



#J-1

NEUTRAL CITATION NO: 2022/DHC/001545

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 14.12.2021

Judgment Delivered On: 28.04.2022

CRL.A. 8/2020

NADEEM

.....Appellant

versus

THE STATE(GOVT.OFNCT DELHI)

.... Respondent

2

CRL.A. 10/2020

NARESH @ RAJU

.....Appellant

versus

THE STATE (GOVT.OFNCT DELHI)

.... Respondent

3

CRL.A. 79/2020

MOHSIN@ RAJU

.....Appellant

versus

THE STATE (GOVT.OFNCT DELHI)

.... Respondent

4

CRL.A. 111/2020

NITIN @ PINTU @ AATISH

.....Appellant

versus

THE STATE (GOVT.OFNCT DELHI)

.... Respondent



Advocates who appeared in this case NEUTRAL CITATION NO: 2022/DHC/001545

For the Appellants: Ms. Manika Tripathy and Mr. Shubham Hasija, Advocates for Appellant Nadeem.
Mr. M.L. Yadav Advocate for Appellant Naresh @ Raju
Mr. SulaimanMohd. Khan for Appellant Mohsin @ Raju
Mr. Biswajit Kumar Patra for Appellant Nitin @ Pintu @ Aatish

For the Respondent: Mr. Ashish Dutta APP for the state with Inspector Umesh,
P.S: Nihal Vihar.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present batch of criminal appeals being Criminal Appeal Nos. 8/2020, 10/2020, 79/2020 and 111/2020 instituted under the provision of section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C), assail the judgment of conviction dated 11.10.2019 and the order on sentence dated 17.10.2019, rendered by learned Additional Sessions Judge, West-02, Tis Hazari Courts, Delhi, in Session Case No. 58184/16, titled as '*State vs. Nadeem and Ors*', emanating from F.I.R. No. 174/2011 registered under Sections 302/307/34 of the Indian Penal Code, 1860 (IPC), at Police Station Nihal Vihar.

2. By way of the impugned judgment dated 11.10.2019 and the order on sentence dated 17.10.2019, appellants namely Nadeem ('Appellant No.1'), Naresh @ Raju ('Appellant No.2'), Mohsin @



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Raju ('Appellant No.3'), and Nitin @ Pintu @ Aatish ('Appellant No.4') were convicted for committing the murder of the deceased victim Manoj s/o Charan Singh by inflicting deadly injury upon the deceased with *dandas* and subsequently stabbing him with a *knife* in furtherance of their common intention. All the Appellants were convicted and sentenced for the offences mentioned as under:

- i. qua offence punishable u/s 302/34 IPC, to undergo Rigorous Imprisonment for life and to pay fine of Rs. 5000/- each. In default of payment of fine to further undergo R.I. for three months;
- ii. qua offence punishable u/s 307/34 IPC, to undergo Rigorous Imprisonment for two years and to pay fine of Rs. 3000/- each. In default of payment of fine to further undergo R.I. for three months."

All the sentences were directed to run concurrently, whilst according the benefit of Section 428 Cr.P.C to all the convicts/appellants, herein.

3. The fulcrum of the case of the prosecution is that on the night of 03/04.06.2011, the Appellant Nos.1, 2, 3 and 4 (hereinafter collectively referred to as 'Appellants'), sharing common intention, caused stab injuries on the body of Manoj s/o Sh. Charan Singh r/o G-44/14, Laxmi Park, Nangloi, Delhi (hereinafter referred to as 'the deceased') leading to his death. The injuries were caused with a knife [Ex.PW-26/B] and *danda* [Ex.PW-21/O] as a vendetta owing to previous enmity and animosity with the deceased. After committing the murder, the appellants absconded from the crime spot. The entire incident was



witnessed by PW-4 Smt. Gudiya W/o Jagbir Singh, PW-6 Jagbir Singh

(brother of deceased and injured eye witness); and PW-2 Amit Bhardwaj (neighbour and eyewitness who turned hostile); who were statedly present with the deceased at the time of the incident.

4. A PCR call [Ex.PW-5/A] was received from mobile No. 9891285918 by Ct. Anita (PW-5) regarding stabbing of one person with knife, and Daily Diary No.42-B was lodged at Police Station: Nihal Vihar, Delhi (hereinafter referred to as 'the Police Station'). Sub-Inspector Dinesh Chandra (PW-14) alongwith Constable Yudhbir Singh (PW-18) reached the crime spot where they found blood on the road and upon inquiry, it was revealed that the injured has been shifted to the hospital. By this time, beat constable Ct. Kuldeep (PW-17) also arrived at the spot. SI Dinesh Chandra (PW-14) prepared the *rukka* (Ex.PW-6/A, CX, 15/B) and handed over the same to Ct. Yudhbir (PW-18) with a direction to get the FIR registered (Ex.PW-15/A) and also requesting that the investigation be marked to (PW-30) Inspector Sehdev Kumar Rana, ATO, Nihal Vihar. After registration of the FIR, investigation was handed over to Inspector Sehdev Kumar Rana (IO). Thereupon, IO Sehdev Kumar Rana also reached the crime spot, and got the same inspected through the Crime Team whilst contemporaneously photographing the scene of crime from different



angles and also seizing blood stained earth samples [Ex.PW-17/A]. Thereafter the site plan [Ex.PW12/A] was prepared. The dead body of the deceased was sent for post mortem at DDU hospital [Ex.PW-26/A]. On 04.06.2011, PW-30 conducted inquest proceedings and the dead body of the deceased was identified by Mr. Gajendra Singh and Mr. Brijendra Singh [vide Ex.PW-3/A and Ex.PW-30/A, respectively]; and thereafter the dead body of the deceased was handed over to his relatives [vide Ex.PW-3/B]. On 06.06.2011, all the Appellants surrendered before the court and the IO arrested all the appellants vide the following Arrest Memos: Appellant No.1 [Ex-PW-21/E], Appellant No.2 [Ex-PW-21/G], Appellant No.3 [Ex-PW-21/F], and Appellant No.4 [Ex-PW-21/H], respectively; and IO PW-30 further sought permission to interrogate them. During the course of interrogation appellants made disclosure statements admitting their involvement in the offence [Ex.PW-21/A, 21/B, 21/C, and 21/D]. Thereupon, the weapon of offence i.e. blood stained knife was got recovered and was seized at the instance of Appellant No.1, Nadeem vide seizure memo [Ex.PW-21/N]; as well as *dandas* were recovered and seized at the instance of Appellant No.2, Appellant No.3, and Appellant No.4, vide seizure memos [Ex.PW-21/O, 21/Q, 21/P] respectively.



Furthermore, a white coloured blood stained pant with sticker on

FLU jeans on it was recovered at the instance of Appellant No.1, which he was wearing at the time of the commission of the offence [Ex.PW21/I].

The IO also filed the application for conducting Test Identification Parade (TIP) of Appellant No.2 and Appellant No.4 but both the appellants refused to participate in the judicial TIP.

The Exhibits were sent to the Forensic Science Laboratory (hereinafter referred to as 'the FSL'). In the FSL examination [Ex.PW-29/B] it was discovered that human blood was present on the clothes recovered at the instance of the Appellants as well as on the knife, however, the specific blood group could not be detected. Insofar as the post-mortem report is concerned [Ex.PW-26/A], it has been specified therein that, the following injuries were present on the body of the deceased:

“1. Clean incised wound 1 in No. present on the lateral aspect of left upper forearm 10 cm from left elbow, obliquely placed of size 4 cm x 1.8 cm x bone deep with lower angle acute and upper angle obtuse with clear cut regular margin, liquid and clotted blood present in and around margin.

2. Incised stab wound present on the middle part of lower abdomen of size 3.2 cm x 1.3 cm deep to abdominal cavity, 4 cm below and right to umbilicus, 25 cm below xiphisternum, 12 cm from right iliac spine with lateral angle obtuse and medial angle acute. Omentum and mesentery coming out through the wound with liquid and



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clotted blood present in and around the wound. On further exploration of the wound penetrating injury present piercing omentum, mesentery, intestinal loop and reached upto abdominal aorta making a tear of 3 cm.”

It has been opined by Dr. Komal Singh (PW-26) that the cause of death was haemorrhagic shock caused by penetrating injuries to abdominal aorta, omentum and mesentery by sharp edged pointed weapon like *knife/chhura* etc; all injuries were ante-mortem in nature. Injury No.2 was sufficient by itself to cause death in the ordinary course of nature.

5. Charges were framed vide order dated 18.10.2011, to which all the appellants pled not guilty and claimed trial. At the trial, the prosecution examined 31 witnesses in support of its case.

6. The Appellant No.1 in his defence chose not to lead any evidence. However, it had been stated by him in his statement under Section 313 Cr.P.C that he had been falsely implicated in the present case at the instance of PW-6 Jagbir who had previous enmity with him. Moreover, the recovery of the weapon of offence viz. the knife at his instance was denied by him.

Furthermore, Appellant No.2, Appellant No.3 and Appellant No. 4 in their statements under Section 313 Cr.P.C, whilst disputing the recoveries of *dandas* at their instance, also stated that they had



been falsely implicated in the present case in order to solve a blind murder by the police.

7. The Trial Court whilst rejecting the defence set up by the Appellants, convicted them as stated hereinbefore. Broadly, the grounds that have contributed towards the conviction of the Appellants before the Trial Court are as follows:

- i) The testimony of PW-4, the eyewitness as well as PW-6 injured eyewitness, being consistent, credible and truthful;
- ii) PW-4 has identified the Appellants in Court. Furthermore, PW-4 has elaborated on the specific roles played by each of the Appellants in the commission of the crime;
- iii) Recovery of the weapon of offence [Ex.PW-21/N] at the instance of Appellant No.1 and the opinion of Dr. Komal Singh (PW-26) that the stab injuries could have been caused by the said weapon;
- iv) Refusal on the part of the Appellants to participate in the T.I.P. proceedings;
- v) Common intention shared by the Appellants to take revenge of the insult, from PW-6 and his deceased younger brother, in causing the injuries present on the body of the deceased as well as on PW-6;
- vi) The stab injury in the stomach i.e. Injury No.2, being sufficient to cause death in the ordinary course of nature.

8. Ms. Manika Tripathi, learned counsel appearing on behalf of the Appellant No.1 would submit that there is material contradiction in the statements of PW-4 and PW-6 recorded u/s 161 Cr.P.C and the



deposition given before the court, wherein at one instance, only

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Appellant No.1 Nadeem is stated to have wielded the knife, whereas in their deposition before the court it was stated that Appellant No.3 had also wielded the knife and inflicted injury upon the person of PW-6. It is further submitted that, PW-2 Amit Bhardwaj has turned hostile and has not supported the case of the prosecution. It is also submitted that no fingerprints were taken from the recovered weapon of offence nor any FSL Test was conducted in that regard to establish the user of the weapon. It is further submitted that, all the Appellants voluntarily surrendered before the trial court within 2 days of the commission of the crime; as soon as they received information about the FIR registered against them. This itself is urged to be indicative of the fact that the Appellants did not try to flee the law and have been cooperative throughout the investigation.

9. Mr. M L Yadav, learned counsel appearing on behalf of the Appellant No.2 would submit that there are glaring contradictions and material improvements in the testimony of the purported eye witnesses PW-4 and PW-6. It is also submitted that the role ascribed to the Appellant No.2 of inflicting injury upon the deceased with *danda*, is not proven by the medical evidence on the record as no bruise marks have been found on the body of the deceased. It is further submitted



that refusal to participate in TIF by the Appellants was owing to their assertion that they had been shown to the eye-witnesses at the police station. It is further submitted that none of the eye-witnesses has distinctly identified the Appellants; and that PW-4 has collectively identified all the Appellants. It is further submitted that there was no material evidence on record to show that there was a pre-meeting of minds between the Appellant No. 2 and the other appellants prior to the commission of the alleged offence. It is also submitted that the recovered weapon of offence in the present case had been planted upon the Appellant No. 2 and other appellants and that is why no independent witness was joined during the recovery of alleged weapon of offence from the Appellant No.1; and the witnesses to the recoveries are interested witnesses, since PW-6 was the brother of the deceased and PW-4 is the wife of PW-6.

10. Mr. Sulaiman Mohd. Khan, learned counsel appearing on behalf of the Appellant No.3 Mohsin, whilst subscribing to the submissions made by other learned counsel for the appellants, would submit that Appellant No. 3 was not even present at the spot and that he was falsely implicated in the case owing to previous enmity that existed between PW-6 and his brother/Appellant No.1, as is reflected from the circumstance that as per the deposition of PW-4 before the Trial



Court, the police had recovered two knives from the spot but the prosecution's case is that there was only one knife; this vast improvement indicates that this witness is not a reliable or credible witness, and it is therefore unsafe to uphold the conviction of the Appellant No.3 premised on his testimony. Moreover, PW-6 recognized three *dandas* before the trial court which were allegedly used in the commission of offence, but no medical evidence to show that the deceased died of *danda* blows is available, and rather the cause of death is admittedly by a sharp edged weapon; thus the cause of death is neither by the alleged *danda* blows given by Appellant No. 3 nor was he found to be possessing a knife. It is also submitted that, FSL/Scientific examination reflects that no blood was detected upon the *danda* allegedly used by Appellant No. 3, although the I.O. has falsely shown in the Seizure Memo that blood was present on the *danda* seized at the instance of the Appellant No. 3. Thus, it was argued that the Appellant No. 3 was falsely implicated merely owing to previous enmity with PW-6.

11. Mr. Biswajit Kumar Patra learned counsel appearing on behalf of the Appellant No.4 Aatish@ Pintu, would submit that the learned trial court erred in failing to appreciate that, no blood was found on the *danda* recovered at the instance of the Appellant No.4 nor was the



cause of death said to be the injury inflicted by the said danda. ^{NEUTRAL CITATION NO: 2022/DHC/001545} It is

also submitted that PW-4 and PW-6 did not name the Appellant No. 4 at the time of the alleged offence but merely addressed him as an associate and that such a vague imputation cannot be the basis for conviction under Section 302 IPC. It is further submitted that refusal to participate in TIP by the Appellant No. 4 is due to the circumstance that he had been shown to the eye-witnesses at the police station.

12. *Per Contra* Mr. Ashish Dutta, Ld APP appearing for the State, whilst opposing the arguments of the Appellants and supporting the judgment and order of conviction passed by learned trial court in-toto, would submit that all the PWs examined by the prosecution have remained firm and withstood the test of cross examination and have thereby proved the case of prosecution beyond the pale of reasonable doubt. It is also submitted that the prosecution has been able to establish its case clearly and categorically; and merely because there are some discrepancies in the testimony of the PWs, that does not take away their clear and unequivocal deposition before the Ld Trial Court; and that the prosecution in law is not required to procure or reproduce a parroted version of the PWs. It is also argued that PW-4 Gudia and PW-6 Jagbir the star witnesses of this case being eye witnesses, have both categorically deposed about the subject incident and have firmly



stood their ground during the cross examination and have further corroborated each other on all relevant and material facts and consequently proved the case of the prosecution beyond reasonable doubt. Their testimonies also clearly establish the motive behind the crime committed by the Appellants in furtherance of their common intention of committing the murder of a young boy in his mid-twenties.

It is further submitted in refutation to the argument that no neighbour except PW-2 Amit Bhardwaj was cited as a witness and even he turned hostile and did not support the case of the prosecution, that PW-4 in her testimony has categorically deposed that when the Appellants inflicted injuries on the person of deceased Manoj and PW-6 Jagbir, neighbours came to rescue them; however, the Appellants threatened the neighbours to kill them in case they extended any help to the injured/deceased. It is result of intimidation by the Appellants which terrified PW-2 and other neighbours in the vicinity, thereby discouraging them from testifying against and identifying the Appellants.

It is further submitted that, non-joining of public witness in the recovery proceedings does not absolve the appellants from the commission of a heinous offence.



It is also urged that non-mention of *danda* injuries or bruises in

the MLC of deceased or injured PW-6, is not fatal to the case of the prosecution since it is not a natural corollary that a *danda* injury would result in permanent bruises. Injuries caused by a *danda* may not be visible but may cause internal injury on the bones. Further, since there was no *danda* injury visible on the body, there was no question of seeking subsequent opinion.

Ld APP, would also urge that refusal of Appellant No.2 and Appellant No.4 to participate in TIP proceedings when requested by PW-30, unerringly points towards their culpability and fear to face the eye witness.

13. We have carefully considered the submissions made by learned counsel for the Appellants and the learned APP; and closely examined the evidence marshalled by the prosecution; as well as perused the impugned judgment and sentencing order.

14. On the facts of the present case, it is undeniable that a young man has lost his precious life, and now the court is confronted with the question as to whether there was an intention to kill the deceased by the Appellants in furtherance of their common intention so as to attract the rigorous provision of section 302 IPC or was there merely an



intention to cause bodily injury, which would fall within the pale of section 304 Part II thereof.

15. This court in Vipin Sharma & Ors.vs State reported as 2019 I AD (Delhi) 109, whilst appreciating the distinction between Section 299 and Section 300 of the IPC and in particular, clause (3) of Section 300 thereof, reiterated the principle laid down in the celebrated decision in *Virsa Singh v. State of Punjab* reported as AIR 1958 SC 465 as follows:

“15. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant Singh v. State of Kerala* [AIR 1966 SC 1874: 1966 Cri LJ 1509] is an apt illustration of this point.

16. In *Virsa Singh v. State of Punjab* [AIR 1958 SC 465: 1958 Cri LJ 818] Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”. First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The ingredients of clause “thirdly” of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows: (AIR p. 467, para 12)



“12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 ‘thirdly’;

First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

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19. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case [AIR 1958 SC 465 : 1958 Cri LJ 818] for the applicability of clause “thirdly” is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in Virsa Singh case [AIR 1958 SC 465] even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.



21. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons — being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.”

16. At this stage, it would be profitable to briefly encapsulate the legal position that has been settled by the Apex Court in the celebrated judgment of **Virsa Singh (supra)** which is *locus-classicus* in criminal jurisprudence, as follows:-

- a) If the subject injury is intended and is not caused by an accident or otherwise is not unintentional and the injury is sufficient in the ordinary course of nature to cause death, then the same would fall under Section 300 clause (3) and be punishable under Section 302 of IPC;
- b) If there is intent to cause a bodily injury likely to cause death, then the same would be a case of Section 304 Part I of IPC; and
- c) If it is only a case of knowledge and not intention to cause a bodily injury likely to cause death, then



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the same would fall under Section 304 Part I of
IPC.

17. In the present case, Appellant No.1-Nadeem along with co-appellants went to the dwelling of the deceased and PW-6, at late night hours around 11:00 PM, and abusively enquired about the whereabouts of the deceased from PW-4 by employing the derogatory expression to a woman, verbatim : "*Bhosdike, bata kaha hai Manoj badmaash*". It is stated by PW-4 in her deposition before the Ld Trial Court that the Appellants came armed with knife and *dandas* with the clear intention of inflicting injuries upon her *Devar* (deceased) as well as on her husband PW-6; and categorically ascribed clear roles to each individual Appellant.

18. Upon a plain reading of the testimonies of PW-4 and PW-6 read in conjunction, it is reflected that both of them have unwaveringly supported the case of the prosecution and have also remained consistent with their testimonies and have corroborated each other, on all material facts. They also successfully stood the test of cross-examination; hence, their testimonies have remained unshattered, unchallenged and unimpeached.

19. It is further pertinent to observe that PW-6 is an injured eye witness and the testimony of an injured eye witness is kept on a higher



pedestal and is accorded a special status in law, as held by the Hon ^{NEUTRAL CITATION NO: 2022/DHG/001545} die

Apex Court in **Abdul Sayeed vs. State of Madhya Pradesh**, reported as **(2010) 10 SCC 254**, reproduced as follows:

“The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

20. Another argument raised on behalf of Appellant No. 2-Naresh and Appellant No. 4-Aatish, was to the effect that they were initially not named in the FIR and have subsequently been falsely implicated in this case. This argument cannot be sustained because an FIR is not required or expected by law to be an encyclopaedia of the offence committed. An FIR by its very nature and nomenclature is only a First Information Report, which is to record the commission of an offence contemporaneously and not an elaborate compendium of the offence. During investigation, it was uncovered that both these Appellants alongwith Appellant No.1-Nadeem and Appellant No.3-Mohsin had in fact barged into the house of the deceased and caused grievous injuries to him and his brother PW-6, resulting in the death of deceased



Manoj. Further, PW-4 Gudia and PW-6 Jagbir in their testimonies

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have categorically mentioned the names of Appellants Aatish and Naresh as well as the role played by them in the commission of the offence. Also, the two *dandas* used by them at the time of the commission of the offence were recovered at their instance vide seizure memos EX.PW21/Q and Ex.PW21/P, respectively.

21. The argument put forward before us to the effect that PW-4 and PW-6 are interested witnesses –being family members– and resultantly the argument that their testimonies are not trustworthy is untenable and specious. In this behalf we have carefully scrutinized their testimonies; PW-6 admittedly is an injured witness and PW-4 is the *bhabhi* of the deceased. The two of them alongwith the deceased were present at the house, when the Appellants barged in and caused the injuries which *inter alia* resulted in the unfortunate death of the deceased Manoj. Since all three of them were present at the time when the incident occurred, the argument made on behalf of Appellants that they are interested witnesses does not hold water.

22. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the crime is natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested.



There is a clear distinction in law between a related witness and an interested witness. The Hon'ble Supreme Court of India in **Md. Rojali Ali v. The State of Assam** reported as **AIR 2019 SC 1128** held as under:

“10. As regards the contention that all the eye-witnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an ‘interested’ witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between ‘interested’ and ‘related’ witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused”.

23. Thus, in our considered view, both PW-4 and PW-6 cannot be characterised as interested witnesses simply because they happen to be related to the deceased victim. Their testimony is credible and inspires confidence as they were witnesses to the commission of the offence being present at the time it was perpetrated.

24. Another vital aspect which point towards the culpability of the appellants is the recovery of the weapon of offence on their alleged disclosure statements; and since the weapon of offence i.e blood stained knife was in fact recovered at the instance of Appellant No.1 and one *danda* each was recovered at the instance of the other



Appellants namely, Mohsin, Naresh and Aatish. The PSL report

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clearly establishes the presence of human blood on the knife, which also points towards the commission of the offence by the Appellants in concert.

25. It is also observed from the testimony of the post mortem doctor (PW-26) Dr. Komal Singh; who opined in the post mortem report [Ex.PW26/A] that the cause of death of the deceased was hemorrhagic shock caused by penetrating injuries to abdominal aorta, omentum and mesentry by a sharp edged pointed weapon like knife/chhura etc and Injury No. 2 in particular was opined to be sufficient to cause death in the ordinary course of nature. PW-26 further opined that the Injury No. 2 was possible to be inflicted by the weapon of offence i.e the knife used by the Appellant No.1 and recovered on his disclosure statement in the present case.

26. The argument of the appellants that PW-4 has testified that two knives were used, whereas only one knife had been recovered by the prosecution, thereby rendering the testimony of PW-26 unreliable, is without merit. In this regard, we find ourselves in agreement with the Trial Court where it observes as follows:

“If one imagines as to what might have transpired during the incident, that suddenly four persons barge into the house of victims and start giving beatings with the help of dandas and knife and the incident happens in a spur of moment, a



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*helpless lady (PW-4) trying to save her husband (PW-6) and
dewar (since deceased), it cannot be expected of her to
remember as to how many knives were being used and
recovered. Even otherwise, in view of the fact that the
disclosure statement of accused has now become admissible
into evidence, this piece of testimony is not of much
relevance and does not come to the rescue”.*

27. It is relevant to observe that, the Appellants have merely taken the general plea of false implication and no specific suggestion has been put by any of the appellants to this effect to the prosecution witnesses as to why the appellants have been named by PW-6 in the complaint. Further, the Appellants have not produced any cogent evidence in their defence.

28. Therefore, in view of above discussion and the clear and cogent evidence in the form of the testimonies of PW-4 and PW-6 – who were the eye-witnesses – read in conjunction with the disclosure statements of the Appellants leading to the recovery of the weapon of offence at their instance; and the circumstance that PW-4 and PW-6 correctly identified the Appellants as well as the weapons of offence before the Ld. Trial Court; coupled with the medical evidence namely post-mortem report [Ex.PW-26/A] and FSL report [Ex.PW-29/B], it is abundantly clear that all four Appellants, in furtherance of their common intention, inflicted injuries by using a *knife* and *dandas*



which resulted in the death of the deceased Manoj and also caused injury to PW-6 Jagbir with an intention to cause his death.

29. We, consequently, find ourselves in agreement with the findings returned by the Ld. Trial Court, which in our considered view, do not warrant any interference or modification.

30. Therefore, the judgment dated 11.10.2019 and the order on sentence dated 17.10.2019, are upheld and the present appeals are accordingly dismissed. However, there shall be no order as to costs.

31. A copy of this judgment be provided to learned counsel appearing on behalf of the parties electronically and be also uploaded on the website of this Court *forthwith*.

SIDDHARTH MRIDUL
(JUDGE)

ANUP JAIRAM BHAMBHANI
(JUDGE)

APRIL 28, 2022