

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

% Reserved on: 23<sup>rd</sup> January, 2023  
Decided on: 19<sup>th</sup> April, 2023

+ **CRL.A. 101/2019**

VISHAL @ BUNTI ..... Appellant  
 Represented by: Mr. Anil Kumar Basoya, Mr. Yash  
 Lohia, Mr. Prateek Rai and Mr. Kshitej  
 Chaabra, Advocates.

Versus

THE STATE (GNCT) OF DELHI ..... Respondent  
 Represented by: Mr. Laksh Khanna, APP for State  
 with SI Bansi Lal, PS Ambedkar  
 Nagar.

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

**MUKTA GUPTA, J.**

1. By this appeal, the appellant challenges the judgment of learned Trial Court dated 3<sup>rd</sup> October, 2018 whereby the appellant was convicted for murder of one Pankaj (deceased) and also for causing grievous injuries to Lekhraj (victim). The appellant also challenges the order on sentence dated 10<sup>th</sup> October, 2018 whereby the appellant was directed to undergo rigorous imprisonment for life along with fine of ₹5,000/- in default whereof simple imprisonment for three months for offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC). Four other accused persons namely Salman @ Samma, Raju @ Ravinder, Pradeep and Rafique were also found

guilty along with the appellant for offence punishable under Section 326/34 IPC and all of them were sentenced to the period already undergone and were directed to pay fine of ₹2,000/- each and in default whereof, they were directed to undergo simple imprisonment for seven days. The appellant was acquitted for offence punishable under Section 25 of the Arms Act, 1959.

2. Brief facts of the prosecution case are that on 24<sup>th</sup> June, 2013 the deceased along with Lekhraj (victim) and one Yajuvender were going towards the victim's shop on deceased's motorcycle driven by Yajuvender and at about 9.30 PM when they reached in front of Sapna Optical, the accused persons stopped their motorcycle. The accused persons had a grudge with the victim, the deceased and Om Prakash (victim's cousin) owing to a quarrel which took place about five-six months prior to the incident between Om Prakash and Bunti, Raju and Samma. On the day of incident, Raju caught hold of the deceased and Bunti inflicted number of stab injuries on the deceased. Rafique had caught hold of Yajuvender and Pradeep had caught hold of the victim and thereafter, Samma inflicted knife injuries on victim's leg and Yajuvender managed to escape from the spot while shouting on which all the accused persons ran away. The victim made a call to his *bua* Kamlesh and in the meanwhile, one Chetram made a call at number 100. Kamlesh reached the spot on a Honda Activa and took the deceased to Batra Hospital on the said Activa where the deceased was declared "brought dead". IO/Insp. Abhay Singh Yadav (PW-28) reached Batra Hospital and recorded the statement of the victim and prepared the *rukka* on which FIR No.271/2013 dated 25<sup>th</sup> June, 2013 under Sections 302/326/34 IPC at PS Ambedkar Nagar (Ex.PW-16/A) in the present case was got registered.

3. Dr.Asit Kumar Sikary (PW-3) at AIIMS Hospital Mortuary conducted the post-mortem examination on the dead body of Pankaj on 25<sup>th</sup> June, 2013, tendered his report (Ex.PW-3/A) and opined:

*"1. Multiple red colour abrasions of size varying from 0.5x0.5 cm to 3x3 cm are present over dorsal aspect of right foot toes and medial aspect of left big toe.*

*2. A red colour abrasion of size 3x1.5 cm is present over right knee.*

*3. A stab wound of size 4x1x4.5 cm, wedge shaped, margins clean cut, going upwards and medially, cutting through skin, subcutaneous tissue and muscles, is present over lateral aspect of left knee. It is situated 51 cm above left heel and 47 cm below anterior superior iliac spine. Margins and track of wound are red and contains hematoma.*

*4. A stab wound present over lateral aspect of left thigh, situated 81 cm above left heel and 18 cm below anterior superior iliac spine, of size 4x2 cm, wedge shaped, margins clean cut, going forwards and medially, cutting through skin, subcutaneous tissue, muscles, skin and exiting through spindle shape wound of size 1x0.5 cm, present over anterior aspect of left thigh, situated 82 cm above left heel and 18 cm below left anterior superior iliac spine. Margins and track of wound are red and contains hematoma. Length of track is 5 cm.*

*5. A stab wound of size 3x0.8x5.5 cm, wedge shaped, margins clean cut, going forwards and medially, cutting through skin, subcutaneous tissue and muscles; is present over left lower back. It is situated 110 cm above left heel and 11 cm from midline. Margins and track of wound are red and contains hematoma.*

*6. A stab wound of size 3x0.8xcavity deep, wedge shaped, margins clean cut, going forwards, cutting through skin, subcutaneous tissue, muscles retroperitoneal tissue, mesentry over left lower back. pericapsular hematoma around left kidney and bleeding amounting about 2000 ml is present. It is situated 110 cm above left heel and 11 cm left lateral from midline. Margins and track of wound are red and contains hematoma.*

7. A stab wound of size 2.5x0.5x10 cm, wedge shaped, margins clean cut, going forwards, downwards and medially, cutting through skin, subcutaneous tissue and muscles is present over left upper gluteal region. It is situated 87 cm above left heel and 7 cm left lateral from midline. Margins and track of wound are red and contains hematoma.

8. A stab wound of size 3x1x4.5 cm, wedge shaped, margins clean cut, going forwards, cutting through skin, subcutaneous tissue and muscles, is present over left upper gluteal region. It is situated 86 cm above left heel and 16 cm left lateral from midline. Margins and track of wound are red and contains hematoma.

9. A stab wound of size 2x1.2x4 cm, wedge shaped, margins clean cut, going forwards, cutting through skin, subcutaneous tissue and muscles, is present over left lower gluteal region. It is situated 77 cm above left heel and 11cm left lateral from midline. Margins and track of wound are red and contains hematoma.

10. A stab wound of size 1.5x1.5x5 cm, wedge shaped margins clean cut, going forwards, cutting through skin, subcutaneous tissue and muscles is present over left lower left gluteal region. It is situated 77 cm above left heel and 12 cm left lateral from midline. Margins and track of wound are red and contains hematoma.

11. A stab wound of size 2x0.5x6 cm, wedge shaped, margins clean cut, going forwards, cutting through skin, subcutaneous tissue and muscles, is present over lower left gluteal region. It is situated 79 cm above left heel and 3.5 cm left lateral from midline. Margins and track of wound are red and contains hematoma.

12. A stab wound of size 2.5x0.8x8 cm, wedge shaped, margins clean cut, going forwards, cutting through skin, subcutaneous tissue and muscles is present over dorsal aspect of upper part of left thigh. It is situated 73 cm above left heel and 4 cm left lateral from midline. Margins and track of wound are red and contains hematoma.

13. A stab wound of size 2.5x0.8x7 cm, wedge shaped, margins clean cut, going forwards, cutting through skin,

*subcutaneous tissue and muscles, is present over right upper gluteal region. It is situated 86 cm above right heel and 2 cm right lateral from midline. Margins and track of wound are red and contains hematoma.*

14. *A stab wound of size 2.5x1x7 cm, wedge shaped, margins clean cut, going backwards, downwards, medially, cutting through skin, subcutaneous tissue and muscles, is present over upper, anterior aspect of upper part of left thigh. It is situated 73 cm above left heel and 14 cm left lateral from midline. Margins and track of wound are red and contains hematoma.*

15. *An incised wound of size 4x0.2 cm, subcutaneous tissue deep is present over thenar eminence of left hand. Margins of wound are red and blood stained.*

... ..

... ..

(J) TIME SINCE DEATH

*About eighteen hours.*

(K) OPINION

*The cause of death to the best of my knowledge and belief is Shock due to hemmorrhage. Injury No.6 individually and all injuries collectively are sufficient to cause death in ordinary course of nature. All injuries are antemortem. Injury No.3 to 15 are caused by sharp edged pointed weapon. Viscera has been preserved for toxicological analysis."*

4. On 25<sup>th</sup> June, 2013 at about 4.00 PM, IO/Insp. Abhay Singh Yadav (PW-28) received a secret information on which Pradeep was arrested from near Mother Dairy Booth, Gali No.19, Madangir. On 26<sup>th</sup> June, 2013 one DD was lodged by the official of PS Saket in PS Ambedkar Nagar that one Rafique involved in the present case was apprehended and would be produced before the Saket Court and after seeking permission, the custody of Rafique was handed over to him and Rafique was thereafter arrested. On the intervening night of 19<sup>th</sup>/20<sup>th</sup> July, 2013 SI P.K. Jha (PW-29) and ASI

Ratan Lal (PW-25) apprehended Ravinder @ Raju in suspicious circumstances in the area of PS Saket who disclosed about his involvement in the present case. Thereafter, on 1<sup>st</sup> August, 2013 Vishal @ Bunti who was wanted in FIR No.351/2013 of PS Ambedkar Nagar was arrested, wherein he made a disclosure statement regarding his involvement in the present case and was thereafter arrested in the present case. On 21<sup>st</sup> August, 2013 a secret information was received that accused Salman @ Samma was arrested at Flat No.F-II/280, Madangir, DDA Flats.

5. After completion of investigation, charge-sheet in the present case was filed and all the five accused persons were charged for offence punishable under Sections 302/34 IPC for murder of Pankaj, as also for offence punishable under Section 307/34 IPC for inflicting stab injuries on Lekhraj (victim). The appellant was also charged for offence punishable under Section 25 of the Arms Act, 1959. To prove its case, the prosecution examined 33 witnesses.

6. Learned counsel for the appellant assails the impugned judgment on the ground that the first information regarding the incident was recorded vide DD No.50A (Ex.PW-24/A) on the information of one Abhishek (brother of deceased) however, said Abhishek was never examined by the prosecution. As per the said DD entry, the informant stated that his brother was “shot”, however, the case of the prosecution has been that the incident in question pertains to stabbing of the deceased with knife. There is no mention of Lekhraj having sustained injuries in the said DD entry and even as per the PCR form (Ex.PW-30/A), it was recorded that only one person i.e. the deceased was injured and no one was present at the spot and there is no whisper of any injury to Lekhraj. None of the witnesses have confirmed

the presence of Lekhraj at the spot at the time of the incident. It was further contended that no effort was made by the police to seize or locate the motorcycle which was a material evidence to prove the presence of Lekhraj at the spot at the time of the incident. It was further contended that the reliance by the prosecution on the testimony of Kamlesh (PW-13) to prove the presence of Lekhraj at the spot is misplaced as it is an undisputed fact that PW-13 herself reached the spot after the occurrence of the incident as she was informed about the incident by Lekhraj. PW-13 in her cross-examination categorically stated that Pankaj was not taken to the hospital on her scooter while Lekhraj had deposed to the contrary. On the other hand, Chetram (PW-15) deposed that when he reached the spot after the incident, he saw the deceased lying there alone which is also contrary to the prosecution story. It was contended that the prosecution relies heavily on the testimony of Lekhraj whose presence at the spot is doubtful.

7. It was further contended that as per the prosecution version, two knives were used, however, only one knife was recovered from the appellant, which in itself is suspicious and does not support the prosecution case. Two knives were sent to the FSL and Dr.Asit (PW-3) opined that injuries to the deceased were possible by either knife which does not establish the fact that the knife allegedly used by the appellant was in fact used to cause death of the deceased. Even the alleged eye-witness Lekhraj failed to identify the knife which was allegedly used for the alleged offence. Further, no finger prints were found on the seized knives and the Trial Court has acquitted the appellant for offence punishable under the Arms Act. It was contended that even as per the MLC of the eye-witness Lekhraj (Ex.PW-19/B), Dr.Nilakanta Sahu (PW-19) opined that the injury on

Lekhraj could be due to fall and the said MLC does not mention any stab wounds. MLC of the deceased suggests that the deceased was taken to the hospital by Lekhraj and it becomes doubtful as to how Lekhraj could have taken the deceased to the hospital when he himself had allegedly sustained knife injuries. It was further contended that from the deposition of Om Prakash, it was evident that if the accused persons had any prior motive to kill anyone, that was Om Prakash or Lekhraj and not the deceased. Further no independent witness was examined to establish the presence of Lekhraj at the time of incident, nor was Abhishek who informed the police was made a witness and nor were the parents of Lekhraj made witnesses all of which highlight the shortcomings in the investigation and cast doubt on the story of the prosecution. It was thus prayed that the impugned judgment be set aside and the appellant be acquitted.

8. Per contra, learned APP for the State submitted that the prosecution had successfully established the guilt of the appellant and that after proper appreciation of the evidences, the learned Trial Court had rightly convicted the appellant and therefore, the present appeal be dismissed. To support his submission, learned APP submitted that the presence of Lekhraj (PW-12) is established from the testimony of Yajuvender (PW-1). It was further submitted that the appellant had intention to kill the deceased as multiple stab injuries were inflicted on the deceased with the help of a knife. Further, as per the post-mortem report (Ex.PW-3/A), death of the deceased was caused by a sharp-edged pointed weapon and a knife was recovered at the instance of the appellant on 2<sup>nd</sup> August, 2013 (Ex.PW-10/B). As per the subsequent opinion sought from Dr.Asit Kumar (PW-3), injuries were opined to be possible with the said knife.

9. In response to the contentions raised on behalf of the appellant, learned APP for the State submitted that there is nothing in the testimony of Dr.Nilakanta Sahu (PW-19) who prepared the MLC of Lekhraj that the injuries sustained by Lekhraj could not have been caused by a sharp weapon. It was further submitted that the testimony of Lekhraj (PW-12) was unimpeached and consistent with his earlier versions and in this regard reliance was placed on the decision reported as (2010) 10 SCC 259 Abdul Sayeed vs.State of M.P. It was also contended that there was no delay in recovery of the weapon of the offence and from the testimony of HC Bansi Lal (PW-10), it was sufficiently clear that the appellant was arrested on 1<sup>st</sup> August, 2013 and that the weapon was got recovered at the instance of the appellant on the next day i.e. 2<sup>nd</sup> August, 2013 itself. HC Bansi Lal (PW-10) duly identified the appellant as well as the weapon of offence. From the testimony of Bansi Lal (PW-10) it was sufficiently clear that a chocolate colour cover was affixed on the plastic knife with screws and it was not something which was used to seal the knife. The knife was seized in a cloth *pullanda* only and the contention on behalf of the appellant that the knife was found without the rexin cover of chocolate colour is an attempt to create confusion and seek benefit. With respect to the contention of the appellant that Abhishek was not examined as a witness, it was submitted that pursuant to the incident multiple PCR calls were made and information with respect to only one PCR call was given by the PCR official at the police station and therefore, DD entry of only one PCR call was registered at the police station. It was submitted that despite such a lapse, the appellant cannot gain any benefit in the presence of strong ocular evidence against him and to buttress this argument reliance was placed on the decision reported as

(2010) 9 SCC 567 C. Muniappan & Ors. vs. State of Tamil Nadu. In response to the contention that no independent witnesses including the parents of PW-12 were examined as witnesses, it was submitted that no question in this regard was put to IO/Insp. Abhay Singh Yadav (PW-28) during his cross-examination and even otherwise, non-joining of independent public witnesses does not discredit the case of the prosecution and reliance in this regard was placed on the decision in CrI.A. 591/1999 Saleem vs. State and (2010) 9 SCC 608 Dharampal Singh vs. State of Punjab.

10. Having heard both the parties at length and perusing the record, the following evidence emerges.

11. Lekhraj (PW-12) deposed that on 24<sup>th</sup> June, 2013 at about 9.30 PM, he along with Yajuvender and deceased were going to his shop at Central Market, Madangir on a motorcycle being driven by Yajuvender. When they reached the gali at Sapna Optical, they were surrounded by Pradeep, Salman @ Samma, Bunti, Raju and Rafique. Raju caught hold of the deceased and dragged in, whereas Bunti whipped out a knife and started stabbing the deceased. Pradeep caught hold of him and Yajuvender was caught by Rafique, however, Yajuvender was able to free himself and manage to escape. He raised hue and cry on which Salman stabbed him in left lower part of the leg. The commotion drew attention of the neighbouring shopkeepers and the family members who were sitting at his shop nearby and thereafter the accused persons fled away. The deceased was profusely bleeding. He took *chunni* of his mother and tied it on the deceased but blood still continued to ooze out. Thereafter, he made a call to his *bua* Kamlesh and informed about the incident on which his *bua* came on her scooty and

with the help of a person present there put the deceased on the scooty between himself and his *bua* and took him to Batra Hospital where after treating the deceased for about 10-15 minutes the deceased was declared dead. Thereafter, family members of the deceased arrived at the hospital. He was taken to the police station where his statement was recorded (Ex.PW-12/A) and his bloodstained clothes were taken into possession by the police. He further stated that about five-six months prior to the incident, a quarrel had taken place between Om Prakash and Samma, Bunti and Raju, whereafter Samma, Bunti and Raju wanted to take revenge from them, for which they sought help of their two associates namely Pradeep and Rafique. When the knife was shown to him, he stated that he cannot identify the knife but also stated that the knife which was used by Bunti @ Vishal was of the same type. In his cross-examination, he stated that he had not seen the motorcycle after the incident and the same belonged to his friend and might be with him. He further stated that knife blows were given more than two-three times in his presence on deceased's stomach and on the back. He further stated that the brother of accused Salman @ Samma inflicted a gunshot injury on himself to implicate Om Prakash in a false case. He also stated that the deceased was a pillion rider at the time of the incident and was sitting behind him and was pulled down by the accused persons and he and Yajuvender also fell down from the motorcycle. Yajuvender had sustained abrasion injury on his knee and that he had not sustained injury by fall.

12. Yajuvender (PW-1) deposed that on 24<sup>th</sup> June, 2013 at about 8.00-9.00 PM he along with Lekhraj and the deceased was going to market from his house and was driving the motorcycle. When they reached near Shiv

Shakti Market, near Sapna Optical, the motorcycle fell due to skidding of the back wheel and he sustained injuries on his right knee by falling along with the motorcycle. He immediately returned to his house leaving the motorcycle, Lekhraj and deceased. He denied knowing the accused persons Pradeep, Rafique, Ravinder, Vishal and Mohd. Salman @ Samma. Thereafter, he was declared hostile as he was not disclosing the facts of the case.

13. Chetram (PW-15) stated that on 24<sup>th</sup> June, 2013 at about 9.30 PM he had gone to the market to buy *paneer* and while he was standing at a shop near Sapna Optical, he noticed that a crowd had gathered in the gali and found that the deceased, who was his neighbor, was lying on the road with his hand on the right side of the lower abdomen from where blood was oozing out, and also found a motorcycle lying there. Thereafter, he made a call to the PCR on 100 number and after the police arrived, he left for his place. Thereafter, the witness was declared hostile as he was resiling from his statement given to the police. In his cross-examination, he stated that he was the user of mobile No.9971717710 from which he made a call to the police.

14. Kamlesh (PW-13) deposed that in the month of June, 2013 she was at her shop at Madangir Market, at about 8.30 PM she heard some noise and saw 8-10 boys of which three were on motorcycle, which was being chased by the other boys, who caught hold of the deceased and the motorcycle fell down. She stated that all those who were chasing had knives and they assaulted the deceased with knives whereas two others i.e. Lekhraj and Yajuvender managed to escape. She made a call to number 100 and in the meanwhile, Lekhraj had gone towards his shop in order to call his family

and by the time Lekhraj arrived along with his father, deceased was lying in a pool of blood. Lekhraj tied his mother's *chunni* on injuries of the deceased and on raising a cry of help to take the victim to hospital, one of the neighbours provided his motorcycle and offered to take the victim to the hospital. Deceased was caught by Lekhraj while sitting on the pillion of the motorcycle while being taken to the Batra Hospital. She stated to have gone to the hospital on her Activa. At this stage, the witness was declared hostile as she was resiling from her previous statement recorded by the police. In cross-examination, this witness admitted that the incident had taken place on 24<sup>th</sup> June, 2013 on which day at about 9.30-9.40 PM, Lekhraj made a telephonic call to her and informed her that his friend/deceased was stabbed by Raju, Bunti, Rafique, Samma and Pradeep Madrasi. She also stated that on an earlier occasion Samma had caused bullet injuries to her nephew (*bhanja*) Om Prakash. She further admitted that she reached the spot i.e. near Sapna Optical, near Shiv Shakti Market, Madangir, on her Honda Activa where she saw blood lying at the spot and Pankaj lying in an unconscious state with blood oozing out from his injuries. She further stated to have made a call to the police in presence of Lekhraj and had also noticed stab injuries on the hand and foot of Lekhraj. She further admitted that with the help of her nephew Lekhraj, she took the deceased to Batra Hospital on her Activa where the doctor declared the deceased "brought dead". She further stated that her clothes got stained with blood while taking the deceased to the hospital, however, she had not handed over her clothes to the police. She further admitted that the incident of stabbing did not take place in her presence and that she did not see any assailant at the spot when she reached there.

15. Om Prakash (PW-4) stated that on 25<sup>th</sup> December, 2012 at about 3.30 PM when he was going from his place of job to village Madangir, near Heera Chakki in Madagir, he was encircled by Salman @ Samma, Vishal @ Bunti and Raju who abused him and Salman took a shot at him causing injuries on his back, consequent to which, he became unconscious and fell on the road and the said three persons ran away. His *mausi* Kamlesh came at the spot and took him to AIIMS Trauma Centre. For this incident, FIR No.441/2012 under Section 307/34 IPC was registered at PS Ambedkar Nagar. He further stated that the accused persons were involved in many criminal cases as they used to snatch money from public persons and that they had also snatched money from his possession for which he did not make any complaint to the police. He also stated that the said three persons wanted to take revenge from him, his cousin Lekhraj and his school friend Pankaj/deceased.

16. Suresh Kumar (PW-8), the father of the deceased stated that on 24<sup>th</sup> June, 2013, his son had gone along with his friend Lekhraj and at about 9.30 PM, it was brought to his notice that his son had sustained stab injuries at a place in Madangir Market, consequent to which, he reached Batra Hospital where the doctor informed him that his son had expired. He identified the body of his son (Ex.PW-8/A). Rajesh Kumar (PW-7) also identified the body of his nephew/deceased (Ex.PW-7/A) and after the post-mortem examination, the dead body was handed over to them (Ex.PW-7/B).

17. IO/Insp. Abhay Singh Yadav (PW-28) deposed that on 24<sup>th</sup> June, 2013 he along with Ct. Jeeta Ram and Ct. Surrender reached the spot where SI P.K. Jha along with HC Sunil Gaur were present and after briefing from SI P.K. Jha, he took up the charge of DD No.50A. Thereafter, he went to

Batra Hospital where the deceased was declared “brought dead” and also collected the MLC of Lekhraj who was declared fit for statement and accordingly, statement of Lekhraj (Ex.PW-12/A) was recorded on which *rukka* was prepared and FIR was got registered. He called the crime team to the spot and he along with Lekhraj returned back to the scene of crime. No chance prints could be lifted from the spot and after inspection of the scene of crime, he prepared a rough site plan (Ex.PW-28/B). He lifted blood in gauze as well as bloodstained concrete and earth control (Ex.PW-2/A and B) and also seized the bloodstained clothes of Lekhraj (Ex.PW-2/C). Thereafter, the body was sent to mortuary at AIIMS Hospital for post-mortem examination. On the same day at about 4.00 PM, on a secret information, Pradeep was apprehended from near Mother Dairy Booth, Gali No.19, Madangir. (He could not point out Pradeep in Court). Pradeep was arrested (Ex.PW-2/E) and his disclosure statement (Ex.PW-2/G) was recorded. On 26<sup>th</sup> June, 2013 one DD was lodged by the police official of PS Saket in PS Ambedkar Nagar that one Rafique involved in the present case was apprehended and would be produced before the concerned MM at Saket Court, on which he reached Saket Court and after seeking permission from the Court, the custody of Rafique was handed over to him pursuant to which he was arrested (Ex.PW-2/I) and his disclosure statement (Ex.PW-2/J) was recorded. Thereafter, on the intervening night of 19<sup>th</sup>/20<sup>th</sup> July, 2013 SI P.K. Jha and ASI Ratan Lal apprehended accused Ravinder @ Raju in suspicious circumstances in the area of PS Saket where he made his disclosure statement regarding involvement in the present case. Thereafter, Ravinder @ Raju was arrested in the present case and his disclosure statement (Ex.PW-28/E) was recorded. On 1<sup>st</sup> August, 2013 SI P.K. Jha and

Ratan Lal arrested one Vishal @ Bunti who was wanted in case FIR No.351/2013 under Section 307/34 IPC of PS Ambedkar Nagar wherein the accused Vishal made a disclosure statement regarding his involvement in the present case and consequently, he was arrested and his disclosure statement (Ex.PW-25/I) was recorded. Vishal took the police party near Peeli Building School, near Nala and got recovered a *buttondar* knife from underneath the *pulia* of the *nala* which was seized (Ex.PW-10/B). Thereafter on 21<sup>st</sup> August, 2013, a secret information was received that accused Salman @ Samma would come to Flat No.F-II/280, Madangir, DDA Flats, on the basis of which Salman was arrested (Ex.PW-5/A) and his disclosure statement (Ex.PW-5/C) was recorded. From his personal search, one *buttondar* knife was recovered from the right dub of his pant which was seized (Ex.PW-5/D). In his cross-examination, he stated that he had inquired about the caller of DD No.50A i.e. Kamlesh and recorded her statement. He stated that he neither seized the scooty of Kamlesh nor any motorcycle on which the deceased and other witnesses had arrived.

18. HC Bansi Lal (PW-10) joined the investigation on 2<sup>nd</sup> August, 2013 with the IO on which day a knife was recovered at the instance of the appellant. He stated that the appellant led the police party to a *pulia* between a nala of Madangir, Phase-I and II, near Peeli building to recover weapon of offence i.e. knife. The appellant took out a knife from the garbage under *pulia* and produced the same before the IO which was seized vide seizure memo Ex.PW-10/B. He identified the knife recovered at the instance of the appellant in the Court. In his cross-examination, he stated that the knife was put in a rexin cover of chocolate colour. However, no rexin cover was found in the envelop along with the knife and cloth parcel.

19. Shri Santosh Tripathi (PW-31) conducted the chemical examination on the viscera and after examination he tendered his report (Ex.PW-31/A) and opined that the exhibits were found to contain ethyl alcohol 52.8 mg. per 100 ml of blood.

20. As per the FSL report (Ex.PW-32/A) blood was detected on the knives recovered at the instance of the accused persons as also on the clothes of Lekhraj and also the *dupatta* tied on the deceased by Lekhraj. However, as per the serological report (Ex.PW-32/B), blood grouping could not be generated from the said articles.

21. In his statement 313 Code of Criminal Procedure, 1973 (Cr.P.C.) Vishal @ Bunti stated that he has been falsely implicated in this case and that he neither made any disclosure nor pointed out any place. He further stated that nothing was recovered from him or at his instance. He further stated that it is a false and fabricated case and all the witnesses are interested and falsely deposing against him.

22. As noted above, case of the prosecution is based on the testimony of injured eye-witness Lekhraj and the other eye-witness Yajuvender. Lekhraj has categorically deposed that when he along with Yajuvender and deceased were going to his shop at Central Market, Madangir on a motorcycle being driven by Yajuvender, they were surrounded by Pradeep, Salman @ Samma, Bunti i.e. the appellant, Raju and Rafique. It is alleged that Bunti whipped out a knife and started stabbing the deceased. Pradeep caught hold of Lekhraj and Yajuvender was caught hold by Rafique however, Yajuvender was able to free himself which version is quite probable because Yajuvender was driving the motorcycle. The fact that Lekhraj was injured in the incident is proved from the MLC (Ex.PW-19/B) wherein he gave

alleged history of assault at 9.30 PM in front of Sapna Opticals, Shiv Shakti Market, Madangir, the place of incident. Lekhraj had suffered a lacerated wound on the left lateral foot and the injury was opined to be by sharp weapon and grievous in nature. Lekhraj not only was examined in the causality at 9.50 PM but he also got admitted Pankaj, the deceased at 9.50 PM who was brought by Lekhraj, Mobile No.9999737705 in an unconscious, unresponsive state with alleged history of assault, stabbing at 9.30 PM on 24<sup>th</sup> June, 2013 in front of Sapna Opticals, Shiv Shakti Market, Madangir. Pankaj was started CPR immediately however, he did not respond and thus, was declared “brought dead”. The promptness with which Lekhraj, who himself was injured, took the deceased to the hospital is sufficient corroboration to the fact that he was an injured eye-witness.

23. Supreme Court in a catena of decision has held that the testimony of injured eye-witness cannot be brushed aside lightly. In the decision cited as (2010) 10 SCC 259 Abdul Sayeed Vs. State of M.P., Hon’ble Supreme Court held as under:-

*“30. The law on the point can be summarised 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 inbuilt 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”.*

24. Challenge is laid to the testimony of Lekhraj on the point that Dr.Nilakanta Sahu (PW-19) in his cross-examination stated that there was a

possibility of this injury mentioned in the MLC (Ex.PW-19/B) may be sustained due to fall however, even if this probability is there the fact that soon after the incident not only the injured went but took the deceased also with him with multiple stab injuries is sufficient to rely upon his testimony.

25. Challenge is also laid to the prosecution evidence on the count that there was a delay of 40 days in recovery of weapon of offence. It may be noted that the alleged incident took place on 24<sup>th</sup> June, 2013 however, the appellant was arrested on 1<sup>st</sup> August, 2013 and at his instance on the next day, i.e. 2<sup>nd</sup> August, 2013 the weapon of offence was recovered. Merely because public witnesses were not joined in the said recovery is not sufficient to discard the testimony of the police witness.

26. Challenge is also laid to the testimony of Ct.Bansi Lal (PW-10) who claimed that the weapon of offence was sealed in rexin cover of chocolate colour. However, when the same was shown to him for identification during the course of examination it was found without the rexin cover. As per the seizure memo of the knife (Ex.PW-10/A) the cover of the chocolate colour was fixed on the plastic of knife with screws and was not a cover which sealed the entire knife. The knife was kept in a sealed cloth *pullanda* and was as such produced with the seals intact in the Court. Even the FSL found the seals intact. Even though FSL report could not give the blood grouping on the same however, as per the subsequent opinion of the post-mortem doctor who found 12 stab injuries and one incised wound on the dead body of the deceased, the blade of the knife was found rusted with an unidentifiable stain present on the blade, and it was also opined that the injury Nos. 3 to 15 mentioned in the post-mortem report were possible with the knife submitted to him.

27. The knife by which the deceased was inflicted injuries was duly identified by Lekhraj to be of the same type with which injuries were inflicted to the deceased by the appellant herein. To be precise the witness stated that he could identify the knife with which appellant assaulted Pankaj and on seeing the knife he stated that he cannot say whether it was the same knife but the knife which the appellant used was of the same type and was exhibited. The truthfulness of the witness is evident from his evidence for the reason nobody can say that exactly it is the same knife and can only say that the knife shown is similar to one used. Further the fact that Yajuvender did not support the prosecution case is not sufficient to belie the testimony of Lekhraj (PW-12), the injured witness which is also supported by Kamlesh (PW-13), who on hearing the noise came at the spot and stated that Lekhraj had gone to his shop to call his family and by the time Lekhraj came deceased was lying in the pool of blood. Lekhraj tied his mother's *chunni* on the injuries of the deceased whereafter the victim was taken to the hospital on one of the neighbors' motorcycle. She had also gone to the hospital on her Activa.

28. Further merely because the blood grouping could not be given of the blood on the *chunni* tied around the deceased would not entail that no human blood was detected and the *chunni* was not used for tying over the deceased to stop the blood.

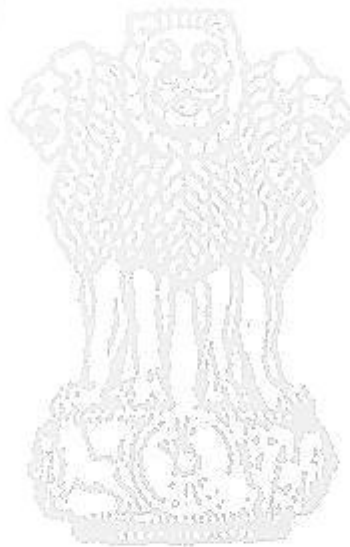
29. In view of the testimony of Lekhraj, the injured eye witness and the recovery of weapon of offence which corroborates the version of the injured eye witness, this Court finds that the prosecution has proved the case against the appellant beyond reasonable doubt. The appeal is accordingly dismissed.

30. Judgment be uploaded on the website of this Court and be conveyed to the Superintendent Jail for intimation to the appellant and updation of record.

**(MUKTA GUPTA)**  
**JUDGE**

**(POONAM A. BAMBA)**  
**JUDGE**

**APRIL 19, 2023**  
**'vn'**



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