



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

NEUTRAL CITATION NO: 2022/DHC/004069

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Reserved on: 31st August, 2022

Pronounced on: 07th October, 2022

CRL. A. 878/2019

PANCHI @PANCHPAL

..... Appellant

Represented by: Mr. D.K. Singh, Mr. Rishabh Kr. Singh, Advs.

versus

THE STATE (NCT OF DELHI)

....Respondent

Represented by: Mr. Mukesh Kumar, APP for State with SI Talis Khan, PS Sangam Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The appellant assails the order and the judgment dated 20th April, 2019 by the learned Trial Court convicting the appellant for the offence punishable under Section 302 IPC and order on sentence dated 24th April, 2019 awarding sentence of rigorous imprisonment for life to the appellant and a fine of Rs.2,000/- (simple imprisonment for two months in default of payment of fine). By the same impugned judgment, co-accused Sumit @Akki @Akshay was also convicted for the commission of offence punishable under Section 326/34 IPC and sentenced to a period of six years for that offence. At the time of the hearing of the appeal, it transpired that Sumit @Akki @Akshay had been released from prison on 16th October, 2019 having served his full sentence. As per the



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prosecution two others were also involved in FIR No. 477/2013 dated 30th October, 2013 viz. “S” and “K”, but when investigation commenced both were found to be juveniles and hence their inquiries were conducted before the Juvenile Justice Board.

The Incident:

2. As per the case of the prosecution, Sunny Kumar Gupta (PW-3) stated that he along with Shahnawaz Ali and Ashwani on the intervening night of 29th-30th October, 2013, around 12:00 a.m., went to K Block, Sangam Vihar where they got involved in gambling with some boys. One of those boys aged 20-25 years insisted that Shahnawaz should gamble, who refused and a scuffle ensued between Shahnawaz and that boy who summoned some other boys standing at some distance. The appellant was one of them and had a knife and while two boys caught hold of Shahnawaz, the appellant inflicted knife injuries on Shahnawaz. Seeing this, Sunny and Ashwani got frightened and ran away. When they came back after 15-20 minutes, they saw blood oozing out from the chest and stomach of Shahnawaz. In the meantime, some persons had already called the PCR and they shifted the injured Shahnawaz to AIIMS Trauma Centre where he died during treatment. Pursuant to this, *rukka* was endorsed and an FIR No. 477/2013 was registered under Section 307 IPC. The crime team was called, who conducted the investigation at the spot and when Shahnawaz died, Section 302 IPC was added. Pursuant to the completion of the investigation, chargesheet was filed. Charges were framed against the two accused Panchi and Sumit @Akki and they pleaded not guilty and claimed trial. The prosecution examined 30 witnesses, the statements of the accused were recorded under Section 313 Cr.P.C. and no witnesses were examined in defence.



Submissions by the Appellant: NEUTRAL CITATION NO: 2022/DHC/004069

3. In support of the appeal, the counsel for the appellant submitted that there was no independent witness to the recovery therefore the recovery could not be connected to the appellant. It was further contended that the prosecution was unable to produce eye witness Ashwani and another important eye witness PW-8, Harish Gupta did not support the case of the prosecution. It was further contended that the testimony of PW-3, Sunny Gupta was full of inconsistency and contradiction. The circumstances of the arrest and consequent recovery of the knife from Sumit @Akki was not credible and it was quite probable that the death of the deceased was due to cardiac arrest as evident from the testimony of PW-9.

Submissions by the Prosecution:

4. The learned Additional Public Prosecutor countering the case of the appellant contended that the *rukka*, the FIR, statement under Section 164 Cr.P.C. and deposition of eye witness PW-3, Sunny were consistent. The *post mortem* report categorically stated that injuries were serious including the internal ones which were numerous and grave. The subsequent opinion of the doctor was clear that injuries could have been caused by the weapon recovered. Running away of PW-3 could not dent his evidence since PW-3 had clearly stated that they ran away due to fear but came back later to discover that Shahnawaz had been grievously injured. As regards the testimony of PW-9, the doctor who conducted the medical examination, he stated that the deceased had been taken for emergency surgery and died during the surgery after developing cardiac arrest. As per the learned APP, PW-9 only stated that because of the



severe nature of injuries that had to be necessarily operated and during the operation, he suffered cardiac arrest.

The Evidence:

5. The evidence which is relevant and necessary for the assessment of the contentions of the parties is as under:

(i) PW-3, Sunny Gupta was the star witness being the eye witness to the incident. It was on his complaint that the *rukka was* endorsed (Ex. PW-3/A, 27/A and 13/B). Further, statement recorded under Section 161 Cr.P.C. (Ex. PW-3/PX) also records events that he had allegedly witnessed on that fateful night. In his deposition before the Court, PW-3 stated that on that night, he along with his friend Shahnawaz and Ashwani were consuming beer in Govindpuri, Gali no.14 at about 10:00-10:30 p.m. and thereafter went to Sangam Vihar on his bike with both his friends. Shahnawaz got down at Gali no.8, Sangam Vihar whereas he along with Ashwani reached Gali no.19, K Block, Sangam Vihar where 4-5 boys were gambling. He remained standing along with Ashwani near the boys and in the meantime after 10-15 minutes, Shahnawaz also reached there. One of the boys who were gambling asked Shahnawaz to gamble with them but Shahnawaz refused to play. Upon this a scuffle took place between Shahnawaz and that boy, whom PW-3 did not know. Thereupon, the boy who was involved in this scuffle, called the other boys who were gambling including the appellant who was called out by his name "*Panchi*". Those boys including Panchi rushed towards Shahnawaz. While PW-3 and Ashwani tried to take Shahnawaz away from there, the appellant Panchi inflicted knife injuries upon the chest and abdomen of Shahnawaz. PW-3 identified the



appellant Panchi in the Court. PW-3 stated that the stab injuries were inflicted by the appellant Panchi and two persons caught Shahnawaz from behind when he was stabbed, whom he could not identify. After the incident of stabbing, PW-3 along with Ashwani left the spot and ran away in fear but came back after 15-20 minutes to the same spot and saw Shahnawaz lying in the *gali*, blood oozing out from his chest and abdomen. PW-3 took off his *baniyan* and tied it on the wounds of Shahnawaz in order to stop the blood oozing from the body. In the meantime, a PCR call had already been made by some person who had reached the spot. They took the injured Shahnawaz to Trauma Centre, AIIMS where his statement was recorded. PW-3 in his cross-examination stated that he may not be sure about identifying the knife. Later when being shown the knife as recovered, he stated that was not the knife which had caused the injuries to Shahnawaz. The knife which was used by the accused was a longer and wider blade and the end point of that knife was rounded not pointed. The handle of the knife as per PW-3 used in the commission of the offence was shorter in length and was like a butcher's knife which is used for cutting meat. PW-3 further identified the blood stained *baniyan* which was used by him to prevent the wound of Shahnawaz from bleeding over. Ashwani Kumar is the friend of PW-3 who was not produced before the Trial Court since he was not traceable.

(ii) PW-8, Harish Gupta who was declared hostile by the prosecution, stated that he woke up in the morning after the incident and heard some quarrel in the intervening night but did not witness anything. He denied that he used to charge from the persons gambling for using his premises and also denied that the appellant Panchi and the accused Sumit used to work for him. He denied his earlier statement Ex. PW-8/A as per which



he had stated that he was an eye witness to the incident since he was part of the gambling group.

(iii) PW-1, Dr. Pradeep Yadav, who conducted the *post mortem*, deposed that on 31st October, 2013 after receiving the papers of the inquest, he had conducted the *post mortem* on the body of Shahnawaz and observed the following injuries on the body:

External Injuries:

1) *Lacerated contusion, 4 cm x 3 cm with a laceration of 2 cm x 1 cm x scalp deep was present over forehead in midline and running towards left side, bluish in colour and 2 cm above glabella.*

2) *Multiple abrasions, present in an area of 5 cm x 4 cm, reddish in colour measuring 1 cm x 1 cm to 0.8 cm x 0.2 cm over right cheek and 2.3 cm in front of helix of right ear.*

3) *Surgical stapled wound with two staple pins in situ. On opening the wound, it was 2.5 cm x-1 cm x sternum bone deep and was present on right side of chest wall and 1 cm lateral to midline of sternum and is placed obliquely with sharp end on the higher and medial side. The wound was 39 cm above-right side of lower end of pubic symphysis. The wound was running laterally, downwards and backwards upto a sutured rent in diaphragm on right side and lower end of oesophagus.*

4) *Surgically stapled wound with two stapler pins in situ was present over left side of chest wall, 4 cm lateral to midpoint of sternum and 34 cm above the lower end of pubic symphysis on left side. On opening the wound, it was 2.6 cm X 9 cm X cavity deep running posteriorly, downwards and medially cutting the anterior chest wall bones and muscles, the diaphragm and the*



wall of stomach (stitched wound). Wound was obliquely placed over body with a sharp end present at lower and lateral end.

5) Surgically stapled wound with one stapler pin in situ was present over left side of chest wall 11 cm left lateral to midpoint of sternum and 30 cm above left anterior superior iliac spine. On opening the wound it was 0.5cm X 0.5 cm x intercostal muscle deep running medially, downwards and posteriorly. The wound was present obliquely.

6) Surgically managed wound with two stapler pins and one suture in situ was present on left lateral aspect of chest .wall 32 cm above left anterior superior iliac spine and 15.4 cm left lateral to midpoint of sternum. On opening the wound, it was 3 cm x 0.8 cm x chest cavity deep running medially, posteriorly and upwards and was horizontal.

7) Surgically sutured wound with two stapler pins in situ was present over left side of abdomen 10 cm left of umbilicus and 9 cm above left anterior superior iliac spine. On opening the wound it was 2, 1 cm x 0.5 cm x cavity deep present obliquely with sharp end towards medial side. The direction of the wound was downwards posteriorly and medially.

8) Surgically stapled wound with two pins in situ was present over left side of abdomen, 14 cm from midline of abdomen and 12.5 cm from anterior superior iliac spine, on opening the wound it was .2.2 cm x 1 cm x cavity deep and was obliquely placed with a sharp end was on the medial and lower side. The wound runs upwards medially and backwards.

9) Surgically stapled wound with four pins in situ was present over right side of abdomen, 12 cm above right anterior



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superior iUac spine and 10 cm right from the midline. On opening the wound it was 4 cm x 1 cm x cavity deep with both ends blunt and obliquely placed running medially, backwards and downwards.

10) Lacerated wound 1 cm x 1 cm x skin deep present over right thumb on its proximal end.

11) Surgically sutured wound with two sutures in situ was present over left side of back in para spinal area of lower back 5 cm above gluteal cleft and 2 cm lateral from midpoint of vertebra. On opening the wound it was 2.1 cm X 0.5 cm x cavity deep placed obliquely with both ends blunt and running medially forwards and upwards.

12) Multiple abrasions in an area of 7 cm x 3 cm present over anterior part of chest wall in midline measuring 2 cm x 1 cm to 1 cm x 0.9 cm, reddish brown in colour.

13) Laparotomy wound, 22 cm long and 7 cm above pubic symphysis with exposed abdominal contents.

Internal Injuries:

1) Defect in ribs and chest wall was present corresponding to external injuries no. 3, 4 and 5.

2) Surgically sutured rents in diaphragm on left and right side was present.

3) Lower end of oesophagus showed collection of blood with a laceration.

4) Plural cavity contained about 500 ml of blood tinged fluid.

5) Laceration of right middle lobe of lung and collection of blood of about fist size was present at hilum of lung.



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- 6) Surgically managed aortic repair was present with extravasation of blood.
 - 7) Peritoneal cavity contained about one litre of blood tinged fluid.
 - 8) Stomach was empty. Anterior and posterior wall of stomach showed surgically sutured wound.
 - 9) Small intestine showed multiple laceration.
 - 10) Extravasation of blood in left perinephric area.

As per his opinion, death was due to haemorrhagic shock consequent upon multiple injuries to the chest and abdomen by a sharp weapon. All injuries were *ante mortem* in nature and could be produced by an assault by a knife. PW-1 gave a subsequent opinion upon being shown the alleged weapon of offence and opined that the injuries mentioned in the *post mortem* report as injuries no. 3-8 could be possible by the blade of the alleged knife; injuries no. 1, 2 and 10 could be possible either by the handle of the knife or any other blunt weapon; injuries nos. 9 and 12 could be possible by some other weapon but possibility of knife could not be ruled out and injury no.14 was a surgical wound. He confirmed that his opinion Ex. PW-1/C was given in relation to the knife of which the sketch was exhibited as Ex. PW-1/B.

(iv) PW-4, Mukesh Kumar deposed that he was sleeping in his house at Sangam Vihar and he heard a noise of quarrel and a boy calling out for help in front of his house. When he opened the main gate, he saw one boy lying in a pool of blood and he made a call to the police from his mobile phone. PW-6, Smt. Soni @Shabana deposed that five years ago she married Shahnawaz, resident of Bhagalpur, Bihar and they have two children from the wedlock. She stated that the deceased used to



drive an auto at Sangam Vihar, New Delhi and that Sunny and Ashwani were friends of her husband and used to visit their house often. When she had made the call on that night at about 12 midnight to the deceased, he replied that he would reach after about 5 minutes and had asked her to re-heat the food and told her that he was still at Sangam Vihar and would inform her whenever he leaves for returning home. Thereafter, she had received a call from Sunny from the mobile phone of her husband, informing that her husband had been stabbed and asked her to reach AIIMS Hospital. PW-7, Shamshad Ansari deposed that Shahnawaz was his son and upon reaching AIIMS he had identified the dead body.

(v) PW-9, Dr. Shashi Kant Singh, who had conducted the medical examination of Shahnawaz, exhibited the MLC as Ex. PW-9/B. The MLC stated that Shahnawaz had been received on 30th October, 2013 night at about 02:43 a.m. as a case of assault on multiple sides by knife at Sangam Vihar and had been brought in by the ambulance. The MLC also notes about six stab wounds. PW-27, SI Kishan Gopal, who had reached the spot with PW-25, Constable Bajrang, said that he recorded Sunny's statement at AIIMS Hospital and later on that basis, the FIR was registered. When he came back to the place of the incident at about 5:15 a.m., the crime team was present, conducting their investigation. His testimony was corroborated by PW-25, PW-29, PW-12 and other members of the police and crime team.

(vi) PW-30, Ms. Sunita Gupta, the Scientific Officer of Forensic Science Laboratory (FSL), upon examination of the article seized opined that blood was detected on the dirty *baniyan* by which PW-3 had tried to secure the wound of the deceased and had been detected with blood group 'B' which was the same as that of the deceased.



(vii) PW-29, Inspector Shahid Khan had taken over the investigation once the charge of Section 302 IPC had been added post the death of Shahnawaz. Regarding arrest of the accused, he stated that on 01st November, 2013 PW-3 came to the police station early morning and informed that the appellant and his associates were present in pahariwala jungle, Ramleela Ground, K Block, Sangam Vihar, Delhi. PW-29 along with the police team accompanied PW-3 to the above place and they apprehended four persons from the jungle whose names were revealed as Sumit @Akki, the appellant, “K” and “S”. The accused led them to the place of the incident and pointing out memo was prepared. During the investigation, accused Sumit @Akki disclosed that after causing stab injuries by the appellant Panchi, the knife was given to him which he had thrown in the bushes in the jungle behind Ramleela Ground, Sangam Vihar. PW-29 took the accused Sumit @Akki on 02nd November, 2013 to the jungle behind Ramleela Ground and the accused got one *buttondar* knife recovered from the bushes in the jungle. The knife was found lying in an open condition with some brownish stains and it appeared that the knife had been washed.

(viii) As per the application for a subsequent opinion regarding weapon of offence Ex. PW-29/E the knife in question sealed with the seal of SGV-1-SED was sent for analysis. It was opened by PW-1, the doctor from the FSL and he made a sketch of the knife which was exhibited as EX. PW-1/B showing that the blade of the knife was 15.2 cm long, maximum width was 2.4 cm with the blade being single edged and pointed tip and the handle of the knife was 17 cm long and it was a button style knife with decorating tips (pearl type) on the handle.



Analysis

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6. Having examined the evidence on record and after appreciating the contentions of the counsel for parties, this Court is of the considered view that the prosecution has been able to prove the guilt of the accused beyond reasonable doubt for the commission of offence punishable under Section 302 IPC, for *inter alia* the following reasons:

(i) The death of the deceased was clearly homicidal in nature as per the *post mortem* report which notes severe external injuries, mostly stab wounds (detail of the injuries are extracted above in para 5(iii)).

(ii) Before we advert to the testimony of PW-3, the eyewitness, it is necessary to appreciate the context in which the testimony of PW3 becomes acutely critical.

(iii) *First*, there is no other eyewitness testimony available to the prosecution. Even though the IO had taken the statement of Ashwani, the boy accompanying PW-3 and Shahnawaz that night, who would have been also an eye witness to the incident, he was reportedly “untraceable” at the time of trial. PW-8, Harish Gupta who was living in the vicinity and could have been a witness was declared hostile by the prosecution.

(iv) *Second*, the recovery of the alleged weapon, the knife was not through the appellant Panchi but at the instance of Sumit @Akki who stated that after causing stab injury by Panchi, the knife was given to him i.e. Sumit @Akki, which he then threw in the bushes in the jungle behind Ramleela Ground, Sangam Vihar. This disclosure statement has to be dissected into two parts: (1) the mental fact stated by Sumit @Akki that the knife was given to him by Panchi; and (2) the actual recovery of



the knife from the place of recovery. While the former would not be admissible as a fact under Section 27 of the Indian Evidence Act, the latter would be. The latter relates to the fact of the knife being discovered while the former does not relate distinctly to the fact of the knife being recovered.

(v) This fine distinction has been extensively articulated and assessed in various judgments of the Hon'ble Supreme Court, the most notable of them being *State (NCT of Delhi) v. Navjot Sandhu @Afsan Guru* (2005) 11 SCC 600. The following passages from the said judgment would be instructive in this regard:

“121. The first requisite condition for utilising Section 27 in support of the prosecution case is that the investigating police officer should depose that he discovered a fact in consequence of the information received from an accused person in police custody. Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received. Of course, it is axiomatic that the information or disclosure should be free from any element of compulsion. The next component of Section 27 relates to the nature and extent of information that can be proved. It is only so much of the information as relates distinctly to the fact thereby discovered that can be proved and nothing more. It is explicitly clarified in the section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to the police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in



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evidence as an incriminating factor against the accused. As pointed out by the Privy Council in **Kottaya case** [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] : (AIR p. 70, para 10) –

“clearly the extent of the information admissible must depend on the exact nature of the fact discovered” and the information must distinctly relate to that fact.

.....

Then, Their Lordships proceeded to give a lucid exposition of the expression “fact discovered” in the following passage, which is quoted time and again by this Court: (AIR p. 70, para 10)

“In Their Lordships' view it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added ‘with which I stabbed A’ these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

122. The approach of the Privy Council in the light of the above exposition of law can best be understood by referring to the statement made by one of the accused to the police officer. It reads thus : (AIR p. 71, para 13)

“... About 14 days ago, I, Kottaya and people of my party lay in wait for Sivayya and others at about



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sunset time at the corner of Pullpad tank. We, all beat Beddupati China Sivayya and Subayya, to death. The remaining persons, Pullayya, Kottaya and Narayana ran away. Dondapati Ramayya who was in our party received blows on his hands. He had a spear in his hands. He gave it to me then. I hid it and my stick in the rick of Venkatanarasu in the village. I will show if you come. We did all this at the instigation of Pulukuri Kottaya.”

The Privy Council held that : (AIR p. 71, para 14)

“14. The whole of that statement except the passage ‘I hid it (a spear) and my stick in the rick of Venkatanarasu in the village. I will show if you come’ is inadmissible.”

There is another important observation at para 11 which needs to be noticed. The Privy Council explained the probative force of the information made admissible under Section 27 in the following words : (AIR p. 71)

“Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.”

125. We are of the view that Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is an authority for the proposition that “discovery of fact” cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.”

(emphasis added)



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(vi) Therefore, only that part of the disclosure by Sumit @ Akki that there was a knife to be recovered from a particular place would be admissible, but not the information that it was given to him by appellant Panchi after the incident to hide. It would, therefore, lead us to the conclusion that there is no incriminating weapon which has been recovered or can be connected to the appellant in this matter.

(vii) *Third*, PW-3's testimony as regards the identification of the knife also needs to be carefully noted. He did state in his statement recorded under Section 164 Cr.P.C. that the knife in the hands of Panchi was a meat cutting butcher's knife. In his deposition before the Court when shown the knife which was unsealed and presented to him marked as *Mark MO-1*, he categorically stated that the knife being shown to him was not the same knife by which injury was caused to injured Shahnawaz. He further specifically added "*the knife which was used by the accused was having more long and wide blade than the present one and the end point of that knife was rounded not pointed like the present one. The handle of the knife used in the commission of the offence was shorter in length than the knife mark MO-1. The knife which was used by the accused in the commission of the offence was like the butcher's knife which is usually used for cutting meat/chicken*". Earlier in his statement, he had also mentioned that the knife was about 10-11 inch long.

(viii) The issue regarding identification of the knife recovered through the disclosure of Sumit @ Akki is further confounded by the testimony of PW-1, the doctor who conducted the *post mortem* and gave a subsequent opinion on the knife recovered. A perusal of the subsequent opinion on the knife recovered (Ex. PW-1/C) would show that PW-1 was presented



with a knife sealed under seal “~~SECRET~~” and had drawn the sketch of the knife, later exhibited as Ex. PW-1/B. This sketch shows that while the handle of the knife was 17 cms, the blade was about 15.2 cms, it was about 2.4 cms wide and had a pointed top. When shown, pursuant to unsealing, the sealed knife *Mark MO-1* PW-1 stated that “*I am not confirmed whether the knife MO-1 is the same knife which was submitted to me by Inspector Shahid Khan for my opinion and on the basis of which I have given my opinion*”. Further, he stated that the knife handed over to him by the IO had a different seal whereas, the knife produced in the Court before him had a seal of the Juvenile Justice Board and therefore he was not sure about the identity of the knife but then he said that the knife MO-1 was matching with the sketch Ex. PW-1/B.

(ix) A holistic review of these two testimonies (PW-3 and PW-1) regarding the knife creates a substantial doubt that the knife recovered was indeed the weapon of offence. However, the knife was recovered at the instance of Sumit @Akki and not appellant Panchi and therefore nothing was available to connect the appellant with the weapon recovered.

(x) This leaves the prosecution to merely rely upon the sole testimony of the eyewitness PW3, which therefore ought to be of sterling quality, consistent and cogent.

(xi) This Court finds that aside from minor discrepancies, the testimony of PW3 was credible and unassailable. A careful dissection of his testimony who was presented as a prosecution witness, would show that while there are some inconsistencies in his statements regarding the appellant, however, there are not material enough to discredit his



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testimony as an eye witness to the incident that night. In this regard the following is noted:

(a) In the *rukka* (Ex. PW-3/A) which was recorded on 30th October, 2013 itself, just after the incident, his statement is recorded that pursuant to the scuffle of the boys with Shahnawaz, the boys who were causing ruckus called out to one “Panchi”. Thereupon, three boys came running from there led by Panchi in the front who had a knife in his hand. He further stated that he knew Panchi from earlier (*Panchi ko main pehle se hi janta hun*).

(b) In his statement recorded under Section 164 Cr.P.C., PW-3 states that after the three or four boys were called by the boys involved in the scuffle, then Panchi came with a “*meat kaatne wala chaaku*”. Further, he also named another boy as “*Akki*” who had earlier exhorted Shahnawaz to gamble and later was one of two or three boys who had caught Shahnawaz.

(c) In his deposition before the Trial Court, PW-3 stated that pursuant to the scuffle with an unknown boy, the other boys were called and one of them was called by his name “Panchi”. As regards appellant Panchi, he identified him in Court and stated he had stabbed the deceased. He did state in his cross-examination that he had not met Panchi prior to the incident, nor had ever gambled with him, nor had heard even the voice of Panchi earlier.



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(d) It is also noteworthy that it was on PW3's instance that the appellant was arrested. The information regarding the presence of Panchi in the Ramleela Maidan led to his arrest was given by PW-3 himself. When he said he did not know Panchi (in his deposition before the court) and if he indeed did (as per the statement in the *rukka*), it can at best be assumed that he became hostile to that extent at that stage. However, he did identify Panchi as the assailant, in the court. The circumstances regarding the arrest are fully corroborated by the testimony of the police team viz. PW28 SI Vikram, PW17 HC Satya Prakash, PW20 HC Hari Ram, PW21 Ct. Gaurav, PW23 Ct. Rakesh, PW29 Inspector Shahid Khan IO.

(xii) Since the current appeal is focussed on the appellant Panchi, Sumit @Akki not being an appellant before this Court, PW3's testimony regarding appellant Panchi is consistent and cogent and he has not only named the appellant as the assailant in the *rukka*, but also got him arrested at his instance, and then identified him in court as the assailant.

(xiii) There is nothing in the statement recorded under Section 313 Cr.P.C. to put forward a plea of alibi regarding their presence on the place which would serve to dent the case of the prosecution.

(xiv) As regards the contention of the appellant that the absence of the evidence by the other eyewitness Ashwani, the case of the prosecution could not be sustained, does not appeal to this Court in light of the clear testimony of other eyewitness PW-3. Defective or incomplete investigation cannot serve to acquit the appellant in view of the rest of the evidence, scrutinized independently serves to confirm the conviction.



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The Hon'ble Supreme Court in the decision reported as *State of M.P. v. Chhaakki Lal* (2019) 12 SCC 326 in Paras 34 and 35 held as under:

*“34. For reversing the verdict of conviction, the High Court has pointed out that there was delay in sending the seized gun and pistol (recovered on 1-3-2006) which was sent to the FSL only on 19-4-2006. The High Court has doubted the case of the prosecution by observing that apart from delay in sending the seized guns/pistol, there is no material showing as to where the seized weapons were kept during the period from 1-3-2006 to 19-4-2006. Such delay in sending the recovered weapons to FSL could only be an omission or lapse on the part of the investigating officer. Such omissions or lapses in the investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent. In *Nankaunoo v. State of U.P.* [*Nankaunoo v. State of U.P.*, (2016) 3 SCC 317 : (2016) 1 SCC (Cri) 857] , it was held as under : (SCC p. 322, para 9)*

“9. ... any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.”

*“35. In *V.K. Mishra v. State of Uttarakhand* [*V.K. Mishra v. State of Uttarakhand*, (2015) 9 SCC 588 : (2015) 4 SCC (Cri) 1] , it was held as under : (SCC p. 607, para 38)*

“38. The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions.”

(emphasis added)



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(xv) PW-3, the eye witness initially tumbled in identifying the co-accused Sumit @Akki but did state that the boy at that night was having scars engrave on the right side of his neck and later identified him in subsequent examination in chief. As regards other discrepancies in the testimony of PW-3, as the eye witness, they seem to be natural and in fact testifying that the witness is not a tutored witness. The Hon'ble Supreme Court has held that minor discrepancies in testimonies in fact prove the fact that it is not a tutored witness and have natural abrasion because of fading memory at the time of the trial which is usually conducted a few years later; The Hon'ble Supreme Court in the decision reported as ***Faquira v. State of U.P.*** (1976) 1 SCC 662 in Para 4 held, as under:

“4. We have been taken through the relevant evidence against which some criticism, which is not sufficient to enable us to discard this evidence, was levelled. This Court does not interfere with findings or questions of fact on the strength of minor discrepancies which only indicate that the witnesses were not tutored. The fact that the apparent motive was too flimsy is no reply to the unshaken testimony of creditable and natural eyewitnesses who had no motive whatsoever to implicate the appellant falsely...”

(xvi) The Division Bench of this Hon'ble Court in ***Anurag v. State*** 2009 SCC OnLine Del 534 has stated in Para 37, as under:

*“37. ...The witnesses are bound to err while narrating happening of a chaotic situation. As observed by the Supreme Court in the decision reported as *Bharwada Bhoginbai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217 : AIR 1983 SC 753: -*

“Over much importance cannot be attached to minor discrepancies. The reasons are obvious:

(1) By and large a witness cannot be expected to possess a photographic memory and to recall the



details of an incident. It is not as if a video tape is replayed on the mental screen:

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person,

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.



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Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important “probabilities-factor” echoes in favour of the version narrated by the witnesses.”

(Emphasis added)

(xvii) Contention of the appellants that this fight was on the spur of the moment and there was no intention to cause death cannot be accepted by this Court looking at the nature of the wounds inflicted by multiple stab injuries on vital parts of the body and the fact that there was no grappling or struggle between the deceased and the appellant. The testimony of PW-3 was clear that the gang of boys rushed towards the deceased who was reluctant to participate in the gambling and the appellant inflicted knife injuries on him. The appellant being in possession and wielding the knife and causing such grave injuries which were ultimately fatal is clearly guilty, as proved beyond reasonable doubt for the offence punishable under Section 302 IPC. This is not a case of causing simple hurt or blunt blow or an injury unintended to cause death. The nature of the injuries itself is evident of the intent to cause death or even intent can be to cause bodily injuries, which is sufficient in the ordinary course of nature to cause death or even knowing that in all probability it will cause death and commits the act without any excuse, while incurring the risk of causing death. Therefore, in fact, the act of the accused would be within the definitional rubric of Section 300 IPC, sufficient to sustain his conviction under Section 302 IPC.

**Conclusion:**

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellant for the murder of the deceased has been proved beyond reasonable doubt and duly supported by evidence on record. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeal is accordingly dismissed.

9. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellant and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 07, 2022/mk