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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd February, 2023Decided on: 8th May, 2023

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CRL.A. 69/2019

TARUN alias CHEETAH

.... Appellant

Represented by: Ms.Dolly Sharma, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with Inspector Raj Kumar, main IO
(Security) and Inspector Ram Pal,
P.S.Inder Puri.

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CRL.A. 917/2019

YASHPAL

.... Appellant

Represented by: Ms.Saahila Lamba, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with Inspector Raj Kumar, main IO
(Security) and Inspector Ram Pal,
P.S.Inder Puri.

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CRL.A. 83/2019

JITENDER alias JITU

.... Appellant

Represented by: Ms.Indu Kaul, Advocate for the
appellant with appellant in person
(through VC produced from jail).

versus

STATE

..... Respondent

Represented by: Mr.Laksh Khanna, APP for the State
with Inspector Raj Kumar, main IO
(Security) and Inspector Ram Pal,
P.S.Inder Puri.

CORAM:**HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE POONAM A. BAMBA****MUKTA GUPTA, J.**

1. By these appeals, the appellants challenge the common judgment of the Trial Court dated 17th December, 2018 by which the appellants were convicted for murder of one Praveen (“deceased”); and also, the order on sentence dated 18th December, 2018, whereby the appellants were directed to undergo imprisonment for life along with fine of ₹500/- each in default whereof, simple imprisonment for one month for offence punishable under Section 302/34 of the Indian Penal Code, 1860. Appellants Yashpal and Tarun were also directed to the sentence of imprisonment for three years along with fine of ₹500 for offence punishable under Section 25 Arms Act, which had been already undergone during the period of trial.

2. Briefly, case of the prosecution is that on 9th September, 2014, Ct.Vinay Kumar (PW-1), Ct.Sanjay and Ct.Satbir were on patrolling duty near Brar Square Railway Station, when at about 7.00 PM, the appellant who were coming towards them, on seeing the police, turned in the opposite direction. On suspicion, these police officers caught the appellants and found their clothes had fresh blood stains. On their personal search, bloodstained knife was found in the pant’s right pocket of both Yashpal and Tarun. On enquiry, these appellants disclosed that the dead body of the deceased was lying in a bush covered pit and on reaching the spot with the accuseds, the body was in fact found. Thereafter, Ct. Vinay Kumar passed the information to PS Inderpuri which was recorded by HC Vikram Yadav (PW-7) vide DD No. 37A (Ex.PW-7/A), which was handed over to IO/Insp.

Raj Kumar (PW-28), who prepared the *rukka* (Ex.PW-28/B), on which, FIR No. 296/2014 dated 10th September, 2014 under Section 302/34 IPC at PS Inderpuri (Ex.PW-6/A) was registered. The dead body was taken out of the pit and after preparing the inquest report, the body was sent to mortuary at Safdarjung Hospital.

3. After identification of the body, postmortem was conducted. All the three appellants were arrested and their bloodstained clothes, weapons were also seized. After completion of investigation, chargesheet was prepared, and the appellants were charged for murder of Praveen punishable under Section 302 of the IPC. To prove its case, prosecution examined 29 witnesses.

4. Dr.Sadre Alam prepared the MLC (Ex.PW-2/A) of the deceased where he declared the deceased to be “brought dead”. Dr. Mukesh Kumar Bansal (PW-3) conducted the post mortem examination on the dead body of the deceased, tendered his report (Ex.PW-3/A) and opined:

“External Examination (injuries etc.)

1. *Incised wound of size 10 cm x 09 cm x deep up to anterior wall of esophagus horizontally placed with through transaction of trachea, muscles, nerves and vessels of neck present over anterior and right lateral aspect of neck. Upper edge of wound is 7.5 cm below chin and lower edge is 6 cm above sternal notch. The wound starts 2.5 cm left of midline and 4.5 cm below left angle of mandible, runs across midline and ends 7 cm from midline and 5 cm below right angle of mandible. Tailing of wound is present on right side. Extravasation of blood with extensive bruising of the base of wound and blood clots in various places is present in the wound.*
2. *Incised wound of size 18 cm x 05cm x bone deep with through transaction of muscles, nerves and vessels of neck present over posterior part of right lateral aspect and back of neck. Upper edge of wound is 1 cm below external occipital protuberance*

and lower edge is 6 cm below external occipital protuberance. The wound starts 8 cm right of anterior midline and 6 cm below right angle of mandible, runs upward and backward up to posterior midline then again downward and laterally. Tailing of wound is present on left side. Extravasation of blood and blood clots in various places is present in the wound.

- 3. Incised wound of size 4cmx0.5cmx0.2 cm obliquely placed present over left side of neck, 3cm below left angle of mandible and 1 cm lateral to midline with tailing present towards lower end and left.*
- 4. Incised wound of size 3 cm x0.5 cmx 0.2 cm obliquely placed present over left side of neck, 6 cm below left angle of mandible and merging with injury no.1.*
- 5. Incised wound of size 3.5 cm x 0.5 cm x0.2 cm obliquely placed with tailing at upper end present over right angle of mandible. Extravasation of blood is present in the wound.*
- 6. Incised wound of size 2.5 cm x 0.5 cm x 0.2 cm obliquely placed with tailing at upper end present over right side of face, 5.5 cm lateral to right angle of mouth. Wound starts 1 cm above right angle of mandible and ends 2.5 cm above right angle of mandible. Extravasation of blood is present in the wound.*
- 7. Incised wound of size 4.5 cm x 0.7 cm x 0.2 cm obliquely placed with tailing at upper end present over right side of face, 4 cm lateral to right angle of mouth and 2.5 cm below outer canthus of right eye. Extravasation of blood is present in the wound.*
- 8. Incised wound of size 8 cm x 0.5 cm x0.2 cm horizontally placed present over left side of face, 4.5 cm lateral to midline and 4 cm anterior to left tragus. Tailing of wound present over left side. Extravasation of blood is present in the wound.*
- 9. Incised wound of size 7.5 cm x 0.5 cm x 0.2 cm obliquely placed present over left side of face 1 cm above injury no.8. Tailing of wound present at lower end on left side. Extravasation of blood is present in the wound.*
- 10. Incised wound of size 4 cm x 0.5 cm x 0.2 cm obliquely placed over left side of face 2.5 cm above injury no.8. Tailing of wound present at lower end of left side. Extravasation of blood is present in the wound.*

11. *Incised wound of size 6 cm x 0.5 cm x 0.2 cm obliquely placed present over left side of face 1 cm lateral to left tragus.*
12. *Incised wound of size 3 cm x 0.5 cm x 0.2 cm obliquely placed present over root of nose. Tailing of wound present over left side. Extravasation of blood is present in the wound.*
13. *Incised wound of size 3.5 cm x 0.7 cm x 0.2 cm obliquely placed present over left eyebrow. Tailing of wound present over left side. Extravasation of blood is present in the wound.*
14. *Incised wound of size 1.2 cm x 0.3 cm x 0.2 cm present over palmer aspect of right index finger.*
15. *Incised wound of size 2 cm x 0.3 cm x 0.2 cm present over palmer aspect of right middle finger.*
16. *Incised wound of size 4.5 cm x 0.5 cm x 0.2 cm obliquely placed present over palmer aspect of left thumb.*
17. *Incised wound of size 4 cm x 0.2 cm x 0.2 cm obliquely placed with tailing at upper end present over front of left forearm, 5 cm above left wrist joint. Extravasation of blood is present in the wound.*
18. *Incised wound of size 4 cm x 0.2 cm x 0.2 cm obliquely placed with tailing at upper end present over front of left forearm, 9 cm above left wrist joint. Extravasation of blood is present in the wound.*
19. *Incised wound of size 1 cm x 0.5 cm x 0.2 cm obliquely placed present over right side of chest, 4 cm lateral to midline and 2 cm below nipple.*
20. *Incised wound of size 5 cm x 0.7 cm x 0.2 cm obliquely placed with tailing at lower end & medially present over dorsum of right forearm, 3 cm above right wrist joint.*
21. *Incised wound of size 5 cm x 0.3 cm x 0.2 cm obliquely placed present over right iliac fossa 1cm above right anterior superior iliac spine and 6 cm lateral to midline.*
22. *Incised wound of size 1 cm x 0.5 cm x 0.2 cm obliquely placed present over front of right thigh, 14 cm below right anterior superior iliac spine.*
23. *Stab wound of size 3.2 cm x 0.2 cm x up to cavity deep going backward, upward and medially penetrating skin, intercostal muscles and cutting upper border of 7th rib present over left side of chest, 7 cm lateral to midline and 20 cm below medial*

end of left clavicle. The upper end of the wound is acute, sharp and lower end is obtuse. Extravasation of blood and blood clots is present along the whole track of the wound. About 50 ml of blood mixed fluid present in left pleural cavity.

24. Stab wound of size 3.5 cm x 2 cm x 5 cm present over posterior-lateral aspect of right thigh going forward, medially and upward, 32 cm below posterior superior iliac spine. Extravasation of blood and blood clots is present along the whole track of the wound.

25. Stab wound of size 3 cm x 1 cm x 4 cm going upward, forward and medially present over right buttock, 1 cm lateral to midline. Medial end of wound is sharp, acute and lateral end is obtuse. Extravasation of blood and blood clots is present along the whole track of the wound.

26. Stab wound of size 2.5 cm x 0.5 cm x 4 cm going forward, laterally and upward present over left buttock, 5 cm lateral to midline. Lateral end of wound is sharp acute and medial end obtuse. Extravasation of blood and blood clots is present along the whole track of the wound.

Time Since Death: About 18-24 hours.

Opinion: Death is due to shock and hemorrhage as a result of injury sustained to neck structures by sharp cutting/stabbing weapon. All injuries are ante mortem in nature. Injury No.1, 2 & 23 are sufficient to cause death in ordinary course of nature collectively and individually. All injuries are produced by sharp cutting pointed weapon."

5. Learned counsel for the appellant Tarun @ Cheetah challenges the impugned judgment on the ground that he was innocent and was implicated in the case, and thus the impugned judgment be set aside and the appellant be acquitted. Learned counsel relied upon the following:

i. There was no motive for the appellant to murder the deceased, rather the deceased had a number of cases against him and any of his enemies could have murdered him. There is nothing on record to even show any acquaintance of the appellant with the deceased.

ii. It is not known how the information about the incident was passed to PS Inderpuri by PW-1 as no details of the telephone no. by which call was made to PS Inderpuri was disclosed by PW-1 and there is no mention on the DD No.37A either. Further, DD No.37A even fails to mention any recovery of the bloodstained clothes of the appellant or the weapon of offence.

iii. There is an inordinate delay in registration of FIR as the appellants were allegedly apprehended at around 7.00 PM, whereas, the FIR was registered at about 12.20 AM.

iv. There is no mention about the recovery of knives in DD No.37A and no fingerprints were found on the knife allegedly recovered.

v. PW-15 was a planted witness brought in to fill the lacunas in the story of the prosecution, and his version is untenable. Even otherwise, PW-15 was related to the deceased, and hence, an interested witness, whose version cannot be relied upon.

vi. Even the presence of PW-1, PW-9 and PW-19 at the spot has not been proved by the prosecution as neither any CDR nor any document to show that they were on patrolling duty at that time was brought on record.

vii. There are glaring discrepancies in the testimonies of the witnesses.

6. Case of the appellant Tarun @ Cheetah was that the weapon of offence i.e. the knife was planted and not recovered from him. Further, even there is a material discrepancy in the description of the knife in terms of the two sketches of the knife i.e. one prepared by the IO (Ex.PW-1/D) and the

other prepared by Dr. Mukesh Kumar Bansal (Ex.PW-3/D). Furthermore, as per the version of prosecution, the knife was handed over to the IO by PW-1 and when PW-1 seized the knife from the appellant, no seizure memo or recovery memo was prepared. It was further contended that the MLC of the appellant was not prepared in the present case. The appellant was falsely implicated in the present case for which, the police had beaten the appellant. Appellant Tarun categorically stated in his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), that his finger got fractured due to police beating in order to falsely implicate him in the present matter. Further, PW-19 deposed that when Yashpal was apprehended, there were no external injuries on his body, however, as per MLC of the Yashpal, there was fresh injury on his forehead. It was further contended that even the body was spotted by PW-1 and it was PW-1 who led the IO to the place where the body was found and not the appellant, and even the disclosure statement of the appellant was recorded on the next day, and hence, it was not the disclosure of the appellant which led to the discovery.

7. Learned counsel appearing for appellant Yashpal besides adopting the arguments made on behalf of Tarun also contended that no independent witness joined the recovery proceedings of the dead body. It was also contended that PW-15 who was the 'last seen' witness was not a reliable witness and his first statement was recorded at about 5.00 PM on 11th September, 2014. Further, the prosecution failed to examine any taxi driver who could have identified/corroborated the version of PW-15 even when one of the taxi drivers was familiar with the deceased from whom the deceased had borrowed 100 rupees.

8. Learned counsel appearing for appellant Jitender @ Jeetu also adopted the above-noted arguments and further assailed the impugned judgment on the ground that the learned Trial Court erred in properly appreciating the evidence on record and hurriedly passed the impugned judgment, thereby wrongly convicting the appellant, and thus, the impugned judgment be set aside. It was the case of the appellant that the dead body of the deceased was dragged by Ct.Vijay into the pit who thereafter, cooked up a false story to implicate the appellants. The learned Trial Court erred in not appreciating the fact that it is unknown as to where did the appellants change their clothes when their alleged bloodstained clothes were seized by the police, the fact that no public person or the Station Master was made a witness at the time of recovery of knife or demarcation of place where the dead body was recovered. It was pointed out that ASI Kulbhushan, who was the finger print expert, who visited the spot with Ct. Nawal Kishore, was not made a witness in the present case. It was contended by learned counsel that the last seen theory is not applicable in the present case due to the time gap between, when the deceased was last seen i.e. 3.00 PM by PW-15 and the time of his death i.e. 6.00 PM. Even otherwise, the witness who last saw the deceased i.e. PW-15 was himself in a drunken condition and hence, not reliable. Reliance was placed on the decisions in (2021) SCC OnLine Bombay 191 Krishna Mahadev Chavan vs. State of Maharashtra and (2019) 4 SCC 522 Digamber Vaishnav & Anr. vs. State of Chhattisgarh to contend that judgment cannot be solely based on the basis of last seen theory and that the entirety of circumstances must be considered. Learned counsel also raised doubt as to the reliability of the version of PW-15 as neither it was proved that he was employed in Dox Notary, Munirka, nor

that he had come out for lunch at the relevant time, nor any CDR was brought on record to suggest that he was infact in the area of Inderpuri Park at the relevant time. It was also pointed out that as per PW-15, he had gone to the Inderpuri Park during his lunch hours to consume liquor however, it is unreasonable to believe that a person would travel from Munirka to Inderpuri Park, which is about 14.7 KMs away to consume liquor during office hours while he is still on duty. It was further pointed out that no independent person from the general public was made a witness to the recovery and even the police constables did not make any call to the PCR after apprehending the accused persons.

9. On the other hand, learned APP for the State submitted that the present case was based on circumstantial evidence, which was unbroken and duly established and relied upon the following facts proved by the prosecution:

- i. The deceased was last seen with the appellants by Prateek Pal (PW-15), who was the cousin of the deceased, at around 2.30-3.00 PM on the day of incident, when both the deceased and PW-15 were consuming liquor in the park where appellants came and started abusing the deceased and took the deceased along with them. The fact that deceased was present with PW-15 was corroborated by the post-mortem report (Ex.PW-3/A) and the FSL (Ex.PW-26/A) report which established the presence of alcohol in the body of the deceased.
- ii. That on seeing PW-1, PW-9 and PW-19, the appellants started running towards the railway line, when they were apprehended by these three police officers.

iii. The clothes of the appellants were stained with blood (Ex.PW-22/I, Ex.PW-22/J and Ex.PW-22/K), and the weapon of offence i.e. the bloodstained knives were recovered from appellant Yashpal and Tarun at the time when they were apprehended, which were seized vide seizure memo (Ex.PW-1/E and Ex.PW-1/F).

iv. The dead body was recovered at the instance of the appellants. As per the testimony of PW-1, PW-9 and PW-19, the appellants disclosed to them that the body of the deceased was lying in *paharis* in a *gadda* surrounded by bushes, and this fact was corroborated by the disclosure statement of the appellants (Ex.PW-22/F, Ex.PW-22/G and Ex.PW-22/H).

v. Even as per the post-mortem report (Ex.PW-3/A), there were 26 injuries found on the body of the deceased out of which three injuries were found to be sufficient to cause death individually and collectively, and all these injuries were produced by a “sharp cutting pointed weapon”. As per the subsequent opinion (Ex.PW-3/B) on the weapon of offence, it was opined that the injuries were possible with the produced weapons. As per the FSL report (Ex.PW-27/B), blood on the clothes of the appellants (Ex.8, Ex.9 and Ex.10) and on the knives (Ex.6 and Ex.7) tallied with that of the deceased.

10. Learned APP for the State further countered the contentions raised on behalf of the appellants and contended that PW-15 was a reliable witness whose version that the deceased had consumed alcohol was corroborated by the FSL report. Further, the fact that he had last seen the deceased with appellants at about 3.00 PM on the day of incident, and the appellants were apprehended around 7.00 PM on the same day, there is no possibility of any

interference which would lead to non-application of Section 106 of the Indian Evidence Act. In response to the contention that DD No.37/A fails to mention about recovery of knives from the appellant, it was countered that PW-1 clarified during his examination that he could not give the information about recovery of weapon of offence because of urgency and hurry. Further, PW-1, PW-9 and PW-19 categorically deposed that no public person were present at the place of incident and even otherwise, it was contended that deposition of police witnesses cannot be rejected if the same inspires confidence merely because public witnesses had not joined and reliance was placed on the decision in (2010) 9 SCC 608 Dharampal Singh vs. State of Punjab. Further, from the testimonies of PW-1, PW-8, PW-19, PW-22, PW-24, PW-28 and also the crime team report (Ex.PW-16/A), it is evident that the body of the deceased was lying in a ditch behind the bushes, which is sufficient evidence to show that the body was in fact lying in a pit and therefore, a minor defect of not showing the pit in the site plan would not dent the case of the prosecution, and reliance was placed on the decision in (2004) 13 SCC 279 Prithvi (Minor) vs. Mam Raj & Ors. As regards the contention on behalf of the appellants that there was a variation in the measurements of the knives in the sketches made at the time of seizure and the sketches made at the time of giving subsequent opinion, it was submitted by learned APP that no such suggestion was put to the IO or to the witness of recovery or to the doctor giving subsequent opinion and reliance was placed on the decision of Delhi High Court in CrI.A. 430/2003 Shri Nath vs. The State. It was further submitted by learned APP that minor deviations in the testimony of witnesses is natural owing to the lapse of time between the date of incident/investigation and the date of recording of

evidence, and the same cannot be fatal to the case of prosecution, for which reliance was placed on the decision in (2000) 1 SCC 247 State of H.P. vs. Lekhraj.

11. Having heard learned counsels for the parties at length and perusing the record, the following evidence emerges.

12. Ct.Vinay Kumar (PW-1) deposed that on 9th September, 2014 he was on patrolling duty in the evening at about 7.00 PM with Ct.Sanjay and Ct.Satbir. He stated that near the Brar Square Railway Station, he had observed three boys coming from the side of the railway station towards the Ring Road and on seeing the police party, the said three persons started running back towards the railway line. Thereafter, they all ran towards those three persons and apprehended them and their names were revealed to be Yashpal, Tarun and Jitender. He observed fresh blood marks on the clothes of all three persons and on their personal search, Yashpal and Tarun were found carrying a knife which was blood laden, in their pant pocket, and on inquiry, they disclosed that they had killed Praveen and thrown the dead body in the *pahari*. Thereafter, they took them to the *pahari* where they saw dead body of a male person lying covered with bushes. The information was thereafter, passed to the Duty Officer at PS Inderpuri on telephone. After arrival of Insp. Raj Kumar, the custody of the three persons was handed over to them as also the blood laden knives and his statement was also recorded (Ex.PW-1/A). He had shown the place of occurrence to the Investigating Officer (IO). He further stated that due to urgency and hurry, the only intimation given to the police station was about recovery of dead body, and the intimation regarding recovery of knives from Yashpal and Tarun could not be given but was told to the IO as soon as he arrived at

the spot. In his cross-examination, he stated that there was no public on the railway station. He also stated that there was no injury on the person of either of the three apprehended persons.

13. Ct.Sanjay (PW-9) and Ct.Satbir (PW-19) corroborated the version of PW-1. However, Ct.Sanjay stated that when the body was found it was facing upwards while Ct.Satbir stated that when the body was found it was facing downwards.

14. Prateek Pal (PW-15) deposed that he was working in the office of Dox Notary, Munirka and on 9th September, 2014, during lunch time, he had come from his office and bought a quarter bottle of liquor and went to Jhandu Singh/Inderpuri Park. His cousin/deceased was passing by, he called the deceased to the park and both of them started drinking liquor. Some taxi drivers were also present there, who were playing cards. All the three appellants, who were also present in the park, called the deceased by saying that they were going to Inderpuri to buy some goods and Praveen after borrowing rupees 100 from a taxi driver who was playing cards went with the appellants at about 2.30-3.00 PM. He also stated that the appellant Yashpal was hurling abuses at the deceased and was bent on taking the deceased with him. Thereafter on 10th September, 2014 at about 5.00 AM, he came to know that the deceased was murdered and his statement was recorded by the police on 11th September, 2014 at about 5.00 PM. He also stated that he had bought the liquor bottle from Bhikaji Cama Palace. In his cross-examination he stated that he had known all the appellants for the last six-seven years and that no quarrel ever took place between him and the appellants. He also stated that three-four taxi drivers were present at that

time however, he did not know any of them but the deceased knew the taxi driver from whom he had borrowed 100 rupees.

15. Devender Singh (PW-4), who was the father of the deceased and Rajender Singh (PW-14), who was the uncle of the deceased identified the body at the Safdarjung Hospital (Ex.PW-4/A and PW-14/A respectively). After the post-mortem, the dead body was handed over to PW-4 (Ex.PW-4/B).

16. IO/Insp. Raj Kumar (PW-28), deposed that on 9th September, 2014 at about 8.45 PM, Duty Officer handed over DD No.37A to him on which he along with SI Balram, SI Varun Kumar, HC Charan Singh reached the spot where he met Ct.Vinay, Ct.Satbir and Ct.Sanjay. Ct.Vinay handed over the three appellants along with two knives with bloodstains which he had recovered from Yashpal and Tarun. Ct.Vinay took him to a nearby hill where a dead body was lying in a pit under the bushes. Thereafter, he called the crime team at the spot. He also stated that the dead body was lying in the pit on the stomach and head was facing North-West direction and the feet were in the South-East direction. Blood was splattered on the spot near the body. The body was taken out from the pit and inquest report under Section 174 Cr.P.C. (Ex.PW-28/A) was prepared. He prepared the *rukka* (Ex.PW-28/B) on which FIR (Ex.PW-6/A) was got registered. He prepared the site plan (Ex.PW-1/B) at the instance of Ct.Vinay and also the sketches of knives (Ex.PW-1/C and Ex.PW-1/D), which were seized vide seizure memo (Ex.PW-1/E and Ex.PW-1/F respectively). He lifted the blood samples from the earth, took earth control from the soil, lifted the scattered blood with the help of cotton, also the branches along with leaves having bloodstains, earth having bloodstains, which were seized vide seizure memo

(Ex.PW-22/B). He then sent the body to Safdarjung Hospital. Thereafter, he arrested appellant Yashpal (Ex.PW-22/C), appellant Tarun (Ex.PW-22/D) and Jitender (Ex.PW-22/E). Disclosure statement of Yashpal (Mark-A), Tarun (Mark-B) and Jitender (Mark-C) were also recorded. Bloodstained clothes of Yashpal i.e. green colour pant, green and blue colour *checkdaar* shirt, blue colour pair of socks and black and red colour shoes of Adidas were seized (Ex.PW-22/I). Bloodstained clothes of Tarun i.e. blue jeans, red and blue *checkdaar* shirt, white colour pair socks and black and yellow colour shoes of AIR were seized (Ex.PW-22/J). Bloodstained clothes of Jitender i.e. blue jeans, blue colour printed t-shirt, full sleeve blue colour shirt and half blue colour shoes were seized (Ex.PW-22/K). Thereafter, the appellants were provided with separate clothes. Thereafter, he along with SI Varun Bharti reached the mortuary of Safdarjung Hospital where he met the relatives of the deceased Devender and Rajender Singh and recorded their identification statement (Ex.PW-4/A and Ex.PW-14/A respectively). During investigation, the accused persons were taken to their village Mohammadpur to find the street hawker from whom the appellants had purchased the two knives, however, the said hawker could not be found but in the village itself, father of the deceased met him and informed him that one Prateek had last seen the deceased with the appellants. Thereafter, statement of Prateek under Section 161 Cr.P.C. was recorded. After completion of investigation, charge-sheet was filed.

17. As per the FSL (Chemistry) report (Ex.PW-26/A), blood of the deceased (Ex.13) was found to contain ethyl alcohol 36.3 mg over 100 ml of blood. As per the FSL (Biology) report (Ex.PW-27/B), the blood of deceased was found on the bloodstained clothes and shoes of the appellant

Yashpal (Ex.8a, Ex.8b and Ex.8d), on the bloodstained clothes and shoes of appellant Tarun (Ex.9a, Ex.9b and Ex.9d) and bloodstained clothes and shoes of Jitender (Ex.10a, Ex.10b, Ex.10c and Ex.10d). Blood of the deceased was also found on both the knives (Ex.6 and Ex.7).

18. In his statement under Section 313 Cr.P.C, appellant Yashpal stated that he was picked from his house at Mohammadpur when he had come to meet his mother in Delhi on 9th September, 2014 and was mercilessly beaten to the extent that he started bleeding after which he was taken to the hospital. He denied having known any person namely Prateek. He also stated that the bloodstained clothes did not belong to him and were planted on him in the present matter. He stated that he was innocent and was a resident of Faridabad and neither met the deceased nor knew him. He also stated that in the police station two knives were lying on the table and he was forced to hold the same in his hand.

19. Appellant Jitender @ Jitu in his statement under Section 313 Cr.P.C. also stated that he was picked up from his house from Mohammadpur and the clothes did not belong to him. He also denied having known any person namely Prateek and that he was beaten up mercilessly by the police. He stated that he was innocent and was a driver by profession and used to drive the car of Mr.Khosla at Safdarjung Enclave.

20. Appellant Tarun @ Cheetah in his statement under Section 313 Cr.P.C. also stated that he was picked from his house at village Mohammadpur and that the bloodstained clothes did not belong to him. He also denied having known any person by the name of Prateek. He stated that he was innocent and was falsely implicated in the present case. He also

stated that he was badly beaten up by the police as a result of which one of the fingers on the right hand got fractured.

21. Indubitably, the statement of the appellants made to the three police officers i.e. Constable Vinay Kumar, Constable Sanjay and Constable Satbir i.e. PW-1, PW-9 and PW-19 to the extent that the appellants confessed their guilt, is hit by Section 25 of the Indian Evidence Act and thus, is not admissible in evidence, however, so much of the information given by the appellants which relates distinctly to the facts thereby discovered, can be proved from the deposition of these witnesses under Section 27 of the Indian Evidence Act. Further, the fact that when PW-1, PW-9 and PW-19 saw the three appellants with fresh blood marks on their clothes and appellants Yashpal and Tarun were found to be carrying knife on their pockets, is admissible in evidence under Section 8 of the Indian Evidence Act as a conduct, even though not under Section 27 of the Indian Evidence Act, for the reason, as per the deposition of Constable Vinay Kumar, when he saw the fresh blood marks on the clothes of these three appellants, they carried out search and found the knives each in the pant's pocket of Yashpal and Tarun. Thus, these recoveries were not pursuant to the disclosure statements. Only after this search was made and enquiries were made from the three appellants who initially did not reveal anything, however thereafter disclosed that they were friends with one Praveen with whom they used to have quarrel and on that day, they have killed Praveen towards the *pahari* across the railway line and that the dead body was thrown by them in the *pahari*. Thus, the statement of the appellants to the extent that the dead body was thrown by them in the *pahari* and pursuant thereto, the discovery of the dead body of a male person identified to be of Praveen found to be

covered with bushes, is admissible under Section 27 of the Indian Evidence Act. Hon'ble Supreme Court in the decision reported as (2005) 11 SCC 600 *State (NCT of Delhi) v. Navjot Sandhu*, held as under:-

“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 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.

Elucidating the scope of this section, the Privy Council speaking through Sir John Beaumont said: (AIR p. 70, para 10)

“Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.”

(emphasis supplied)

We have emphasised the word “normally” because the illustrations given by the learned Judge are not exhaustive. The next point to be noted is that the Privy Council rejected the argument of the counsel appearing for the Crown that the fact discovered is the physical object produced and that any and every information which relates distinctly to that object can be proved. Upon this view, the information given by a person that the weapon produced is the one used by him in the commission of the murder will be admissible in its entirety. Such contention of the Crown's counsel was emphatically rejected with the following words: (AIR p. 70, para 10)

“If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.”

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."

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142. There is one more point which we would like to discuss i.e. whether pointing out a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. the concealment of an incriminating article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27. Of course, it is subject to the rider that the information so furnished was the immediate and proximate cause of discovery. If the police officer chooses not to take the informant accused to the spot, it will have no bearing on the point of admissibility under Section 27, though it may be one of the aspects that goes into evaluation of that particular piece of evidence.

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206. We have already noticed the distinction highlighted in *Prakash Chand* case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as “conduct” under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in *Prakash Chand* case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . In *Om Prakash* case [H.P. Admn. v. Om Prakash, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] this Court held that: (SCC p. 262, para 14)

“[Even apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.]”

[Emphasis supplied]

22. Learned counsels for the appellants have seriously challenged the presence of the witnesses Constable Vinay, Constable Satbir and Constable Sanjay at the alleged place. However, all three of them have stood the test of cross examination and clarified that they were on the beat duty and that beat No. 1 was assigned to them which comprised of areas of half Naraina Gaon, WZ-1 to WZ-400, Brar Square Railway Station, Brar Square Railway Colony, KV-3 School and Seema Sadak Bhawan. On the non-association of the public witnesses, these witnesses clarified that there were no public witnesses at that time at the railway station and as noted above, this was a case of chance meeting of the three witnesses with the three

appellants. Their testimonies is also assailed on the ground that one of the witnesses stated that the dead body was lying with the face down whereas, the other stated that the dead body was lying with the face up. It may be noted that these witnesses, in the cross examinations, have clarified that the body was lying within the bushes in the pit and thus, these minor contradictions when the witnesses are examined nearly two and a half years after the alleged incident, are bound to take place.

23. Evidence of Prateek Pal (PW-15) as the last seen witness is assailed on the ground that it is highly improbable that a person who is working in Munirka will come in the lunch time to Inderpuri Park with the quarter bottle of liquor. It may be noted that Prateek Pal was working in a private office and despite lengthy cross examination of Prateek Pal, it has not been elicited that he could not have reached at the Inderpuri Park from Munirka. Further, this witness also clarified that on the next day at about 5 am, he came to know about the death of his cousin Praveen. His statement was recorded by the police. Further, non-association of the taxi driver who was familiar with the deceased with whom he was present before the appellants met him, would not belie the prosecution case as the alleged incident took place after the deceased was taken away by the three appellants from the said place. Testimony of Prateek Pal is also assailed on the ground that he cannot be termed as a last seen evidence in view of the time gap between last seen at 3 p.m. and the time of death i.e. 6 p.m. It may be noted that at 3 p.m., the three appellants were seen quarrelling and taking away the deceased by Prateek, whereafter, he was found dead when the police party was patrolling at about 7 p.m. The deceased had as many as 22 incised wounds and 4 stab injuries and thus, it is not a case that merely one blow

was inflicted. Further, after number of blows were inflicted, the body was also concealed which all would have taken some time. Further, the place where the dead body was found was at some distance from the Inderpuri Park and thus, this would have consumed some more time. Therefore this Court does not deem it fit to reject the evidence of Prateek as the last seen evidence, in view of the time gap of 3 to 4 hours. Further as noted above besides the last seen evidence, the clothes of the appellants were also found stained with the blood of the deceased. Further the two knives recovered were also stained with the blood of the deceased. As per the subsequent opinion, injuries to the deceased were possible by the said knives.

24. Learned counsels for the appellants have also assailed that recovery was made before their disclosure statements were recorded and hence, it cannot be attributed to them. As noted above, it was a chance meeting of the three police witnesses who were on patrolling duty with the appellants and on seeing the blood stained clothes when enquiry made, the two knives were recovered and disclosure of the dead body was made, whereafter, information was given to the local police which registered the FIR and formally arrested the appellants and recorded the disclosure statements. Merely because the disclosure statements were recorded by the jurisdictional police, it cannot be held that the statements so made by the three appellants to PW-1, PW-9 and PW-19 on enquiry made, was not a statement to a police officer which resulted in the discovery of a fact.

25. As regards the defence taken by the accuseds that they were picked up from their houses, beaten up and falsely implicated in this case and even though, Jitender @ Jitu produced his sister as DW-1 to state that he was forcibly taken away by the police, it may be noted that when the appellants

were first produced for remand or even subsequent thereto, there was no plea taken before the concerned Magistrate that they were picked up from their houses and falsely implicated in this case. It may be noted that though initially Constable Vinay was not cross-examined, however under Section 311 CrPC, he was recalled and extensively cross examined. No such suggestion was given that the accused were picked up from their houses and falsely implicated. Further, the version of the three police officers is corroborated by the evidence of the post mortem Doctor who gave the subsequent opinion that all the injuries could be possible by the two weapons shown to him of which he prepared the sketches.

26. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence.

27. Appeals are accordingly dismissed.

28. Copy of the judgment be sent to the Superintendent, Jail for updating the record and communicating to the appellants and be also uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

MAY 08, 2023

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