

\$~R-50

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

Reserved on: 21.03.2023

Decided on: 23.05.2023

+ **CRL.A. 909/2019**

MONU alias JIJ

..... Appellant

Represented by: Ms. Sairica Raju, Amicus Curie and  
Ms. Ankeeta Appanna, Advocates

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State.  
Inspector Gaje Singh, PS Rohini  
South.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**HON'BLE MS. JUSTICE POONAM A. BAMBA**

**POONAM A. BAMBA, J :-**

**1.0.** Vide this appeal, the appellant is assailing the judgment dated 08.02.2019 (**'impugned judgment'** in short) passed by Ld. ASJ, (FTC) North-West; Rohini Courts: Delhi, whereby the appellant was convicted for the offence punishable under Section 302 Indian Penal Code, 1860 (**"IPC"** in short), in Sessions Case No. 53591/2016, in FIR no. 260/2016, Police Station South Rohini ; and order on sentence dated 13.02.2019, whereby the appellant was sentenced to undergo rigorous imprisonment for life under Section 302 IPC with fine of Rs. 30,000/-, in default to undergo simple imprisonment for three months.

**2.0** Briefly stating, case of the prosecution is, that on 13.07.2016, at 5:50 am one call regarding stabbing of the brother of a lady, at H. No. 86 Sector 3 Rohini was received by L/Ct. Shobha, which was recorded as DD No. 10/A (Ex PW-7/D). Said information was passed on to HC Balraj (PW-21) for appropriate action. On the same day at about 6:05 am, another call was received regarding the incident by L/Ct. Shobha, informing that the accused has been apprehended by the caller, which was recorded as DD No. 11/A (Ex PW 7/E) and was passed on to SI Lichhman (PW-27), who along with Ct. Ashok Paliwal (PW-28) reached the spot i.e. at Jhuggi no. 86, Indra JJ Camp, Sector-3, Rohini, where HC Balraj (PW-21) and Ct. Sunil were already present. There, complainant Brijpal (PW-3), his brother Sonu (PW-17) and deceased's sister Renu (PW-13) met ; and PW-3 Brijpal produced the appellant before SI Lichman (PW-27). PW-19 Sonu also handed over a blood-stained knife to PW-27. SI Lichman recorded the statement (Ex. PW-3/A) of the complainant/PW-3 Brij Pal. Thereafter, SI Lichhman (PW-27) along with Ct. Ashok went to Jaipur Golden Hospital and collected MLC bearing no. 13382/16 of the injured Sachin, who was unfit for statement. PW-27 SI Lichhman then returned to the spot and prepared rukka Ex. PW-8/A on the statement of Brijpal (PW-3), which was handed over to Ct. Ashok for registration of FIR. (Ex. PW-7/A). PW-27 SI Lichman got the spot inspected through crime team vide inspection report Ex. PW-5/A and also got the same photographed through Ct. Mahesh Kumar (PW-6), vide photographs Ex. PW-6/A1 to A6 (negatives of which are Ex. PW-6/B). Exhibits were lifted from the spot and were seized vide seizure memo Ex. PW-21/A . Sketch of the knife Ex. PW-13/A was prepared by SI Lichman and same was seized vide seizure memo Ex. PW-13/B. Appellant was

arrested vide arrest memo Ex PW-13/C and after inquiry, his disclosure statement Ex. PW-21/D was recorded. Appellant was got medically examined through Ct. Sunil at Dr. BSA Hospital as he had also sustained some injuries. He also prepared site plan Ex. PW-3/DA at the instance of eye-witness Brijpal. Wearing blood stained clothes of the appellant Monu i.e. lining shirt and light brown colour pants were sealed and seized vide memo Ex. PW-21/E.

**2.1.** On the same day i.e. 13.07.2016, call regarding death of the deceased, was received from Jaipur Golden Hospital by W/Ct. Manju PW-12 which was recorded as DD No. 26B (Ex. PW-25/A), which was passed on to the Investigating Officer (**IO**) Insp Raj Bala (PW-25). PW-25 collected the Death Summary Report of the deceased (Ex. PW-18/A) from the Jaipur Golden Hospital. On 14.07.2016, PW 25 got the post-mortem of the dead body conducted vide post-mortem report (Ex. PW 26/A) through PW- 26 Dr. Narayan Dabas, who reported and opined as under :-

“Post Mortem No. 493/2016      Dated: 14.07.2016  
Post mortem examination conducted on:  
**Date: 14.07.2016 from 10:30 am to 11:30 am** by Dr Narayan Dabas, assisted by Surender Tanwar, PM Technician

**I. CASE PARTICULARS:**

FIR No. 260/16      Dated: 13.07.2015      PS: South Rohini  
Name of the Deceased: Sachin S/o Satish  
R/O: Jhuggi no. 86, Indira J.J. camp, Sector 3 Rohini, Delhi.  
Age: 25 years Sex: Male

**II. REQUEST RECEIVED FROM:** Insp. Raj Bala PS South Rohini

.....  
**IV. BRIEF HISTORY AS PER I/O**

Allegedly the **deceased was stabbed in the neck on morning of 13.07.2016 at 05.30 am at Sector 3 Rohini**. He was brought to Jaipur golden hospital on the same day and expired while on

treatment on the same day at 10:30. ....

V. **HOSPITAL RECORDS:**

MLC No. 13382/16 dated 13.07.2016 prepared in Jaipur Golden Hospital and death summary bearing CR No. 8572/16.

VI. **EXTERNAL GENERAL APPEARANCE**

a. **Clothes:**

.....

b. **Body:**

The body was of a young male of average stature, built and good nourishment. Height 174 cm. .... Blood stains present over face and neck. A hospital gauze piece present over the right side of neck with multiple needle puncture marks. Whiter hospital gauge piece present over left side of neck. ....

VII. ....

VIII. **PROBABLE TIME SINCE DEATH**

Within **about 24-36 hours**. Body preserved in cold storage.

IX. **EXTERNAL EXAMINATION**

**Injuries:**

1. **Stab wound, obliquely placed, 3.2cm x 0.7cm x 8cm deep, wedge shaped (with outer angle acute], with deep cut margins, beveling at the upper margin present over the left side of neck, 6 cm below the left mastoid, directed above downwards, left to right and front to back. Track extended through the soft tissues, muscles cutting the left carotid artery with clotted blood into the tissues surrounding the artery. Incised wound measuring 4.5x0.2 cmx 0.1 cm present extending from the outer end of stab wound.**

2. **Incised wound, vertically placed, clean cut margins 3cm x 0.8cm x 0.1 cm deep, present over left alae of the nose.**

3. **Incised wound, vertically placed, clean cut margins, 2cm x 1cm x 3cm deep, present over left eyebrow.**

4. **Incised wound, obliquely placed, 1cmx0.2 cmx 0.1 cm present over left side of face, 3 cm away from the outer end of left eye.**

5. **Abrasion, reddish, 1.3x0.3 cm present over the left flank.**

6. **Abrasion, reddish, 3x2.cm present over the back of right elbow.**

X. **INTERNAL EXAMINATION**

a. **Head**

On reflection of the Scalp, effusion of blood was present on the left side of forehead. Skull was intact. No epidural hemorrhage was present. No Subdural hemorrhage was present over the brain. The pia arachnoid were congested. No Subarachnoid hemorrhage was present over the brain. Brain parenchyma was pale. Brain weighed 1247grams.

**b. Neck**

Extravasation of blood was seen in the soft tissues and muscles of neck on left side of neck in and around the left carotid sheath. Muscles were cut corresponding to external injury no. 1. Left carotid artery was cut on the upper surface corresponding to the external Injury no. 1. The Larynx, pharynx and tracheal mucosa were pale. Thyroid gland was unremarkable. Hyoid Bone and Thyroid Cartilage were intact.

**c. Chest**

.....

**d. Abdomen**

Effusion of blood present on reflection of abdominal wall in the tissues corresponding to the left inguinal area. Peritoneal cavity was unremarkable. Liver was pale and weighed 1135 grams. Spleen was pale and weighed 103 grams. ....

**XI OPINION:**

**Death is due to hemorrhagic shock consequent to the stab wound over the neck. Injury no. 1 to 4 could be caused by a sharp weapon while injury no 5 and 6 could be caused by blunt force trauma.**

**Injury no 1, individually and in combination with injury no. 2 to 6 are sufficient to cause death in ordinary course of nature.** All injuries are ante-mortem and fresh in duration prior to death.”

**2.2.** Vide subsequent opinion (Ex. PW-26/B), PW-26 Dr. Narayan Dabas opined that :

“The external injuries no. 1 to 4 mentioned in the PM report of deceased could be caused by the weapon (Knife) examined.”

**2.3.** Exhibits of the deceased were taken into possession vide seizure memo Ex. PW-20/A. After the post-mortem examination, dead body was handed over to Ashok Kumar (PW-8) and Satish Kumar (PW-1) vide memo Ex. PW-1/B. Scaled site plan Ex. PW-24/A was got prepared. Exhibits were sent to the FSL for examination. After completion of investigation,

charge sheet was filed.

**3.0** In order to prove its case, the prosecution examined 30 witnesses.

**4.0** On incriminating evidence being put to the appellant/accused, vide his statement under Section 313 Cr.P.C., he denied the allegations and stated that he has been falsely implicated in this case as he had some past dispute with the deceased. All the public witnesses were the family members of the deceased and have falsely deposed against him. He also stated that he does not know what happened on that fateful day as he was heavily drunk.

**5.0** Learned counsel for the appellant argued that there are material discrepancies in the testimony of witnesses. Ld. counsel submitted that PW-3 Brijpal was not an eye witness, which is clear from the fact that he did not mention anything about five injuries as are shown in the post-mortem report Ex. PW-26/A. Even Renu, sister of the deceased (PW-13) categorically stated that PW-3 was not present at the spot and that he came later and only in response to a leading question by the prosecutor, she stated that PW-3 Brijpal was already present at the place of incident. Therefore, testimony of PW-3 Brijpal cannot be relied upon and in support, reliance was placed upon the judgement of Hon'ble Supreme Court in the case of *Varkey Joseph v. State of Kerala (1993) Supp 3 SCC 745*. She also argued that there are material improvements in his testimony over his earlier version under Section 161 Cr.P.C. In his testimony, PW-3 added that he went to the deceased and helped him ; and that he saw the appellant and the deceased quarrelling in the morning whereas, in his earlier statement, he only stated

that the appellant allegedly stabbed the deceased from the back. Thus, testimony of PW-3 Brijpal, the purported eye-witnesss does not inspire confidence. Ld. counsel further argued that none of the non-interested witnesses such as milkman, labourer, who was talking to the deceased and pundits of the temple, were examined. Their non-examination has remained unexplained. In his deposition although PW 27 SI Lichman stated that other eye-witnesses did not come forward due to fear, he admitted that he did not mention this fact either in the rukka Ex. PW-27/A or in the case diary.

**5.1** Ld. counsel also argued that PW-3 Brijpal (cousin brother), PW-13 Renu (sister) and PW-19 Sonu (cousin brother of PW-13) who saw the appellant at the spot, are family members of the deceased and are interested witnesses and are not reliable. All the other witnesses i.e. PW-2 Lalji, PW-9 Ved Prakash (uncle of deceased) and PW-10 (another uncle of deceased) did not see the appellant at the scene of occurrence and only heard from others that the appellant had allegedly stabbed the deceased which is hardly of any consequence. Rather, PW-10 stated that after returning from the hospital, they had all gone to search for the offender ; further, he merely stated that the appellant was trying to flee from the spot and was caught by PW-13 Renu.

**5.2** Ld. Counsel further argued that the appellant was not the assailant as is clear from the PCR Form as well as the testimony of witnesses ; PCR form mentions name of the assailant as ‘Ramij @ Gigi s/o Samar Singh, 448, Indra Camp, Near Jaipur Golden Hospital, Near Sector-3, Rohini, Delhi.’ Thus, even the identity of the appellant is not established. As per

the scaled site plan Ex. PW-24/A, blood was recovered from spot B at the scene of occurrence whereas the deceased was allegedly stabbed at spot A. No explanation has been furnished in this respect. Ld. Counsel also argued that the scaled site plan is vague and only shows two spots i.e. point A where the murder allegedly took place and the point B, the spot from where blood was lifted. It does not depict the Jhuggies where the witnesses lived as per the testimony of PW. 27 SI. Lichman who investigated the case. Furthermore, neither is the Jhuggi of the so-called star eye-witness PW3 shown in the site plan.

**5.3** Ld. Counsel also contended that the prosecution has not explained as to why the clothes of the witnesses PW-19 Sonu, PW-3 Brijpal, PW-13 Renu, were not seized despite the fact that they claimed that they were stained with blood of deceased, which would have substantiated their presence at the spot. Further, there is a possibility that their blood stained clothes contaminated the clothes of the accused as well as the knife that was allegedly taken by PW-19.

**5.4.** Ld. Counsel also submitted that as per the testimony of PW-30 Bhuwan Chander, 9 parcels with 10 items were sent to the FSL, however only 7 parcels were received by FSL. Same creates doubt about the sanctity of exhibits. Further, as per the FSL report, blood alcohol in the deceased was 146.2mg/100ml, which is very high and can cause delirium and may result in accidental death.

**5.5.** Ld. counsel also argued that the weapon of offence – knife as per

sketch Ex. PW-13/A has width of 1.6cm/2.4cm, whereas as per the post-mortem report Ex 26/B, length of the wound was 3.2 cm. She submitted that as per Medical Jurisprudence and Toxicology (Modi's Medical Jurisprudence) width of the single sharp-edged weapon is required to be equal to the size of the length of the stab wound. Further, despite having fingerprint expert in the Mobile crime team unit, fingerprints were not lifted for comparison.

**5.6** Ld. Counsel lastly argued that the hospital was just a minute away as per PW 10 Chander Mani. But the deceased was taken to/ reached hospital only by 5.50 am though the incident took place between 5.00 to 5.15 am. Death could have been caused due to delay. No explanation has come forth in this regard.

**6.0** Per contra, the Ld. Prosecutor argued that there is clear and cogent evidence of PW-3 Brijpal. PW-3 has deposed that on the intervening night of 12.07.2016 and 13.07.2016 he saw the appellant quarrelling with the deceased at about 01:30 a.m. He has further stated that the next morning at about 05:00-05:30 a.m. he again saw the appellant quarrelling with the deceased and immediately thereupon, the appellant took out a knife and gave sudden blow on the neck of the deceased. On raising of hue and cry, his brother Sonu (PW-19), sister of deceased Renu (PW-13) and others came at the spot. The appellant was apprehended with the help of PW 13-Renu and PW 19-Sonu and thereafter, he took the deceased to the hospital. He made a call at 100 number using the mobile of PW-2 Lal Ji on returning back to the spot.

**6.1.** Ld. prosecutor further submitted that MLC (Ex. PW-15/A) records the name of PW-3, who accompanied the injured, thus corroborating his version. PW-3's version of making a call at 100 number is also corroborated by PW-2 Lal Ji. She further submitted that PW-3 has stood by his testimony in cross-examination and is therefore, a trust-worthy witness, who had seen the incident. She also argued that in response to a leading question, PW-13 could recollect that PW-3 Brijpal was already present outside. However, no question challenging his presence was put to her, in cross-examination.

**6.2.** Ld. prosecutor also argued that testimonies of PW-10, PW-13 and PW-19 are further corroborated by PW-9, who has deposed that he along with PW-3 and PW-13 tried to apprehend the appellant ; and PW-3 with the help of other persons had taken the deceased to the hospital. Same even establishes beyond reasonable doubt, the presence of PW-3 at the spot at the relevant time. Further, PW-27, PW-21 and PW-28 have deposed that PW-3 Brijpal, PW-13 Renu and PW-19 Sonu had produced appellant before the IO and Sonu also handed over a blood stained knife to the IO.

**6.3** Ld. Prosecutor further submitted that as far as the name of the assailant as 'Ramu @ Gigi S/o Samar Singh' in PCR Form Ex. PW-11/A is concerned, same is clarified by PW-17 ASI Gonobari. In his testimony, PW-17 has stated that the appellant, who was handed over to him by the public persons, on inquiry, disclosed his name as 'Ramu @ Jiji s/o Samar Singh'. However later on, he came to know that the appellant's name was

‘Monu @ Jiji s/o Samay Singh’. Therefore, the confusion about the identity has been created with mala fide intention.

**6.4.** Ld. Prosecutor also argued that even the FSL report Ex. PW-23/A clearly establishes that the DNA profile generated from the blood of the deceased was found to be similar to the DNA profile generated from the clothes of the accused worn at the time of incident. Same further connects the appellant to the crime.

**6.5.** It is further submitted by the Ld. prosecutor that as per the post-mortem report Ex. PW-26/A, the deceased died due to hemorrhagic shock consequent to the stab wound over the neck ; Injury no. 1 to 4 could be caused by a sharp weapon, while injury no 5 and 6 could be caused by blunt force trauma. Injury no 1, individually and in combination with injury no. 2 to 6 are sufficient to cause death in ordinary course of nature. Further, vide subsequent opinion Ex. PW-26/B, the external injuries no. 1 to 4 mentioned in the post-mortem report could be caused by the weapon of offence (knife). Same also connects the appellant with the crime. In view of the above evidence on record, the prosecution has been able to prove its case beyond reasonable doubt.

**7.0.** We have duly considered the submissions made by both the sides.

**8.0.** PW-3 Brijpal, the eyewitness deposed that he was running his Balero Pick-up Jeep. On the night intervening 12/07/2016 and 13/07/2016, at about 1.30 am, he saw that the appellant, who was in drunken condition, was

quarrelling with Sachin/deceased in front of Sachin's house. Deceased asked him not to quarrel with him. He (PW-3) also asked the appellant not to quarrel. He further deposed that the deceased was an auto-driver and his auto was parked outside his house, and the appellant was quarrelling with him to let him sleep in his auto. The deceased asked the appellant to go and sleep in his own house, but he did not relent and quarrelled and threatened the deceased, '*Mera jo bigad sakta hai, bigad le*'. During this quarrel, the deceased received nail scratches on his neck and then slapped the appellant. The appellant then left from there, but did not go home and rather slept on a rehri parked near the temple in the vicinity. He again threatened the appellant that he would not let him live and would kill him by morning as he had slapped him. The deceased went inside his house. Thereafter, PW-3 returned home.

**8.1.** PW-3 has further testified that at about 5.00/5.15 am, the milkman knocked at his door and while he was talking to milkman to tell him that he did not want to buy milk as his children were away, he saw that the deceased was requesting one labour in the locality for a bottle as he wanted to ease himself. Meanwhile, the appellant got up from the Rehri and started quarrelling with the deceased ; appellant took out knife from his front pocket and caught hold of the deceased and suddenly gave a knife blow on his neck. The appellant started bleeding profusely. He (PW-3) rushed to save the deceased, but the deceased did not stop and gave another blow on the left side of his back. He then shouted. On which, his brother Sonu (PW-19) reached and his uncles and two/three more persons also reached. When the appellant tried to run away, he asked Sonu (PW-19) to catch hold

of the appellant. Sister of deceased namely Renu (PW-13) also reached. He (PW-3), his brother Sonu (PW-19) and Renu (PW-13) caught hold of the appellant. He immediately took the deceased to Jaipur Golden Hospital for treatment and got him admitted and thereafter returned to his jhuggi to bring his ration card required for free treatment. He met Lalji (PW-2) and called police from Lalji's mobile. Police arrived and he handed over the appellant as well as the knife to the police. He again said that his brother Sonu (PW-19) had handed over the knife, which was used by the appellant, to IO SI Lichman (PW-27), who prepared the sketch of the knife (Ex. PW-3/C) and sealed and seized the same vide seizure memo Ex. PW-3/D. He also stated that site plan Ex. PW-3/E was also prepared at his instance. Police recorded his statement Ex. PW-3/A. IO lifted the blood from the spot. He duly identified the appellant in Court. He also identified the knife stating that it is the same knife, with which the appellant had caused injuries to the deceased.

**8.2.** PW-3 stood by his deposition in cross-examination and categorically denied that he was not present at the spot and was planted as eye-witness later on as the FIR was pending. He further denied that he had not witnessed the incident and that is why, he has not shown his position and position of other witnesses, in the rough site plan Ex. PW-3/DA prepared at his instance. He denied that 'Ramij @ Gigi son of Samir Singh, r/o Jhuggie no 448, Indra Camp, near Jaipur Golden Hospital, aged 18 years' was the actual assailant and he had told the police that Ramij had inflicted injuries on the neck of the deceased with some sharp thing, but has falsely implicated the appellant. PW-3 rather stated that there is no person by the

name of 'Ramij' residing in their area. He further stated that he does not know any person by the name of Samir Singh living in their locality. PW-3 was not specifically cross-examined with respect to his version that on the previous night, the appellant had picked up quarrel with the deceased by insisting upon him to allow him to sleep in his auto-rickshaw, and extending threat to him, when the deceased did not allow him and asked him to sleep at home. The appellant himself has stated in his statement under Section 313 Cr.P.C (Q.9) that he was heavily drunk on that day and corroborates PW-3's version that the appellant was in drunken condition and quarrelled with the deceased. Nothing worthwhile could be extracted in his cross-examination to reflect on PW-3's credibility.

**8.3.** Ld. defence counsel vehemently argued that identity of the appellant as the assailant has not been established. She submitted that PCR Form Ex. PW-11/A mentions the name of the assailant as 'Ramu @ Gigi son of Samar Singh r/o T-hut no. 448, Indra Camp, near Jaipur Golden Hosp, Sec.3, Rohini, , age 18 years.' It may be noted that besides PW-3, even PW-17 ASI Gonobari, who was Incharge PCR deposed that on 13.07.2016, at about 5.43 am, he had received an information from the control room that "*Lady caller bol rahi hai ki mere bhai ko chaku maar diya*", but caller did not provide the address of the place of occurrence. He tried calling on the said mobile number, but caller could not be contacted. At about 5.55 am, he again received information from the control room that at jhuggi of Sector-03 Rohini, brother of a lady was stabbed, on which, he reached jhuggi Indra JJ Camp, Sector-03, Rohini, where he found that the public persons had apprehended a person, who had caused injuries on the neck of one Sachin

son of Satish (deceased) r/o 86, T-huts, Indira JJ Camp, Delhi, with a sharp pointed object. On inquiry, the apprehended person disclosed his name 'Ramu @ Jiji son of Samar Singh r/o 448, T Huts, Indira JJ Camp, Sector-3, Rohini, Delhi' ; and duly identified the appellant in the court as the person , who was apprehended by the public persons. He clarified that later on, he came to know that the name of the accused is 'Monu @ Jiji son of Samay Singh' and not 'Ramu @ Jiji son of Samar Singh.' In his cross-examination, PW-17 categorically denied that the appellant has been wrongly identified as the assailant, whereas the actual assailant was 'Ramu @ Gigi'. It is noted that the appellant was duly identified as the assailant not only by PW-3 and PW-17 but also by other witnesses.

**8.4.** It is noteworthy that the appellant put to PW-19 Sonu in cross-examination that he was at home at the time of incident, who categorically denied the same. But no such suggestion was put to PW-3 Brijpal, the eye-witness in cross-examination, who rather deposed that the appellant did not go home despite being asked. Significantly, the appellant did not state anything in this respect in his statement under Section 313 Cr.P.C. Same shows the appellant took a false plea of alibi, which itself adds up as an incriminating circumstance against the appellant. (**'Sahabuddin v. State (2012) 13 SCC 213'**).

**9.0.** Testimony of PW-3 Brijpal is further corroborated by Sonu (PW-19), his brother, Renu, (PW-13), sister of the deceased. PW-13 Renu testified that she was sleeping in her jhuggi and on hearing noise from outside at about 5.15 am, she came out and saw that the appellant (duly identified), who resided in their JJ Camp, was present at a short distance and was

holding a knife in his hand. She also saw that her brother Sachin/deceased lying on the ground having knife stab injury on his neck and was bleeding. With the help of people, the appellant was apprehended. With the help of her cousin brother Sonu (PW-19), Brijpal (PW-3), Ved Parkash (PW-9) and neighbours, who had come on hearing the noise, her brother was made to lie on the cot. She made a call at number 100, on which police arrived. The appellant was handed over to the police and the knife which was snatched from the hand of the appellant by Sonu (PW-19), was also handed over by him to the police. She identified the knife (Ex. P-1) in Court stating that it is the same knife. Though initially, she stated that it looked like the same knife.

**9.1.** PW-13 has stood by her deposition in her cross-examination. She categorically denied that she was not present at the spot and for that reason, her position has not been shown in the rough site plan Ex. PW-3/DA. She reiterated that she had made a call to the police, which stands corroborated by DD no. 10-A Ex. PW-7/D recorded at 5.50 am mentions that ‘Lady ki bhai ko chaku mar diya - phone no. 9953445668’, though she could not tell to whom the mobile number 9953445668 belong. PW-13 categorically denied that to the PCR official as well as to the local police, the name of the assailant was given as “Ramiz @ Gigi son of Samar Singh...” Though as per PW-13’s testimony, she had not seen the appellant stabbing her brother, she saw him holding knife and trying to flee.

**9.2.** Ld. Counsel for the appellant argued that from the testimony of deceased’s own sister PW-13, it is clear that PW-3 was not an eye-witness

to the incident and had come later. It is seen that though in response to Court Question, PW-13 stated that Brijpal was not already present when she came out, but she also stated that as she was crying because her brother was in serious condition, she cannot say about the time of arrival of PW-3 ; and in response to a leading question by the Ld. Prosecutor, she admitted that PW-3 Brijpal was already present, when she came out of her jhuggi. She even explained that she could not understand the question properly and hence did not answer the same properly. She rather went on to state that PW-3 had seen the incident when he was going to ease himself.

**9.3.** The fact that the appellant was apprehended at the spot and was handed over to the police has come on record vide testimonies of PW-3 (Brijpal), PW-13 (Renu), PW-19 (Sonu), PW-27 SI Lichman. Same is further substantiated by history recorded in the appellant's MLC Ex. PW-14/A ("alleged history of beaten up by public around 3 hours back as told by the patient himself") and the injuries (i.e. laceration on forehead and abrasion on left forearms and swelling on hand) suffered by him.

**10.0.** PW-3 Brijpal deposed that he had made a call at number 100 from the phone of Lalji is corroborated by Lalji, who stepped in the witness-box as PW-2. He testified that on 13.07.2016 while he was sleeping in his jhuggi, he heard a lot of noise and commotion. He came out and saw that a crowd had gathered and the deceased, who was bleeding on his neck, was lying on a cot in front of his jhuggi. PW-3 Brijpal borrowed his mobile phone having no. 7053956162 and informed the police. PW-2 was not cross-examined in this respect. In cross-examination, he reiterated that when he came out, he saw only Sachin lying on a cot and was bleeding. The fact that

a call was made from the aforesaid mobile number is corroborated by DD no. 11-A (PW-7/E) proved by PW-7 HC Shailender, who produced original DD register containing DD no. 11-A dated 13.07.2016. He was not cross-examined in this respect. Relevant portion of DD no. 11-A Ex. PW-7/E reads:

*“Samay 6/05 baje subah.... Tele phone se itla di hai Sec. 3, Rohini, Indira Camp, jhuggiyon me chaku maar diya. Caller ne use pakad rakha hai. Ph. 7053956162 From L/Ct. Shobha 8236/PCR..... SI Lichman Sahab ko bataya gaya tatha Ins. Raj Bala/ATO South Rohini, Sahiba Basawari Sarkari Gadhi..... rawana mauka ka hue..”*

**10.1.** The fact that the aforesaid mobile number is in the name of PW-2 Lalji, is corroborated by PW-4 Shishir Malhotra, Nodal Officer, Aircel Ltd., who produced CAF of mobile no. 7053956162 (Ex. PW-4/A), ID (voter-I Card) Ex. PW-4/B, as per which the said mobile number is in the name of PW-2 and CDR for the period 12.07.2016 to 14.07.2016 (Ex. PW-4/C) and copy of said cell ID list (Ex. PW-4/D) and certificate u/s 65-B Indian Evidence Act (Ex. PW-4/E). PW-4 was not cross-examined, hence his testimony remained uncontroverted. As per the CDR, on 13.07.2016 at 5:48:43 hours call of 87 seconds was made from the said number at ‘11100’, which further corroborates the testimony of PW-2 and PW-3.

**11.0.** PW-19 Sonu has deposed on similar lines as PW-13. He stated that on 13.07.2016, at about 5.15 am, while he was present at his house, he heard noise. He came out and saw that the appellant (duly identified), whom he

knew since prior to the incident being resident of the same locality, was holding knife in his hand and was trying to run away. He along with Brijpal (PW-3) and Renu (PW-13) tried to catch him, on which he entered into a scuffle with them and while doing so, he fell down and sustained injuries. He and Renu (PW-13) caught hold of the appellant ; he took knife from the hands of the appellant, which was a vegetable knife. PW-19 further deposed that the deceased was lying on the floor and was bleeding from his neck. His brother Brijpal (PW-3), uncle Vedparkash @ Vedu (PW-9), Renu (PW-13) sister of the deceased and Chander Mani (PW-10) lifted the deceased and laid him on the cot. Renu (PW-13) made a call at number 100 and police arrived ; his brother Brijpal took the deceased to Jaipur Golden Hospital and thereafter, returned to the spot. He handed over the appellant as well as knife to the IO. Appellant was arrested vide arrest memo Ex. PW-13/C. Sketch of the knife Ex. PW-13/A was prepared and same was sealed and seized vide memo Ex. PW-13/B. Site plan Ex. PW-3/DA was prepared at the instance of Brijpal. (PW-3)

**11.1.** PW-19 stood by his deposition in cross-examination and denied that he was not present at the spot. He further denied that the actual assailant is ‘Ramiz Gigi S/o Samar Singh, aged 18 years’, R/o Jhuggi No. 448, Indra Camp, Near Jaipur Golden Hospital, Rohini, Sector 3’ and not the appellant ‘Monu @ Jiji’, who was aged around 25 years at the time of arrest.

**12.0.** PW-9 Ved Parkash, uncle of the deceased, deposed that he lived near the deceased’s house. On 13.07.2016, when he came out of his house at about 5.15 am, he saw the deceased bleeding from his neck. The appellant

(duly identified), who was residing in their locality, was trying to flee away from the spot and was apprehended by Renu (PW-13), Chander Mani (PW-10) and Brij Pal (PW-3). PW-13 Renu informed the police and appellant was handed over to the police. He also stated that with the help of his relatives, he took the deceased to hospital. To PW-9 also, it was suggested that the appellant was not the actual assailant and it was one Rameej, which he categorically denied. Presence of PW-3 Brijpal and PW-13 Renu at the spot is admitted by the appellant by virtue of his own suggestion to PW-9 in cross-examination, which was replied by him as *'It is correct that witnesses Brij pal and Reenu stated to the police about the factum of the case when the police reached at the spot.'* Such suggestion can be admitted as an evidence. [**Balu Sudam Khalde and Anr. vs. State of Maharashtra, (2023) SCC Online SC 355**]

**13.0.** PW-10 Chander Mani also deposed on the similar lines as PW-13, PW-19 and PW-9. He testified that on 13.07.2016, on hearing '*shor-sharaba*', he came out of his house at about 5.15 am and saw that the deceased was bleeding from his neck having knife injuries. He was taken to Jaipur Golden Hospital with the help of Sonu (PW-19), Brijpal (PW-3), Renu (PW-13). They returned to the spot and searched for the offender, who was apprehended by PW-13 Renu. As PW-10 resiled from his previous statement, he was cross-examined by the Ld. Prosecutor. Though, he denied that when he came out of his jhuggi, he had seen the appellant trying to flee away, he himself went on to state that *'when they had gone to Jaipur Golden Hospital, outside the hospital and as their jhuggis are situated very near to the hospital, they had seen accused running and falling*

*and then he was apprehended.*' In his cross-examination by the Ld. defence counsel, PW-10 explained that it hardly took one minute for them to reach the hospital. Thus, even PW-10 corroborates the version of the appellant's apprehension from the spot soon after the crime. PW-10 also categorically denied that the actual assailant was 'Rameej' and not the appellant. He also stated that their/his hands and clothes did not get any blood stains as the deceased was taken to the hospital on the cot itself.

**14.0.** PW-21 HC Balraj, who was the first person to reach the spot on receipt of DD no. 10-A (Ex. PW-7/D), deposed that on receipt of the said DD at 5.50 am, he along with Ct. Sunil reached the spot at Jhuggi no. 86, Indra JJ Camp, Sector-3, Rohini, Delhi and came to know that the deceased had been taken to the hospital by some person. Meanwhile, SI Lichman (PW-27) along with Ct. Ashok (PW-28) reached the spot. Complainant Brijpal (PW-3) met PW-27 and handed over the custody of the appellant to him ; his brother Sonu (PW-19) handed over knife to the IO. IO handed over the custody of the appellant to him and Ct. Sunil and left for Jaipur Golden Hospital and returned after some time. Crime team was called, which inspected the scene of crime, took photographs. Appellant (duly identified) was arrested vide memo Ex. PW-13/C and his disclosure statement Ex. PW-21/D was recorded. He also deposed that Ct. Sunil brought clothes for the accused from his house and IO recovered blood stained clothes of the appellant i.e. his shirt and pants, which were seized vide seizure memo Ex. PW-21/E. PW-21 identified all the exhibits including the appellant's as well as the deceased's clothes, in the court.

**14.1.** PW-21 stood by his deposition in cross-examination. He stated that he did not find any eye-witness after reaching the spot. While admitting that the weapon of offence was not recovered at the instance of the appellant, he stated that complainant had handed over the knife/weapon of offence to the IO. It is note-worthy that by virtue of his own suggestion to PW-21 also, the appellant admitted presence of PW-3 Brijpal, PW-13 Renu, PW-19 Sonu as well as PW-9 Ved Parkash and PW-10 Chander Mani, at the spot. PW-21 also stated that he did not find any priest in Prachin Kaal Shiv Mandir, in front of which the offence took place. PW-21 also denied that it was a blind murder or the murder was committed by ‘Ramiz @ Gigi son of Samar Singh’ and that the appellant has been falsely implicated to solve the same.

**15.0.** PW-27 SI Lichman deposed on the same lines. He testified that public witnesses Brijpal, Renu and Sonu produced the appellant before him, when he reached the spot along with Ct. Ashok Paliwal on 13.07.2016 on receipt of DD no. 11-A. He also stated that the public witness Sonu handed over blood stained knife stating that it was the same knife, which was used by the appellant for inflicting injuries on the deceased. He also deposed that he collected MLC bearing no. 13382/2016 (Ex. 15/A) of the injured from Jaipur Golden Hospital. The injured was unfit for statement and was undergoing medical treatment, hence he returned to the spot. He recorded the statement Ex. PW-3/A of the complainant Brijpal PW-3. Rukka Ex. PW-27/A was prepared and FIR (Ex. PW-7/A) was got registered through Ct. Ashok. Ct. Sunil took the appellant to Dr. BSA Hospital as he had also sustained injuries. Crime team inspected the spot and took photographs. He

also deposed about preparation of sketch of knife Ex. PW-13/A, its seizure vide memo Ex. PW-13/B and lifting of exhibits i.e. blood from the spot and from in front of Shiv Mandir, which was sealed and seized vide seizure memo Ex. PW-21/A and Ex. PW-21/B ; and blood stained earth and earth control, which was sealed and seized vide seizure memo Ex. PW-21/C and also about recording of disclosure statement Ex. PW-21/D of the appellant, seizure of blood stained clothes of the appellant i.e. lining shirt and light brown colour pants, sealed with the seal of LM and seized vide memo Ex. PW-21/E. His testimony in this regard is corroborated by PW-21 HC Balraj. He further deposed that the exhibits were deposited in Mal khana. On 02.09.2016, weapon of offence was sent for subsequent opinion vide RC no. 91/21/16 (Ex. PW-30/G) to Doctor at BSA Hospital. Receipt of the same was obtained and was handed over to MH(C)M. On 20.09.2016, subsequent opinion was obtained from the concerned doctor. PW-27 also identified the appellant and all the exhibits in the court.

**15.1.** In his cross-examination, PW-27 admitted that none of the residents of jhuggies no.18, 68, 84, 83 or any person from Prachin Kal Shiv Mandir joined as witnesses and explained that none of them came forward to give statement due to fear. He categorically denied that the public witnesses were not joined as they were not supporting the prosecution case that the appellant is the assailant. PW-27 was cross-examined at length about the name of the assailant i.e. 'Ramij son of Samar Singh,' without any fruitful result. Further, so as to reflect that the knife was planted, on one hand, it was put to PW-27 that such knife is easily available in the market. On the other hand, by virtue of his own suggestion the appellant admitted that knife

was handed over by Sonu (PW-19) to PW-27 at the spot. PW-27 responded that *“It is correct that knife in the present case was handed over by Sonu to me, when I reached the spot.”* Same shows that the appellant took false defence.

**16.0.** Further, the testimony of the complainant PW-3 and above witnesses is also supported by medical evidence. The MLC of the deceased (Ex. PW-15/A) proved by PW-15 Dr. Dhawal Kumar records :

“....  
*Name of Pt. : Sachin Kumar s/o Satish Kumar*  
*Age 24 years*  
*Name and address of accompany person : Brijpal, 75, Indra JJ Camp, Sector-3, Rohini.*  
*A/H/O assault by sharp object (knife) on back of neck 2 x 1 cm deep near patient home around 5.20 am.*  
*On arrival*  
*Pt. Unconscious in garping state BB not responsive*  
 ....  
*L/E. 1. Stab wound 2 x 1 cm deep back of nexk*  
*2. CLW over Lt. Eyebrow 2 x 1 cm deep*  
*Alcohol intake as per attendant.*  
*Nature of injury : Dangerous”*

**16.1.** It corroborates PW-3’s version that he had taken the deceased to the hospital. History (assault by sharp object/knife) and the nature of injuries reflected in MLC and in the post-mortem report further support the version of the prosecution witnesses PW-3 Brijpal, PW-9 Ved Park, PW-10 Chander Mani, PW-13 Renu, PW-19 Sonu.

**17.0.** Vide subsequent opinion Ex. PW-26/B and testimony of PW-26 Dr. Narayan Dabas, it has come on record that the injuries no. 1 to 4 as

mentioned in the PM report could be caused by the knife/weapon of offence recovered from the appellant. In view of the same, argument of the Id. counsel for the appellant that the deceased could have died accidental death as he was highly intoxicated as per the FSL report (Ex. PW-22/A), is preposterous. Even the argument of the Id. defence counsel that as the size of the wounds did not match the size of the knife/weapon of offence, same creates doubt that the injuries were caused by the said knife, also lacks merits.

**18.0.** In view of the above, testimonies of PW-3, PW-9, PW-10, PW-13 and PW-19 are found to be creditworthy. Therefore, their testimonies cannot be discarded merely because they are relatives of the deceased and are interested witnesses, as pleaded by Id. counsel for the appellant. [**State of A.P. vs. S. Rayappa and Others (2006) 4 SCC 513**].

**19.0.** Testimonies of the aforesaid witnesses are further corroborated by FSL (Biology & DNA) report Ex. PW-23/A given by PW-23 Saurabh Pathak, Junior Forensic/chemical examiner (biology), FSL, Rohini, Delhi. As per the testimony of PW-23 and the report Ex. PW-23/A, on biological examination, blood was detected on Ex.1 (blood gauze of deceased), Ex.4 (blood stained earth material), Ex.5a (appellant's pants) Ex.5b (appellant's shirt), Ex.6a (pant of the deceased with belt) , Ex.6b (deceased's T-shirt), Ex.6c (underwear of deceased) and Ex.7. (knife). Further, DNA profile generated from the source of Ex.1 (blood gauze cloth piece of deceased) was found to be similar with DNA profile generated from the source of Ex.5a, Ex.5b (clothes of accused), Ex.6a, Ex.6b and Ex.6c (clothes of

deceased) and Ex.7 (knife). Thus, forensic evidence further connects the appellant to the crime.

**19.1.** Ld. defence counsel argued that as per PW-30, 9 parcels were sent to the FSL, whereas only 7 parcels were received at FSL, which creates serious doubt about the sanctity of the exhibits rendering the FSL report Ex. PW-23/A inconsequential. It is seen that PW-30 deposed that on 23.09.2016, he handed over seven pullands and two seals to Ct. Prem Prakash to be deposited at FSL vide RC No. 99/21/16 (Ex. PW-30/H). Said version is corroborated by RC Ex. PW-30/H. Further, even PW-23 has testified that total 7 parcels were received in the FSL. Thus, there is hardly any discrepancy between the two. PW-23 Sh. Saurabh Pathak has also deposed that the said parcels were duly tallied and the seals on the said parcels were found intact. Thus, there is hardly any merit in the argument of the Ld. defence counsel.

**20.0.** The appellant has himself stated in his statement u/s 313 Cr.P.C (Qs. 19 and 47) that he had some past dispute with the deceased because of which, he has been falsely implicated. Existence of past dispute with the deceased, rather reflects motive on the part of the appellant, to commit the crime.

**21.0.** In view of the above, it has been established beyond reasonable doubt that the appellant inflicted knife injuries on the neck of the deceased. The appellant was apprehended at the spot soon thereafter and weapon of offence i.e. knife (Ex. P1) with which he inflicted injuries, was

taken/recovered from the appellant. As per subsequent opinion (Ex. PW-26/B), injuries no. 1 to 4, which were sufficient to cause death in ordinary course of nature, could be caused by the said knife. As per the post-mortem report (Ex. PW-26/A), death of the appellant was caused due to hemorrhagic shock consequent to the stab wound over the neck and Injury no 1, individually and in combination with injury no. 2 to 6 is sufficient to cause death in ordinary course of nature.

**22.0.** In view of the above, the appellant has failed to demonstrate any illegality in the impugned judgment and order on sentence. The appeal is accordingly dismissed.

**23.0.** Copy of the judgment be uploaded on the website and be also sent to the Superintendent Jail for updation of record and intimation to the appellant.

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

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

**MAY 23<sup>rd</sup>, 2023/csc**