

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

Judgment reserved on: September 30, 2020
Judgment pronounced on: November 25, 2020

+ CRL.A.614/2019

CHARAN SINGH

....Appellant

Through: Mr.Padam Kant Saxena,
along with Mr. Deepak R.
Dahiya, Advocates.

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Aashaa Tiwari, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. The appellant has filed the present appeal under section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') against the impugned judgment and order on sentence dated 26th November, 2018 and 22nd December, 2018 respectively, in Session Case No. 1899/2016, arising out of FIR No.304/2009, registered at Police Station Sangam Vihar; whereby the learned trial court has convicted the accused Charan Singh

(hereinafter referred to as the ‘appellant’) to rigorous imprisonment for life along with the fine of Rs. 20,000/- for the offence under Section 302 of Indian Penal Code, 1860 and in default of payment of fine, appellant was ordered to further undergo simple imprisonment for six months.

2. Before considering the rival submissions of learned counsels for the parties, we deem it appropriate to outline the case of the prosecution as discussed by learned trial court and it reads as under:

“1.....the case of the prosecution is that a wireless information, DD No 46A, was got recorded on 10.08.2009 at about 9:45 PM that in Street No.6, E-Block, Sangam Vihar at Bans Shop a boy was attacked by knife. Ct. Sajjan Kumar along with Ct. Vijay Narayan reached at the place of incident and took the victim to the hospital. Ct. Vijay Narayan was left behind for taking care of the place of incident and on the same day i.e. on 10.08.2009 at about 11:45PM DD No. 54A was got recorded regarding the death of the victim. Thereafter, IO/Inspector J.D Meena went to the place of incident and recorded the statement of Gopal and on his statement, Ct. Meendya Ram went to the P.S. and registered the case. PW Gopal stated that deceased live with his uncle Lal Diwan. Accused Charan singh lives in front of his house. On 10th August, 2009 at about 09:00 PM, both of them had come to his house and they had a little talk and then Ram Avatar

(deceased) and accused Charan Singh had left stating that they had to take food . At about 09:40 PM, Ram Avtar (deceased) came shouting and sat outside his house. He was stabbed with a vegetable knife which was lying inserted in his chest. Knife was pulled out by the deceased on his own. Ram Avtar had stated that knife blow was given by accused Charan Singh, because he had asked Charan Singh to return his money i.e. Rs.700/- which he (Ram Avtar) had given to him. However, Charan Singh had, stabbed him with a knife. In the meanwhile, someone had called the police at 100 number and the PCR had arrived at the spot and had removed the victim to the hospital. He came to know later on that Ram Avtar has died. IO/Inspector Meena had prepared the sketch of the knife Ex.PW10/B and seized the vegetable cutting knife vide Seizure memo Ex. PW10/C. The IO had also seized the cap of accused Charan Singh vide seizure memo Ex. PW10/D. Accused was arrested by the IO, his personal search was conducted and his disclosure statement was recorded. Thereafter, accused was sent to JC. On completion of the investigation and other formalities, a charge sheet was finally filed against accused Charan Singh in the court of Ld.MM. The Ld.MM after complying with the provisions of Section 207 Cr.P.C., had committed the case to the Court of Sessions for trial.”

3. Vide impugned judgment dated 26th November, 2018, passed by Sh. Gulshan Kumar, learned ASJ-03/South-East District, Saket Courts, New Delhi, appellant was convicted for the offence punishable under section 302 IPC and vide order dated 22nd

December, 2018, he was sentenced to rigorous imprisonment for Life and with a fine of Rs. 20, 000/- and in default of payment of fine, he was further sentenced to simple imprisonment for six months.

4. Aggrieved by the impugned Judgment dated 26th November, 2018 and order on sentence dated 22nd December, 2018, the appellant has preferred this appeal. Learned counsel for the appellant urged at the time of hearing that the case of the prosecution is entirely based on circumstantial evidence as there is no eye witness to the incident in question. According to learned counsel for the appellant, even the last seen evidence is not believable. It is submitted by learned counsel for the appellant that learned trial court has referred to the depositions of PW-10 Gopal, PW-11 Rajni, PW-12 Raju and PW-15 Shyam Singh and observed that they have deposed that accused Charan Singh and deceased Ram Avtar were last seen together at about 9:00 - 9:15 PM whereas PW-11 Rajni in her deposition has deposed that accused Charan Singh and deceased Ram Avtar had come to their plot at about 8:30 PM. PW-13 Sh. Jeevan Lal has also deposed that that on 10th

August, 2009 between 8:30-8:45 PM accused Charan Singh and deceased Ram Avtar were last seen together. Whereas, PW-12 Raju and PW-15 Shyam Singh have not deposed at all about the time or the fact that accused Charan Singh and deceased Ram Avtar were last seen together.

5. Learned counsel for the appellant has further argued that there is variance in statement of prosecution witnesses about the fact as to when accused Charan Singh and deceased Ram Avtar were last seen together . PW-11 Rajni and PW-12 Raju in their statements under Section 164 Cr.P.C. have stated that accused Charan Singh and deceased Ram Avtar had come to their plot at about 8:30 PM. On the other hand, PW-17 Mrs. Bina Kumari (Landlady of Charan Singh) has stated in her statement before the court that she did not remember the date but in August 2009 at about 8:30 PM, when she was watching TV, accused Charan Singh along with Ram Avtar had come to her house. Accused Charan Singh had asked for water and thereafter both of them had gone and she did not know about the case any further. Learned counsel for the appellant has further drawn the attention of this Court to the statement of PW-24 Sh. Beg

Ran Singh (Landlord of Charan Singh) who has deposed that on 10th August, 2009 at about 9-9:15 P.M., he was present at his house along with his wife and children, when Ram Avtar and Charan Singh had come to his house. At that time Charan Singh had asked Ram Avtar to wait outside and he had gone upstairs to his room. Meanwhile Ram Avtar had asked his wife for water and his wife had given a bottle of water to Ram Avtar. By that time, Charan Singh had also come there and he had also drunk water from the same bottle and thereafter both of them had walked towards Gali No.6. According to learned counsel for the appellant, since there are major contradictions in the statement of prosecution witnesses, regarding the time when both the appellant and deceased were last seen together at E-59, Gali no.6, Sangam Vihar, New Delhi and there is variance in the statement of PW-17 Bina Kumari (landlady) and PW-24 Beg Raj Singh (landlord), the finding of learned trial court that accused Charan Singh and deceased Ram Avtar were seen together at about 9:00-9:15 PM is perverse and unreliable.

6. Learned counsel for the appellant has next argued that there are material contradictions in the testimonies of prosecution

witnesses which go to the root of the case and the learned trial court has not properly appreciated the evidence of prosecution witnesses and has convicted the appellant on the basis of conjectures and surmises. According to learned counsel for the appellant, PW-10 Gopal and PW11-Rajni have deposed that deceased Ram Avtar came and shouted in a loud voice that accused Charan Singh has stabbed him with a knife. However, name of PW-11 Rajni has not been mentioned by PW-10 Gopal in his statement i.e. *rukka* Ex.PW10/A, on the basis of which FIR was registered. Learned counsel for the appellant has next argued that PW-16 Lal Diwan, who is the real uncle/*Chacha* of deceased has deposed in his testimony that on receiving call from Rajni, he immediately left his house on foot towards E-Block, Gali no. 6, Sangam Vihar and on the way, he had also made a call to Police on 100 number and this fact has also been confirmed by the investigating officer in the charge sheet, however, copy of the same has not been placed on record. According to learned counsel for the appellant, PW-16 Lal Diwan had gone with the deceased in PCR Van accompanied by PW-7, ASI Yogender. PW-7 has deposed that the uncle of injured

had told him that the quarrel had taken place because of some money dispute. The injured was unconscious and there was stab injury on his right chest. However, this witness has not stated anywhere that the injured was stabbed by the appellant. Whereas in his statement recorded under Section 161 Cr.P.C., he has stated that there was a dispute between appellant and the deceased and the appellant had stabbed the deceased. Thus, there is a contradiction in the statement of this witness given to Investigating Officer and before the court.

7. Learned counsel for the appellant has next argued that MLC of deceased Ram Avtar was prepared by PW-26 Dr. Rajeev Kumar, but he had neither brought any medical record to the court nor proved the MLC of which he was the author. This witness has also not given any detailed account of incident in the MLC. The MLC only states *"A/H/O stab wound with knife at 9:40 PM in Sangam Vihar, Gali No. 6, E-Block, brought by ASI Yogender Singh & Lal Diwan....."*. It nowhere mentions the name of the appellant. Thus, despite the fact that PW-16, Lal Diwan, was already aware of the name of the assailant, his name has not surfaced in either the DD

entry No. 46 A or in the MLC and this omission makes the prosecution version doubtful.

8. Learned counsel for the appellant has next argued that though the call detail record has been placed on record but the same has not been proved by the prosecution. As per the call records, deceased had allegedly called his Chacha PW 16 - Lal Diwan at about 9:23PM from his mobile phone and had informed him that he is going with Charan Singh to the hotel for having food. Thereafter at 9:31 PM, a call was made by PW-11 Rajni from the mobile phone of the deceased to PW-16 Lal Diwan informing him about the alleged stabbing of deceased by the appellant. It is argued that in this short period of only eight minutes, it was not possible to perform the following acts:-

- (i) Going to the hotel by the deceased and the appellant which is situated in Gali No. 6 B;
- (ii) Argument/ altercation with the assailant/appellant;
- (iii) Stabbing at point A (Ex.PW6/A);
- (iv) A long run by deceased from Point A in Gali 6 B to Point C in Gali No. 6 (As shown in Ex.W6/A) with knife inserted in his chest;
- (v) Narration of the incident by the deceased to the prosecution witnesses;
- (vi) The phone being first given to PW Rajni by the deceased but since she did not know

- PW16's phone number, she returned the same to him;
- (vii) Thereafter, a call was made by deceased to his *chacha* PW-16.

Learned counsel for the appellant has, thus, argued that it is not possible for all the above things to take place within a short span of eight minutes and, therefore, the prosecution version is improbable and untrustworthy.

9. Learned counsel for the appellant has next argued that even the alleged place of incident is also doubtful. It is submitted in DD no. 46A, that "*Gali no. 6, E-Block, Sangam Vihar baans ki dukkan par ek ladhke ko chaaku maar diya hai*". In the rough site plan Ex.PW 27/B and scaled site plan Ex.PW 6/A, the said '*baans ki dukkan*' is also shown to be situated in Gali No.6, E-Block Sangam Vihar, New Delhi. However, in scaled site plan Ex.PW6/A, the place of stabbing is shown in Gali No. 6B at point 'A'. Learned counsel has further argued that in the *rukka*, PW-10 Gopal has stated that '*Gali mein aage jaakar chaaku maara hai*' whereas on the endorsement (Ex. PW27/A) made by the IO in the *rukka* (Ex. PW10/A), the place of incident is shown as Gali No. 6E Block Sangam Vihar, New Delhi. Further, PW-10 Gopal in his statement

recorded under Section 164 Cr.P.C. which is Ex.PW5/D, has stated that "*jab usne charan Singh se paise mange to Charan Singh ne use hotel wali gali mein chaaku maar diya*". In the charge framed against appellant and in the statement of accused recorded under Section 313 Cr.P.C., the place of offence is mentioned as Gali no. 6, E-Block, Sangam Vihar, New Delhi. It is submitted that the above statements are highly contradictory in nature and hence cannot be relied upon to prove the exact place of incident and this goes to the root of the prosecution case and makes the whole case against the appellant doubtful.

10. It is further argued by learned counsel for the appellant that as per the deposition of PW-10 Gopal, in presence of whom the alleged dying declaration was made, the clothes of the deceased were blood stained. However, FSL report Ex.PW25/B is 'Inconclusive' regarding the same. The prosecution has, thus, failed to prove presence of blood on the clothes of the deceased which he was allegedly wearing at the time of incident. It is further argued that prosecution has also failed to prove presence of any blood on the cot on which the deceased was allegedly lying in plot No. E-59. In fact,

the said cot was not even taken into possession by the investigating agency for examination. The prosecution has, thus, miserably failed to show the presence of blood of the deceased either at the place of stabbing or anywhere in between from the place of stabbing to E-59, Gali no. 6, Sangam Vihar, New Delhi till the place where he i.e. deceased allegedly made dying declaration.

11. Learned counsel for the appellant has next argued that though the learned trial court has held that since accused had brought vegetable knife with him and he, thus, had the intention and motive to kill the deceased Ram Avtar. However, none of the prosecution witnesses have testified that the appellant was in possession of any knife. According to learned counsel for the appellant, no finger prints were lifted from the weapon i.e. the knife in question and thus, prosecution has failed to connect alleged weapon of offence with the appellant. Learned counsel for the appellant has further submitted that the knife Ex.P1 alleged to have been used in the commission of offence was sent to FSL for examination. However, FSL report Ex.PW 25/B mentioned that 'no reaction' was found on the knife. The prosecution has, therefore, failed to connect weapon

of offence i.e. knife with the crime in question. In these circumstances, it is vehemently argued that the finding of the learned trial court is completely perverse and is required to be set-aside.

12. Learned counsel for the appellant has next argued that learned trial court has wrongly observed that investigating officer has proved the place of arrest of the accused. PW-24 Beg Raj Singh has deposed that at about 10:00 PM, police had come to his house and was searching for the accused Charan Singh. PW-27 IO-Insp. J.D.Meena in his examination-in-Chief has stated that when he along with Ct. Meendya Ram and SI Sita Ram had gone in search of accused, they had met uncle of deceased. Thereafter, they had gone to *Hari ka Dhaba* and on pointing of PW16, Lal Diwan, accused Charan Singh was apprehended. However, PW-16 Lal Diwan has nowhere stated in his testimony that appellant Charan Singh was identified by the police on his pointing out. Therefore, the place of arrest of accused is not believable and shows manipulation of record by the investigating agency.

13. Learned counsel for the appellant has further argued that the prosecution has failed to prove that shirt of the appellant seized at the time of his arrest was the same shirt, which he was wearing at the time of alleged incident. Learned counsel for the appellant has further submitted that prosecution has failed to prove that the blood stains present on the shirt of the appellant were, in fact, the blood of the deceased, as the FSL report Ex.PW25/B categorically reflects the ABO Grouping/Remarks as 'O' group. The 'O' group is a very generic blood group and could be of so many other people and mere matching of blood group cannot lead to the conclusion that the appellant was involved in the commission of the offence.

14. It was lastly argued by the learned counsel for the appellant that the learned trial court has erred in convicting the appellant. The entire case of the prosecution is based on circumstantial evidence and in the light of the above submissions, the prosecution has miserably failed to prove its case beyond reasonable doubt. Learned counsel for the appellant has relied upon the following cases in support of his contentions:-

- 1) G. Parshwanath v. State of Karnataka 2010 (81) SCO 593;

- 2) Madhu @ Madhuranatha vs State of Karnataka, AIR 2014 S C 394;
- 3) Rammaiva v. State of Karnataka, AIR 2014 SC 3388;
- 4) Ram Chandra v. Chamoabai AIR 1965 S C 354;
- 5) Sonvir @ Somvir v. State of Delhi (2018) SCC Online SC 650; and
- 6) Prakash v. State of Karnataka (2014) 12 SCC133.

15. *Per contra*, Ms. Aashaa Tiwari, learned Additional Public Prosecutor for the State submitted that the state has proved its case beyond reasonable doubt. There is no infirmity or illegality in the impugned judgment passed by the learned trial court and no interference is required by this Court. It is submitted that last seen evidence and dying declaration of deceased Ram Avtar before PW-10 Gopal, PW-11 Rajni, PW-13 Jeevan, PW-17 Smt. Bina Kumari and PW-24 Beg Raj Singh has proved the case beyond reasonable doubt and prosecution witnesses have also fully supported and proved the case of the prosecution. The oral as well as medical evidence of prosecution witnesses have remained uncontroverted. All the witnesses have given a consistent statement regarding prosecution version. It is lastly submitted that since, the prosecution has proved its case beyond reasonable doubt, the present appeals be dismissed and the judgment of learned trial court be upheld.

16. Learned Additional Public Prosecutor for the state has relied upon the following cases in support of her submissions:-

- 1) Hema Vs. State, AIR 2013 SC 1000;
- 2) Mritunjoy Biswas Vs Pranab @ Kuti Biswas &Anr., (2013) 12 SCC 796;
- 3) Mahavir Singh Vs State of Haryana, (2014) 6 SCC 716;
- 4) Prahlad Vs State of Rajasthan, JT 2018(11) SC 338;
- 5) Raj Kumar Vs State of MP,104(2) JCC 1211.
- 6) TrimukhMarotiKirkan,(2006) 10 SCC 681;
- 7) State Of Punjab Vs Karnail Singh (2003) Crl.L.J. 3892;
- 8) State of Rajasthan, JT 2014(8) SC 50,
- 9) Balblr Singh Vs State,168(2010) DJ.T 406 DB

17. This Court has heard the learned counsels for the parties and considered the rival submissions and carefully examined the testimonies of all the witnesses on record and the impugned judgment given by the learned trial court.

Last seen evidence and dying declaration.

18. Learned counsel for the appellant has firstly argued that the case of the prosecution is entirely based upon circumstantial evidence as there is no eye-witness to the incident. Nobody has seen the appellant stabbing deceased Avtar Singh with knife and dying declaration allegedly made by deceased before witnesses is only hearsay evidence and, therefore, cannot be relied upon. He has

further argued that all the public witnesses are interested witnesses as all of them are either relatives or neighbours of the deceased.

19. This Court has carefully examined the testimonies of all the prosecution witnesses. The criminal cases are decided either on the basis of direct evidence or circumstantial evidences. The direct evidence may be oral or documentary but circumstantial evidence is gathered from the chain of circumstances. The main factor to be proved on the record is whether circumstantial evidence is such that it is reliable i.e. chain of events of circumstances is complete and established by the prosecution. If the chain is broken, benefit of doubt goes to the accused but if the chain is unbroken, then there is no escape for him.

20. In the case in hand, admittedly, there is no eye witness to the incident as nobody had seen the appellant inflicting knife injuries to deceased, Avtar Singh. Thus, we are in agreement with the contention of learned counsel for the appellant that the case of the prosecution is totally based upon the circumstantial evidence but at the same time, this Court will also dwell upon the ambit and scope of dying declaration and will try to ascertain the fact whether the

statement made by the deceased fulfills the ingredients of section 32 of Indian Evidence Act.

21. Now, let this Court first discuss the last seen evidence as well as alleged dying declaration of deceased made before witnesses. Out of 27 prosecution witnesses, PW- 10 Gopal, PW-11 Rajni, PW-12 Raju, PW-13 Jeevan Lal, PW-14 Ram Singh, PW-15 Shyam Singh, PW-16 Lal Diwan, PW-17 Bina Kumari and PW-24 Beg Raj Singh are the material public witnesses whose testimonies are very important and crucial to prove the theory of last seen evidence and alleged dying declaration. Before proceeding further, this Court would first examine the testimony of all these above material witnesses and the relevant portions of their depositions qua last seen evidence and dying declaration of deceased runs as under:-

PW-10 Gopal

“.....On 10th August, two years ago, at about 9:00 PM, Charan Singh and Ram Avtar came to my house and talked for little while and thereafter both of them left my house saying that they are going for taking food at the Dhabha of Hari. At about 9.30 PM at the gate of my house, Ram Avtar shouted in a loud voice and told that Charan Singh has stabbed him with knife and he entered my house. I saw that the vegetable cutting knife was in the chest of Ram Avtar and he took out the knife from his chest. Raju, Rajni, Jiwan Lal and Shyam Singh also came

there. Ram Avtar told that Charan Singh has given inflicted knife to him when he demanded Rs. 700/- from him, which he had given as loan to accused. Ram Avtar took out his mobile from his pocket of pant and gave it to Rajni and Rajni informed Chacha of Ram Avtar and asked him to come soon as Charan Singh had stabbed Ram Avtar. Ram Avtar was telling us to take him to Hospital and save him."

PW-11 Rajni:-

"About two years ago, on 10th day of August, I was residing at the aforesaid address along with my parents. My parents were not at home and had gone to village. Accused Charan Singh present in the Court along with Avtar came at about 8.30 PM to the plot where we were residing and stayed there for 2-3 minutes and thereafter Charan Singh and Ram Avtar left from there. Charan Singh was wearing blue colour cap. At that time my Chacha Raju was watching T.V. and I was giving food to my younger brothers and sisters. At about 8:45 PM or 9:15 PM Ram Avtar came running at our plot and shouted in loud voice at the gate of the plot "Chachi mujhe bacha lo". We all ran towards the gate of the plot i.e. myself, Jeevan Lal, Raju and Shyam Lal. I saw that Ram Avtar was having knife inserted in his chest. He told us that he has been stabbed by Charan Singh. He asked me to telephone his Chacha. He gave his mobile phone after dialing and I informed his Chacha and asked him to reach soon. Ram Avtar sat down on the gate itself and out the knife from his chest which was a vegetable cutting knife and having handle of orange colour and he walked a little distance of 2-3 steps and lied down on the cot. He was bleeding from the chest, but we had pressed the chest of Ram Avtar, so that the blood does not come out. Ram Avtar further told us that he had been stabbed by Charan Singh when he

demanded his Rs. 700/- from him which he had taken from him.”

PW-12 Raju:-

*“In the year 2009, I was residing at H. No.E-120, Gali No. 6, Sangam Vihar. On 10.08.2009, at about 8.15/8.30 PM I had gone to my brother’s house namely Ram Snehi at E-59, Gali No 6, Sangam Vihar. My Bhabhi and brother were not in the house and had gone to some relatives in village. I had gone there to take care of their children. I was watching T.V. and my niece Rajni was making food for the children. In the said plot, in other jhuggies and rooms Gopal who was from my village was also staying. In between 9.15 to 9.30 PM, I heard the noise, I came out from the room and saw my niece Rajni, Gopal and Jeevan Lal had already reached near the gate where Ram Avtar was standing. I also reached there. **I saw knife inserted in the chest of Ram Avtar. I asked them as to what has happened. Ram Avtar told that Charan Singh accused present in the court has stabbed him.** I cannot give the description of the knife as it was night time, however, I had seen knife in the chest of Ram Avtar. From the gate Ram Avtar came inside and lied on a cot which was lying there in the plot. **Ram Avtar took out the knife from his chest and kept lying on the cot.** Ram Avtar told us to call his Chacha and remove him to Hospital.”*

PW-13 Jeevan Lal:-

“.....On 10.08.2009, at about 8.30-8.45 PM I was present at my tenanted house and talking with Gopal and my younger brother Raju. At that time Ram Snehi along with his wife was not present and went to his village leaving behind their children at the house under the supervision of Raju. I knew accused Charan Singh who is present in the Court today. Accused was also resident of the same locality

as a tenant. At that time Charan Singh came there along with Ram Avtar and after some time on my asking to take food with us Charan Singh and Ram Avtar left from there by saying that they were going to take food at Dhabha. Deceased Ram Avtar was residing in Gali No. 16, Sangam Vihar, along with his uncle Lal Diwan. I knew both of them. At that time Charan Singh was wearing black pant and white type shirt and wearing cap on his head. Thereafter, I and my family members were busy to take food and were talking to each other. At about 9.00-9.15-9.30 PM, we heard the noise of Ram Avtar while saying that "Charan Singh Ne Chaku Mara Hai, Mujhe Bacha Lo, Mere Chacha Ko Bulwa Lo". So I immediately came out of the house and saw that many persons were gathered there and Charan Singh was sitting on the ground. At that time Gopal and the daughter of Ram Snehi namely Rajni were present there. At that time Shyam Singh and Raju also came there. I saw in the chest of Ram Avtar a knife was inserted in the right side chest of Ram Avtar and Ram Avtar put his right hand on his chest. Ram Avtar was crying due to pain and saying that "Mujhe Dhabhe Wali Gali Mein Charan Singh Ne Chaku Mara Hai, Mere Chacha Ko Bulwa Do, Mujhe Bacha Lo, va Haspatal Pahooncha Do". Thereafter, Ram Avtar himself took out the knife from his own hand from his chest and thrown away on the ground."

PW-15 Shyam Singh:-

".....On 10.8.09 at about 9.15 pm, I returned back to my rented room from my job and I started taking food inside my room, in the meantime, I heard a noise of crying from a plot by saying that "mujhe bacha lo", "mujhe aspatal bhijwa do". I immediately opened my door after leaving food and came outside my room. I saw knife was inserted in the chest of Ram Avtar, who was residing at

Block-H, Sangam Vihar along with his uncle Lal Diwan. Said Ram Avtar was sitting in a plot, nearby main gate, later on he was falling on cot. At that time, Rajni D/o Ram Snehi and other tenants Gopal were also standing nearby Ram Avtar. I knew Ram Avtar as he was residing in our locality. **I noticed that the knife which was inserted in the right side of chest of Ram Avtar was normally used for cutting of vegetables. I also noticed that Ram Avtar put his right hand on the place of injury, where, the knife was inserted in the chest. Said Ram Avtar was crying due to pain and was shouting that said knife was inserted in his right chest by Charan Singh and he was also crying for his uncle to send him to the hospital.** Thereafter, Ram Avtar took out his mobile from his pant and gave to Rajni requesting her to call his uncle. Rajni replied that she could not dial the number, as she is illiterate. So, Ram Avtar (now deceased) dialed the number called his uncle and then handed over said mobile phone to Rajni to talk with his uncle. At that time, my relative Jeewan Lal and uncle of Rajni Raju were also reached at the said place. **Thereafter, Ram Avtar (now deceased) himself removed the knife from his chest with his right hand and thrown on the floor.** Thereafter, he fell down on a cot, which was lying nearby him. As soon as Ram Avtar (now deceased) removed the knife from his chest, the blood oozed out and he held his chest with his hand in order to protect the wound. Rajni talked to the uncle of Ram Avtar (now deceased) and informed him about the condition of Ram Avtar (now deceased) that accused Charan Singh had given the knife blow to Ram Avtar (now deceased) and asked him to reach immediately. On asking by the public as to why accused Charan Singh had inflicted such an injury upon him, Ram Avtar (now deceased) told that accused had taken a loan of Rs. 700/- from him and on asking to return the same, heated arguments and quarrel took

place and accused inflicted the knife blow on his chest.”

PW-16 Lal Diwan:-

*“.....On 10.8.2009 at about 8 pm my nephew Ram Avtar informed that he was going at the house of Charan Singh at H. No. E Block, Gali No.6, Sangam Vihar for taking back RS.700/-which was given by him to accused Charan Singh. Deceased Ram Avtar left my house at about 8 pm. I also know accused Charan Singh S/o Ram Dayal as he also belongs to our village Barara, PS Jalalpur, Distt. Hamirpur and he was working as a labour and also residing at E Block, Gali No.6, Sangam Vihar in a tenanted premises. My nephew Ram Avtar having good friendship with accused Charan Singh a long time back. **On that day at about 9.23 pm, I received a telephonic call of my nephew Ram Avtar on my mobile phone bearing NO. 9910587748 and he informed that he was going for taking food at a hotel along with Charan Singh and also asked me not to wait for them.”***

PW-17 Smt Bina Kumari:-

*“In the year 2009, I was residing at the above said address along with my family. We belonged to village Rukkanpur, P.S. Chandpur, Distt. Bijnaur, UP. **Accused Charan Singh, present in the court today (correctly identified by the witness) was residing as a tenant in our house for about 6-7 months from the date of incident @ RS.800 p.m.** He was working as a mason and used to reside alone. Deceased Ram Avtar was his friend and used to visit him at his room. Ram Avtar was also a resident of Sangam Vihar. I am not aware about any monetary transaction between Ram Avtar and accused Charan Singh. I do not remember the date but in August 2009 at about 8.30 pm **I was watching TV when accused Charan Singh along with***

Ram Avtar had come. Accused asked for water. I gave water, thereafter, both of them went away.”

PW-24 Beg Raj Singh:-

“On 10.08.2009 at about 9.00/9.15 PM I was present at my house, along with my wife and children, when Ram Avtar and Charan Singh came to my House. At that time Charan Singh told Ram Avtar (deceased) to wait outside and then he went upstairs to his room. Meanwhile Ram Avtar asked my wife to provide the water and my wife gave a bottle of water to Ram Avtar. At the time of drinking water Charan Singh also came there and he also drank water from the same bottle and thereafter both of them left from there towards Gali No.6”.

22. Perusal of testimonies of PW-10 Gopal, PW-11 Rajni, PW-13 Jeevan, PW-17 Smt Bina Kumari and PW-24 Beg Raj Singh reveals that they have categorically deposed that they had seen the appellant along with deceased just some time before the commission of offence. **PW-10 Gopal** has deposed that on 10th August, two years ago, at about 9:00 PM, Charan Singh and Ram Avtar had come to his house and talked for some time and thereafter, both of them left house saying that they are going to take food at Hari's Dhabha. **PW-11 Rajni** has deposed that at about 8.30 P.M., accused Charan Singh present in the court along with Ram Avtar had come to the plot where they were residing and stayed there for 2-3 minutes and

thereafter both of them had left the place. **PW-13 Jeeven** has deposed that on 10th August, 2009, at about 8:30-8:45 PM he was present at his tenanted house and talking to Gopal and his younger brother Raju. At that time, Charan Singh had come there along with Ram Avtar. After some time, on his asking them to take food with them, they had left saying that they were going to take food at a Dhabha. **PW-16 Sh. Lal Diwan** has deposed that on 10th August, 2009 at about 8 PM, his nephew, Ram Avtar had informed him that he was going to the house of Charan Singh at E-Block, Gali No.6, Sangam Vihar to ask for Rs.700/-which was given by him to accused Charan Singh. Deceased Ram Avtar had left his house at about 8 PM. **PW-17 Smt Bina Kumari** has deposed that she did not remember the date but in August 2009 at about 8.30 PM, she was watching TV when accused Charan Singh along with Ram Avtar had come. Accused had asked for water for drinking. She had given him water, thereafter, both of them had left the place. **PW-24 Beg Raj Singh**, husband of PW-17 Smt Bina Kumari has also deposed that on 10th August, 2009 at about 9.00/9.15 PM, he was present at his house along with his wife and children. At that time

Ram Avtar and Charan Singh had come to his house. Charan Singh had asked Ram Avtar (deceased) to wait outside and then he had gone upstairs to his room. Meanwhile, Ram Avtar had asked his wife for water and his wife had given a bottle of water to Ram Avtar. At the time when Ram Avtar was drinking water, Charan Singh had also come and he had also drunk water from the same bottle and thereafter, both of them had left towards Gali No.6. These witnesses have been thoroughly cross examined by learned defence counsel. However, no major contradiction or discrepancy has appeared in their deposition which may demolish the prosecution version. They have given a consistent version about the fact that they had seen both deceased and Charan Singh together soon before the incident.

23. In view of the above deposition of PW-10 Gopal, PW-11 Rajni, PW-13 Jeevan, PW-17 Smt Bina Kumari and PW-24 Beg Raj Singh, it is clear that all the above witnesses have seen both appellant and deceased Ram Avtar just sometime before the incident and it gives credence to the prosecution version that they were last seen together. Though learned counsel for the appellant has argued

that there are material contradictions in the testimonies of above witnesses with regard to the time when both appellant and deceased were last seen together as all the witnesses have given different time. However, this Court is of the view that with the passage of time, some variations in disclosing the fact or place of incident or exact time are bound to occur in the statement of witnesses. These minor variations, in fact, gives credence to the deposition of witnesses that they are not tutored and are natural witnesses. It is very natural for some discrepancies to creep in the depositions of witnesses as these may arise due to error of observation, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence. Such kind of discrepancies do not affect the credibility of a witness. In this regard, reliance can be placed upon the judgment of Hon'ble Supreme Court in case '**Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr., (2013) 12 SCC 796**' wherein it was held as under:-

'28. As is evincible the High Court has also taken note of certain omission and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The

test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.

(Emphasis Supplied)

24. So far as last seen evidence is concerned, it is pertinent to note that the time gap of the person seen together and the person found dead is quite important. The base of this theory is the principle of probability, cause and connection. In the absence of any direct evidence with regard to the commission of the crime, last seen together concept plays a very vital role and it is also the last resort of the prosecution to connect the accused with the commission of offence. Though, the last seen theory is not absolute to prove the guilt of an accused and it must be supported by other connecting evidence. In the present appeal, the dying declaration of deceased before the witnesses is another crucial connecting evidence to connect the appellant with the commission of offence. In other words, it is an additional link which completes the chain of

circumstantial evidence. It may also be noted in this case that appellant has not given any reasonable explanation as to how and when he parted from the company of the deceased. Thus, he has failed to discharge the burden cast upon him. Elaborating the principle of “last seen alive” in **State of Rajasthan vs. Kashi Ram, (2006) 12 SCC 254**, Hon’ble Supreme Court has held as under:-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can

consider his failure to adduce any explanation, as an additional link which completes the chain.”

25. In view of the above law laid down by the Hon'ble Apex Court and detailed discussion, this Court is of the view that prosecution has successfully established the factum of last seen evidence by way of evidence of PW-10 Gopal, PW-11 Rajni, PW-13 Jeevan, PW-17 Smt Bina Kumari and PW-24 Beg Raj Singh beyond reasonable doubt. As discussed earlier, this court is also of the view that when the prosecution has proved the factum of last seen evidence i.e. presence of appellant with deceased before the commission of offence, the onus stood shifted upon the appellant to disclose as to what had happened thereafter when both appellant and deceased had left for having food at *Hari ka Dhaba* in view of Section 106 of Evidence Act. This Court is of the view that the appellant has failed to discharge the said onus and has failed to give any reasonable explanation regarding the said fact.

Dying Declaration

26. Now the next question to be considered by this Court is to decide whether the last statement made by the deceased before the

witnesses just before his death is admissible being dying declaration or the evidence of the witnesses is only a hearsay evidence as contended by learned counsel for the appellant.

27. This Court has given its thoughts to the matter. A dying declaration is considered to be credible and trustworthy evidence and is based on general belief that a person who is on his death bed will never lie. It is based on the principle *nemo mariturus presumuntur mentiri* meaning a man will not meet his maker with a lie in his mouth. Dying declaration is an exception to hearsay rule which prohibits the use of a statement made by someone other than the person who repeats it while testifying during a trial because of its inherent untrustworthiness. Section 32 of Indian Evidence Act deals with the cases related to that person who is dead or cannot be found. It says:-

“Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the cases where, When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in

cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

28. Keeping in mind the above settled principles and provision of law, let this Court examine the deposition of prosecution witnesses in whose presence deceased Avtar Singh has made dying declaration. For ready reference, it is given in the form of chart which is as follows:-

Sl.no. of PW	Name of Prosecution Witness(PW)	Statement made in the court with regard to dying declaration.
PW-10	Gopal	"At about 9:30 PM at the gate of my house, Ram Avtar shouted in a loud voice and told that Charan Singh has stabbed him with knife and he entered my house. I saw that the vegetable cutting knife was in the chest of Ram Avtar and he took out the knife from his chest. Raju, Rajni, Jiwan Lal and Shyam Singh also came there. Ram Avtar told that Charan Singh has given inflicted knife to him when he demanded Rs. 700/- from him, which he had given as loan to accused."
PW-11	Ms. Rajni	"At about 8:45 PM or 9:15 PM Ram Avtar came running at our plot and shouted in loud voice at the gate of the plot "Chachi mujhe bacha lo". We all ran towards the gate of the plot i.e. myself, Jeevan Lal, Raju and Shyam Lal. I saw that Ram Avtar was having knife inserted in his chest. He told us that he has been stabbed by Charan Singh."

PW-12	Raju	“In between 9.15 to 9.30 PM, I heard the noise, I came out from the room and saw my niece Rajni, Gopal and Jeevan Lal had already reached near the gate where Ram Avtar was standing. I also reached there. I saw knife inserted in the chest of Ram Avtar. I asked them as to what is happened. Ram Avtar told that Charan Singh accused present in the court has stabbed him. ”
PW-13	Jeevan	“At about 9.00-9.15-9.30 PM, we heard the noise of Ram Avtar while saying that "Charan Singh Ne Chaku Mara Hai, Mujhe Bacha Lo, Mere Chacha Ko Bulwa Lo". So I immediately came out of the house and saw that many persons were gathered there and Charan Singh was sitting on the ground. At that time Gopal and the daughter of Ram Snehi namely Rajni were present there. At that time Shyam Singh and Raju also came there. I saw in the chest of Ram Avtar a knife was inserted in the right side chest of Ram Avtar and Ram Avtar put his right hand on his chest. Ram Avtar was crying due to pain and saying that "Mujhe Dhabhe Wali Gali Mein Charan Singh Ne Chaku Mara Hai, Mere Chacha Ko Bulwa Do, Mujhe Bacha Lo, Va Haspatal Pahooncha Do". ”
PW-15	Shyam Lal	On 10.8.09 at about 9.15 pm, I returned back to my rented room from my job and I started taking food inside my room, in the meantime, I heard a noise of crying from a plot by saying that "mujhe bacha lo", "mujhe aspatal bhijwa do". I immediately opened my door after leaving food and came outside my room. I saw knife was inserted in the chest of Ram Avtar, who was residing at Block-H, Sangam Vihar along with his uncle Lal Diwan. Said Ram Avtar was sitting in a plot, nearby main gate, later on he was falling on cot. At that time, Rajni D/o Ram Snehi and other tenants Gopal were also standing nearby Ram Avtar. I knew Ram Avtar as he was residing in our locality. I noticed that the knife which was inserted in the right side of chest of Ram Avtar was normally

		used for cutting of vegetables. I also noticed that Ram Avatar put his right hand on the place of injury, where, the knife was inserted in the chest. Said Ram Avtar was crying due to pain and was shouting that said knife was inserted in his right chest by Charan Singh and he was also crying for his uncle to send him to the hospital. Thereafter, Ram Avtar took out his mobile from his pant and gave to Rajni requesting her to call his uncle
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29. Perusal of testimonies of PW-10 Gopal, PW-11 Rajni, PW-12 Raju, PW-13 Jeevan and PW-15 Shyam Lal, makes it clear that all the above witnesses were present at the spot and the last statement made by the deceased in front of them is in fact a dying declaration as it has been given by the deceased just before his death and he had no reason to name appellant or falsely implicate him. This Court is further of the view that testimonies of all the above prosecution witnesses in whose presence the deceased had made dying declaration are credible and trustworthy. Moreover, it has come in the testimony of PW-16 Lal Diwan that his nephew Ram Avtar was having good friendship with accused Charan Singh for a long time and, therefore, there was no reason for Ram Avtar to falsely implicate his friend. This Court of the view that there is nothing on record to suggest that material witnesses have given statements

which are false, unreliable and improbable. This Court finds no significant and material inconsistency or contradiction in the statements of above witnesses, which would throw any doubt about the incident and offence committed by the appellant.

30. This Court has also given its thoughts to the argument of learned counsel for the appellant that the deposition of all the witnesses regarding last seen evidence or before whom the deceased made dying declaration are not reliable as they are interested witnesses either being neighbours or relatives of deceased Ram Avtar. This Court is, however, of the view that merely because of the fact that some of the witnesses are neighbours and some are relatives of the deceased, there is no reason to discard or disbelieve their testimony, if it is otherwise reliable and trustworthy. In other words, proximity or the relationship is not a factor to affect the credibility of a witness but the only caution is that the Courts have to scrutinize their evidence meticulously with a little care. Admittedly, the witnesses are neighbours or relatives of the deceased. There is nothing on record to suggest that they were inimical towards the appellant Charan Singh. Merely taking a plea

that witnesses are interested witnesses, without proving the fact that they have deposed falsely, does not make their testimonies unbelievable. In a case titled '**Israr Vs. State of U.P. (2005) 9 SCC 616**', the Hon'ble Supreme Court has held that relationship is not a factor to affect credibility of a witness if the testimony is cogent and reliable. The observation runs as follows;

"12. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not counsel actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

31. In **Hari Obula Reddy v. State of A.P., AIR 1981 SC 82, 1980 Cri LJ 1330, (1981) 3 SCC 675**, a three-Judge Bench of Hon'ble Supreme court has held as under:-

"13. ... it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested

witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

32. In view of the above proposition of law and analysis of the testimonies of the witnesses in detail, this Court has no hesitation to hold that the learned trial court has rightly relied upon the statements of the material witnesses who have given a consistent, reliable and trustworthy account of the incident to convict the appellant for the offence charged.

Motive

33. So far as motive for committing the offence is concerned, testimonies of PW-10 Gopal, PW-11 Rajni, PW-12 Raju, PW-13 Jeevan Lal and PW-15 Shyam Lal reveal that they have categorically deposed that deceased Ram Avtar had himself told them that Charan Singh has stabbed him when he had demanded Rs. 700/- from him, which he had given to him as loan. Perusal of record further reveals that even PW-24 Beg Raj Singh, who was the owner of house, where appellant used to reside at the relevant time has also corroborated the deposition of above witnesses and deposed

that on 8th August, 2009 at about 8:00 PM, Ram Avtar had came to his house. At that time, Charan Singh was not present in his room. On his asking about his visit, Ram Avtar informed him that he had come there for taking his balance amount of Rs. 700/- from Charan Singh and Charan Singh was not paying the said money to him and was intentionally harassing him and thereafter he had left his house. PW-15 Shyam Lal has also categorically deposed that on being asked by the public as to why accused Charan Singh had inflicted such an injury upon him, Ram Avtar (deceased) told that accused had taken a loan of Rs. 700/- from him and on his asking to return the same, heated arguments and quarrel took place and accused inflicted the knife blow on his chest. Though all these witnesses have been duly cross examined by learned counsel for the appellant, but as discussed earlier, the appellant has failed to point out any discrepancy in the prosecution version that appellant had stabbed the deceased since he had asked him to return his money. In view of the deposition of the above witnesses, it stands proved that the bone of contention between appellant and deceased was Rs. 700/- which

deceased had given as a loan to the appellant and which led to the murder of deceased by the appellant.

34. This Court would now deal with the argument of learned counsel for the appellant that the place of stabbing is doubtful as there are material contradictions in the testimonies of all the prosecution witnesses. It is further argued that it is not possible for deceased having a knife stabbed in his chest to run or walk from the place of stabbing to E-59, Gali no.6, Sangam Vihar. It is submitted that in the DD no. 46A, it is mentioned that "Gali no. 6, E-Block, Sangam Vihar baans ki dukkan par ek ladhke ko chaaku maar diya hai" whereas in the rough site plan Ex.PW 27/B and scaled site plan Ex.PW 6/A, it is said 'baans ki dukkan' which is situated in Gali No.6, E Block Sangam Vihar, New Delhi. However, in Ex.PW6/A, the place of stabbing is shown at point A which is Gali No. 6B. In the rukka, PW-10 Gopal has stated that 'Gali mein aage jaakar chaaku maara hai' whereas on the endorsement (Ex. PW27/A) made by the IO in the Rukka (Ex. PW10/ A), the place of incident is shown as 'Gali No. 6E Block Sangam Vihar, New Delhi. Further, in his statement recorded under Section 164 Cr.P.C. Ex.PW5/D, PW-

10 Gopal has stated that 'jab usne Charan Singh se paise mange to Charan Singh ne use hotel wali gali mein chaaku maar diya'. In the charge framed against appellant and in the statement of accused recorded under Section 313 Cr.P.C., the place of offence is mentioned as Gali no. 6, E-Block, Sangam Vihar, New Delhi.

35. This Court is also of the view that there may be inconsistencies and contradictions with regard to the place of stabbing but one thing is clearly established and proved on record from the testimonies of witnesses that deceased Ram Avtar was stabbed by appellant Charan Singh with the help of knife which was recovered from E-59, Sangam Vihar, where deceased reached after getting stabbed. It is also a settled law that even if there is negligence in carrying out the investigation, it does not make the prosecution version unbelievable, if there is otherwise cogent evidence on record.

36. Now coming to the next argument of learned counsel for the appellant that it was impossible for the deceased who was having stabbed injuries in his chest to run or walk from the alleged place of stabbing i.e. Gali no. 6B, near Hari Ka Dhaba, Sangam Vihar, New

Delhi to E-59, Gali no. 6, Sangam Vihar, New Delhi, this Court is of the opinion that the same cannot be made a ground for acquittal of the appellant for the reasons firstly, that there is sufficient, cogent and reliable evidence on record which shows that deceased was stabbed by the appellant and secondly, one cannot ignore the fact that knife used for stabbing, was a kitchen knife and thirdly till the deceased had not taken out the knife, the bleeding was not profuse. Fourthly, no suggestion or cross examination has been conducted on the point that it was impossible for the deceased to have travelled a distance after getting stabbed. Fifthly, the deceased was a young boy of 17 years and because of his age, he could have covered the area with the stab injuries and lastly, as discussed earlier, even if there is inconsistency regarding the place of stabbing, it does not go to the root of the case of the prosecution because there is otherwise cogent and reliable evidence on record to connect the appellant with the stabbing.

37. Learned counsel for the appellant has next argued that PW-26 Dr. Rajeev Kumar has also not given a detailed account of incident in the MLC. Since, the name of appellant does not find mentioned

in the MLC despite the fact that PW-16 Lal Diwan was already aware of the name of the assailant, this throws doubt on the prosecution version.

38. The Court is not in agreement with this contention of learned counsel for the appellant that if the doctor has not mentioned the name of appellant in the MLC or even if PW-16 Lal Diwan has not disclosed the name of appellant in the MLC, the case of the prosecution becomes doubtful for the reason that in a situation where one's relative or known person is fighting for his life, the relatives, neighbours or witnesses are more concerned about the treatment to be given to him and about his recovery rather than giving details of the incident and names of assailants to the doctor. In that perplexed state of mind, it is unrealistic to expect that a person would make a perfect statement.

Delay in lodging FIR.

39. Learned counsel for the appellant has next argued that appellant has been falsely implicated in the present case as the alleged incident had taken place at about 9:40 P.M. on 10th August, 2009 whereas the FIR was lodged at 3:15 A.M. on 11th August,

2009 despite the fact that the name of appellant was already known to the witnesses and even to the PW-27 IO Insp. J.D.Meena. Thus, there is an unexplained delay of around 5 hours and 35 minutes in lodging the FIR which shows that a story was concocted to falsely implicate the appellant.

40. This Court has carefully gone through the evidence. As per record, the incident had taken place at around 9:40 P.M. PCR call was made by PW-16 Lal Diwan and on the basis of this call, DD no. 46A was recorded at around 9:45 P.M. PW-20 ASI Sajjan Kumar along with Ct. Vijay reached at the spot at about 10-10.05 P.M. where he came to know that the injured has been taken to AIIMS. PW-20 ASI Sajjan Kumar reached at AIIMS at about 10:30 P.M. and collected MLC of deceased. As per statement of IO Insp. J.D.Meena, at about 11:45 P.M. duty constable at AIIMS informed the duty officer about death of Ram Avtar and thereafter, he along with Ct. Meendya Ram and SI Sita Ram reached at AIIMS. At about 1:30 A.M. IO Insp. J.D.Meena along with SI Sajjan and Ct. Meendya Ram reached at the spot and thereafter on the statement of Gopal, *rukka* was prepared and handed over to Ct. Meendya Ram

for registration of FIR. Ct. Meendya Ram reached at police station and got the FIR registered at about 3.15 a.m. This Court is of the view that alleged delay of about five and half hour was due to proceedings which have taken place and stated above. Moreover, there is nothing on record to suggest that appellant was falsely implicated in the present case by delay in lodging of FIR. It is a well settled law that delay in lodging an FIR is not fatal to the prosecution case. Reliance is placed on **Gurmail Singh vs. State of Punjab & Anr. (2013) 4 SCC 278** wherein Hon'ble Supreme court has held as under:-

33. In situations such as the present, a realistic and pragmatic approach is necessary. It is not as if the incident of firing and inflicting of gandas blows was over within a minute or so. The entire incident would have taken some time, and thereafter, the victims would have to recover from the shock and trauma caused by injuries suffered by them and make arrangements for medical treatment. Often several emergent issues need attention and so, it is not as if the moment an incident is over, someone is expected to rush to the police station for lodging an FIR. However, if there is an unreasonable or unexplained delay in lodging a complaint, an argument can surely be made, but it is wrong to make a fetish out of every delay in lodging an FIR. Given the facts of this case, we do not think there was any unreasonable or unexplained delay in lodging an FIR.

34. In this context, we may only refer to a recent decision of this Court (authored by one of us, Swatanter Kumar, J) in Jitender Kumar v. State of Haryana, (2012) 6 SCC 204 in which it was held:

“It is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases, but in the given circumstances of a case, delay in lodging the FIR can be one of the factors which corrode the credibility of the prosecution version. Delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case. The court has to seek an explanation for delay and check the truthfulness of the version put forward. If the court is satisfied, then the case of the prosecution cannot fail on this ground alone.”

41. As discussed above, the delay, if any, has been explained by the witnesses and, therefore, prosecution case cannot be disbelieved on this ground alone.

42. The next argument of learned counsel for the appellant is with regard to non-lifting of blood from the place of stabbing i.e. Gali no. 6B, E-59 or Gali no. 6 or from the cot on which the deceased was allegedly lying. This Court has carefully gone through the evidence of witnesses in this regard. It has come in the cross-examination of PW-10 Gopal that *“the blood was not oozing out from the wound of the injured, however, his clothes were stained with blood. His blood*

did not fall on the cot, where, he was lying.” In her examination in chief, PW-11 Rajni has deposed that “He was bleeding from the chest, but we had pressed the chest of Ram Avtar so that the blood did not come out.” Further, in his cross-examination PW-12 Raju has also deposed that “Prior to that when the knife was in the chest of Ram Avtar blood was not oozing out.” PW-13 Jeevan Lal has deposed in his examination-in-chief that “Blood was oozing out from the chest injury of Ram Avtar” but clarified in his cross-examination that “Blood was not falling on the ground. Only clothes of the deceased were having blood stains.” PW-15 Shyam Singh has deposed in his cross-examination that “As soon as Ram Avtar (now deceased) removed the knife from his chest, the blood oozed out and he held his chest with his hand in order to protect the wound.”

43. If the above depositions of PW-10 Gopal, PW-11 Rajni, PW-12 Raju, PW-13 Jeevan Lal and PW-15 Shyam Singh are read carefully, they have categorically stated that till the time, the deceased had not taken out the knife from his chest, he was not bleeding profusely. This clearly explains the fact as to why no

blood was found at the place of stabbing or at E-59, Gali no. 6 or on the cot where he was lying. It is also clear from the testimonies of the above witnesses that though blood was oozing from the wound of the deceased but it was not oozing profusely and was, thus, not falling on the ground or the cot on which he was lying and moreover the deceased as well as witnesses had pressed the stab wound of deceased so as to stop the bleeding. Thus, whatever blood had come out, it had dropped on the clothes of the deceased only and not on cot or ground.

44. In view of the above discussion, we are not in agreement with this contention of learned counsel for the appellant that absence of blood from the place of stabbing, E-59, Gali no. 6 or from cot where deceased was lying creates doubt on the prosecution version and therefore, the contention of learned counsel for the appellant is hereby rejected.

Contradictions.

45. On the point of contradictions in the depositions of prosecution witnesses, the Court is of the view that the facts i.e. non-disclosing of name of PW-11 Rajni by PW-10 in the statement

made in the *rukka* Ex.PW10/A, not placing call detail record of PW-16 Lal Diwan who made call to Police on 100 number, not disclosing the name of appellant by PW-16 Lal Diwan to PW-7 ASI Yogender at the time of removing the deceased to hospital in PCR do not have much bearing, as there is other cogent and trustworthy evidence available on record. Considering the entire material available on record and keeping in mind the consistent deposition of all the witnesses, the Court is of the view that all the above discrepancies as pointed out by learned counsel for the appellant in the testimonies of public witnesses are minor in nature and do not go to the root of the case. Merely on the basis of some minor contradictions, the whole testimony of a witness cannot be rejected. If the testimonies of all these witnesses are read as a whole, these are found cogent, consistent and trustworthy. As discussed earlier, though these witnesses were thoroughly cross examined by the learned counsel but no such contradiction, discrepancy or inconsistency has appeared in their depositions which may impeach their creditworthiness. All the witnesses have fully stood the test of cross-examination and have given rational answers to the questions

put to them in their cross examination. On thorough examination, we find their testimony natural and free from any tutoring. Their specific and vivid testimonies with regard to narrating the factum of inflicting of knife injury by the appellant upon deceased as told by him to the witnesses is trustworthy and reliable.

46. With regard to tainted investigation such as discrepancy in the site plan, non lifting of finger prints from the knife in question, not collecting call record of PW-16 Lal Diwan regarding the call made by him on 100 no. and non-recovery of cot, this Court is of the view that when there is clear testimonies of witnesses on record proving the commission of offence, these minor contradictions cannot be considered and made a ground for acquittal of accused. The contradictions as pointed out by learned counsel for the appellant are not such that they demolish the case of the prosecution. This Court is also of the view that even if there is faulty investigation, it is well settled law that remissness and inefficiency on the part of Investigating Agency should be no ground to acquit a person, if there is enough evidence on record to establish his guilt beyond reasonable doubt. It is a settled law that irregularities or deficiencies

in conducting investigation by prosecution are not always fatal to the prosecution case if there is sufficient evidence to establish the substratum of the prosecution case. Reference in this regard can be made to **Dhanaj Singh Vs. State of Punjab AIR 2004 SC 1920** wherein the apex court dealt with plea of tainted investigation and held as under:

" In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective."

47. In another case **Paras Yadav and others Vs. State of Bihar 1999 (2) SCC 126**, Hon'ble Supreme Court has held as under:-

"if the lapse or omission is committed by the investigating agency, the prosecutions evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the Courts; otherwise the designed mischief would be perpetuated and justice could be denied to the complainant party."

48. Applying the ratio of above settled principle of law, this Court is of the view that learned trial court has rightly observed that

accused cannot take advantage of defective investigation and the relevant observation of learned trial court is as follows:-

“23. Accused cannot take any advantage from the lapse on the part of Investigating Agency and defective investigation on certain aspects of case. If a person accused of serious offence is acquitted merely because of negligence and lapse on the part of Investigating Officer, it will be a mockery of justice and judicial process. If the evidence adduced on record is sufficient to prove the charge against the accused, such lapses on the part of police will not advance the case of accused.”

49. As far as finding of FSL report Ex.PW25/A, mentioning ‘no reaction’ with regard to the presence of blood on recovered knife is concerned, this Court is of the view that FSL report is only corroborative evidence and cannot be considered to be the conclusive proof. It is also a well settled principle of law that merely because there is no positive FSL report, it does not, in any manner, render the testimony of the witness, which is otherwise reliable, as unreliable and liable to be discarded. We do not find any material contradiction which may warrant rejection of the depositions of the witnesses.

50. So far as citations relied upon by learned counsel for the appellant are concerned, this Court has gone through the same.

There is no dispute with regard to the law laid down in the said judgments. However, in the present case, as discussed above, it has been proved on record on the basis of evidence of the witnesses that appellant has committed the murder of deceased Ram Avtar. In our view, the judgments cited by learned counsels for the appellants are clearly distinguishable on the basis of the facts and circumstances stated therein.

51. In view of the above discussions, this Court is of the view that the learned trial court has rightly appreciated the evidence appearing on record. The prosecution has successfully proved the charges against the appellant beyond any shadow of doubt. The witnesses have duly supported the case of prosecution and no dent could be created in their testimonies. Motive of appellant to commit murder of deceased also stands proved. Thus, the evidence appearing on record clearly leads to the conclusion that the appellant is the one who had committed the offence. This Court, therefore, finds no infirmity or illegality in the judgment passed by the learned trial court and sees no reason to interfere with the same. Thus, on the basis of appreciation and analysis of the evidence brought on record

by the prosecution, it can safely be concluded that prosecution has proved the case against the appellant beyond reasonable doubt. The conviction of the appellant under Section 302 IPC is, therefore, upheld.

52. Appeal, therefore, fails and is dismissed. The copy of this judgment be sent to the Jail Superintendent. A copy of the judgment be placed in the Appeal file. Trial Court record be sent back forthwith.

53. This court, however, appreciates the hard work put in by the learned counsel for the appellant Sh. Padam Kant Saxena and for assisting this Court by arguing the appeal very meticulously.

54. The Judgment be uploaded on the website of this Court forthwith.

BRIJESH SETHI, J

J. R MIDHA, J

NOVEMBER 25, 2020
AK.