“*supra*”) relied upon by the Ld. counsel for appellant Mukesh @ Haddi, it was held by the Supreme Court that where the conduct of sole eye witness, post incident, was unnatural and his testimony inconsistent and unreliable, accused was entitled to benefit of doubt – Moreover, when he was only a chance witness whose presence at the place of incident was highly doubtful. But in the instant case, the testimony of the sole eye witness i.e. PW-20 Akhil finds corroboration from other material on record and he is not a chance witness as it is established on record that he had accompanied the deceased on the date of the incident from Sangwan Baratghar. His conduct post the incident cannot be said to be unnatural looking to his age; his background, and; the circumstances discussed above.

50. In **Harbeer Singh Vs. Sheesh Pal & others** (“*supra*”) relied upon by the counsel for appellant Mukesh @ Haddi, it has been held that the guilt of the accused must be proved beyond all reasonable doubt and if two views

are possible, the view which is favourable to accused should be adopted. This is settled principle of criminal law and this judgment is differentiable on facts and therefore not applicable to the case in hand.

51. The next judgment relied upon is **Yakub Abdul Razak Memon Vs. State of Maharashtra** (“*supra*”). This judgment deals in detail in regard to the investigation of a criminal trial and appreciation of evidence regarding which there is no dispute but, again, as already observed hereinabove that as each case has its own peculiar facts, therefore, this judgment is differentiated on facts. However, there is no dispute with regard to the principles of law laid down.

52. Counsel for the appellant Mukesh @ Haddi also relied upon **Rambali Vs. State of U.P.** (“*supra*”) and **Krishna Vs. State** (“*supra*”) to submit that the investigation in this case was defective. But the facts of these cases are different from the facts of the case in hand. During the course of arguments, the counsel for the appellant Mukesh @ Haddi has failed to show any glaring defects on the part of the investigating officer which could demolish the case of the prosecution. Rather, in these judgments it is held that it is not proper to acquit an accused solely on account of defective investigation, if the prosecution’s case is otherwise established during trial, based on satisfactory evidence.

53. In our opinion, there was satisfactory evidence on record to support conviction. To sum up, we are of the opinion that PW-18 and PW-20 are

material eye witnesses of the case. PW-20 is the witness to the stabbing incident in which Roshan lost his life. The prosecution has also been able to prove the recoveries beyond the shadow of doubt.

54. Therefore, in view of the discussion hereinabove, we unhesitatingly are of the opinion that both the appellants are guilty of the offence committed. Both the appeals are accordingly dismissed. Impugned judgment dated 01.10.2019 and order on sentence dated 23.12.2019 passed by the Ld. Trial Court are, upheld. All pending applications (if any) are disposed of. Trial court record be sent back forthwith alongwith a certified copy of this judgment.

RAJNISH BHATNAGAR, J

VIPIN SANGHI, J

DECEMBER 24, 2020

Sumant