



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

% Reserved on: 1st May, 2023
Decided on: 26th June, 2023

+ **CRL.A. 1269/2018**

NARENDERAppellant
 Represented by: Ms.Kavita Jha, Adv. (through video
 conferencing) with Mr. Aditeya Bali
 and Mr. Rajiv Jha, Advocates.

versus

STATE Respondent
 Represented by: Mr.Laksh Khanna, APP for the State

+ **CRL.A. 926/2018**

BIJENDER @ VISHNUAppellant
 Represented by: Mr.Nasib Singh Bhatt with Ms.
 Nitika Bhatt, Advocates.

versus

STATE NCT OF DELHI Respondent
 Represented by: Mr.Laksh Khanna, APP for the State.

+ **CRL.A. 927/2018**

IRSHAD alias BABLOOAppellant
 Represented by: Mr.Dinesh Malik, Advocate (through
 video conferencing) with Mr. Akash
 Saini, Mr.Puneet Jain &, Mr.Karan
 Dahiya Advocates.

versus

STATE NCT OF DELHI Respondent
 Represented by: Mr.Laksh Khanna, APP for the State.

+ **CRL.A. 928/2018**

PARVEENAppellant



Represented by: Mr.Nasib Singh Bhatt with Ms.
Nitika Bhatt, Advocates.

versus

STATE NCT OF DELHI Respondent
Represented by: Mr.Laksh Khanna, APP for the State.

+ **CRL.A. 934/2018**

RAHULAppellant
Represented by: Mr.Nasib Singh Bhatt with Ms.
Nitika Bhatt, Advocates.

versus

STATE NCT OF DELHI Respondent
Represented by: Mr.Laksh Khanna, APP for the State.

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 learned Trial Court dated 18th August, 2018 whereby all the appellants were held guilty for murder of one Chanchal ("deceased"). The appellants also challenge the order on sentence dated 21st August, 2018, whereby the appellants were directed to undergo rigorous imprisonment for 2 years along with fine of ₹2,000/- each in default whereof, simple imprisonment for 2 months for offence punishable under Section 147 of the Indian Penal Code, 1860 ("IPC"); were also directed to undergo simple imprisonment for 3 years along with fine of ₹5,000/- each, in default whereof, simple imprisonment for 6 months for offence punishable under Section 148 IPC; and were also directed to undergo rigorous imprisonment for life along with



fine of ₹5,000/- each, in default whereof, simple imprisonment for 6 months for offence punishable under Section 302 read with 149 IPC. Further Vikram, Shiva, Kalu and 3 other accused could not be arrested and thus the appellants who were arrested faced trial and were convicted as noted hereinbefore.

2. Brief facts of the prosecution case are that on 30th December, 2016, at about 11.30 AM, a quarrel took place between the deceased and one Vikram and his companions on some issue. On the same day itself, in the evening at about 9.00 PM, Vikram and his companions came at the house of the deceased, and after exhorting “*tujhe aaj nahi chhodenge*” started assaulting the deceased with knives. Deceased’s mother Veena Devi (PW-11) was also present in the house who requested the assailants to leave her son, but they continued to assault the deceased, and thereafter as PW-11 started shouting, the assailants fled away from the spot. Thereafter, with the help of her daughters Neelu and Sushma, Veena Devi took the deceased to the BJRM Hospital in an e-rickshaw followed by TSR, where the deceased was declared “brought dead”. Information was given to the police at no. 100 by father of the deceased Dalip Mishra (PW-14), which was recorded vide DD No. 39A (Ex.PW-21/A), and it was also informed that the deceased was taken to the hospital at Jahangir Puri. On this, SI Rohit (PW-21) alongwith Ct. Pawan (PW-16) reached the BJRM Hospital and thereafter, the body was sent for post mortem examination. SI Rohit recorded the statement of Veena Devi (Ex.PW-11/A), prepared the rukka and got FIR No. 694/2016 dated 30th December, 2016 under Section 302/120B IPC registered at PS Bhalswa Dairy (Ex.PW-10/B).



3. Dr. Anshul Saxena at BJRM Hospital conducted the post mortem examination on the body of deceased on 31st December, 2016 and tendered his report (Ex.PW-3/A). He opined:

“BRIEF HISTORY AS PER I/O:

As per the Inquest papers, the deceased was allegedly assaulted at his home with knife on 30.12.16. He was subsequently brought to BJRM Hospital, Jahangir Purl where he was declared as brought dead on 30.12.16 at 09:40 pm vide MLC no. 127610.

GENERAL EXAMINATION:

Clothing: Body was attired in vest (torn at places), lower and underwear. Blood stains were present over the apparels.

Built: Moderately built.

Eyes: Eyes were open, conjunctivae were pale and corneae were hazy.

Mouth: Open. Other Natural Orifices: Unremarkable.

Rigor Mortis: Present all over the body.

Hypostasis: Faintly present at the back except over the pressure areas and fixed.

Decomposition Changes: Nil.

EXTERNAL INJURIES:

1. *Abrasion, reddish in colour, measuring 0.5 x 0.2 cm, was present over right side of face, situated 0.5 cm above and 1 cm away from outer canthus of right eye.*

2. *Superficial Incised wound, measuring 5 x 0.1 cm, was present over back of head and neck on the left side, its lower end being situated 4 cm below and 3 cm away from external occipital protuberance.*

3. *An obliquely placed, wedge shaped penetrating stab wound, having fresh margins, measuring 2.5 x 0.5 cm was present over back on the right side, its medial end being 13 cm below and 5 cm away from the external occipital protuberance. Further the wound track was perforating back and neck muscles on the right side and finally penetrating the right*



carotid artery. The direction of the wound was from lateral to medial, anterior to posterior and above downwards.

4. An obliquely placed, wedge shaped penetrating stab wound, having fresh margins measuring 2 x 0.3 cm, was present over back on the left side, its medial end being 13.5 cm below and 5.5 cm away from the external occipital protuberance. The wound track was further penetrating back muscles on the left side. The depth of the wound was 3 cm and its direction was from lateral to medial, anterior to posterior and above downwards.

5. A horizontally placed, wedge shaped penetrating stab wound, having fresh margins, measuring 2.6 x 0.3 cm, was present over back in the midline, being situated 16 cm below the external occipital protuberance. The wound track was further penetrating back muscles on the left side. The depth of the wound was 3 cm and its direction was from anterior to posterior.

6. An obliquely placed, wedge shaped penetrating stab wound, having fresh margins, measuring 2.3 x 0.3 cm, was present over back on the right side, its medial end being 6.5 cm below and 1 cm away from previous injury. Further the wound track was perforating through back muscles on the right side and penetrating the upper lobe of right lung. The direction of the wound was from lateral to medial, anterior to posterior and above downwards.

7. A vertically placed, wedge shaped penetrating stab wound, having fresh margins, measuring 3 x 0.3 cm, was present over back on the left side, being situated 1.7 cm below injury number 4. The wound was associated with tailing over a length 8 cm. The wound track was further penetrating back muscles on the left side. The depth of the wound was 2.5 cm and its direction was from lateral to medial, anterior to posterior and above downwards.

8. Superficial incised wound, measuring 9 x 0.1 cm, was present over back on the left side, its upper end being situated 3 cm below and 11 cm inner to left shoulder tip.



9. *Superficial incised wound, measuring 2 x 0.1 cm, was present over back on the left side, its upper end being situated 3 cm below and 2 cm inner to left shoulder tip.*

10. *A horizontally placed superficial Incised wound, measuring 3 x 0.1 cm, was present over ' back on the left side, situated 3.5 cm below posterior axillary line.*

11. *A horizontally placed, wedge shaped penetrating stab wound, having fresh margins, measuring 3 x 0.3 cm, was present over back on the left side, being situated 10 cm below and 1.5 cm away from posterior axillary line. Further the wound track was perforating through intercostal muscles on the left side and penetrating the lower lobe of left lung. The direction of the wound was from lateral to medial, anterior to posterior.*

12. *An obliquely placed superficial incised wound, measuring 1.4 x 0.1 cm, was present over back in the midline, situated 16 cm above upper end of gluteal cleft.*

The above mentioned injuries were ante-mortem in nature.

INTERNAL EXAMINATION

A) Head

Scalp: Intact and unremarkable.

Skull: Intact and unremarkable.

Brain: Brain matter was softened, pale and oedematous.

B) Neck

Subcutaneous tissue: There was extravasation of blood over the neck muscles and soft tissues on the right side. Perforating injuries to neck muscles were present as described above.

Pharynx, Larynx and Trachea: Mucosa was pale. Hyoid Bone and neck cartilages showed no fractures, Thyroid gland was grossly unremarkable.

Oesophageal mucosa was pale. Penetrating injury to right carotid artery was present as described above.

C) Chest

Wall and Rib Cage: Chest wall injuries were present as described above.



Pleural cavity: Both pleural cavities contained frank and clotted blood.

Lungs: Penetrating injuries were present over the lungs as described above. Both the lungs were soft, pale and frothy fluid oozed out on cut section.

Heart: Heart weighed 340 g. Coronaries were patent on cut section.

D) Abdomen.

Peritoneum: Intact and unremarkable.

Stomach: Stomach contained yellowish partially digested food material having no abnormal odour. Mucosal walls were unremarkable.

Small intestine: Intact and unremarkable.

Large intestine: intact and unremarkable.

Liver: Pale on cut section.

Spleen: Unremarkable on cut section.

Kidneys: Pale on cut section.

Genitalia: Unremarkable.

E) Pelvis: Intact and unremarkable.

F) Spinal Column: intact and unremarkable.

OPINION:

The deceased died due to haemorrhage, secondary to injury to the right carotid artery and lungs, by a sharp cutting/stabbing instrument. Injury no. 6 and 11 are sufficient to cause death in ordinary course of nature.

Time since death: Between 12 - 24 Hrs. at the time of post-mortem examination.

Total inquest papers: 08 (Eight) Papers.

Total pages of PM report: 02 (Two).

Specimen preserved: 1. Clothes. 2. Blood sample on gauze piece.

With seal of 'A.S. FMT BJRM HOSPITAL'

4. Further investigation in this case was carried out by Insp. Manoj Kumar (PW-20). He inspected the scene of crime, and thereafter made an



attempt to trace the accused persons, but they could not be found. He searched for the accused persons in the area of Mukandpur Chowk and Bhalswa Lake and thereafter on 2nd January 2017, Neelu Mishra pointed towards five boys sitting in a park near Bhalswa Lake and all those five boys were apprehended by the police party. PW-20 interrogated all those five boys who disclosed their names as Praveen, Rahul, Bijender @ Vishnu, Irshad @ Bablu and Narender and thereafter, arrested them vide arrest memo Ex.PW-6/A-1, B-1, C-1, D-1 and E-1 respectively. Statement of Neelu Misra was recorded and she was discharged and thereafter, disclosure statement of all these five accused were also recorded (Ex.PW-6/A-3, B-3, C-3, D-3 and E-3 respectively). Thereafter, recoveries were effected pursuant to the disclosure statements and after completion of investigation, charge-sheet was filed and the appellants were charged for offences punishable under Sections 147, 148 and 302 read with 149 IPC. To prove its case, the prosecution examined 21 witnesses and on the other hand, the defence also examined 14 witnesses to dent the case of the prosecution.

5. Learned counsels appearing on behalf of the appellants assail the impugned judgment on the grounds that there are material contradictions in the testimony of the witnesses qua the presence of the appellants at the scene of crime and therefore the Trial Court erred in relying upon the version put forth by the prosecution witnesses and thereby convicting the appellants. It was pointed out that as per Veena Devi (PW-11), in her cross-examination she stated that Vikram, Shiva, Irshad, JCL'J', Kalu, Babu, Rahul and Vishnu came to her house and that Vikram started stabbing the deceased, while his associates started beating the deceased with lathis and



dandas. Neelu (PW-13) deposed that when she returned from the market, she saw a large crowd in the street with Babu, Rahul, JCL‘J’, Kalu, Shiva standing outside her house with *dandas* and knives, and when she started running to reach her house, she saw Shiva, Vikram, Vishnu and Narender coming out of the house, with Vishnu and Vikram having knives in their hands and Narender having *saria* in his hands, and thereafter, these accused persons fled away. Sushma (PW-15) stated that Vishnu and Vikram were having knives in their hands and Shiva JCL‘J’ and Kalu had *Danda* is in their hand and that Narender was standing outside the gate of her house with attendant is hand and Irshad was also standing there with 2-3 other boys. In her cross-examination, she added that Irshad was also having a *saria*. Therefore, it can be seen that there are glaring inconsistencies inter se the witnesses with respect to the role played by the appellants and their positioning at the spot, for which these witnesses cannot be relied upon. It was further contended that the Trial Court erred in relying upon the “dying declaration” of the deceased as there are glaring contradictions in the version put forth by PWs 11 to 15 with respect to their seating position in the TSR as well as the statement of the deceased. Further, learned counsel also submitted that the *dandas* shown to have been recovered at the instance of the appellants were not in accordance with law and ought to be rejected by the Court.

6. In addition to the aforesaid submissions, learned counsel appearing on behalf of appellant Narender contended that there are material contradictions qua the appellant in the testimony of PW-11, PW-13 and PW-15. It was pointed out that PW-11 stated that she did not remember if



Narender was present at the time of commission of offence, while PW-13 stated that she saw Narender with *saria* and coming out of the house and PW-15 stated that Narender was standing outside with a *danda* in his hand. It was further pointed out that all the defence witnesses have categorically stated that the appellants were picked up from their house by the police on 30th December, 2016, and therefore, it becomes clear that all the appellants have been falsely implicated in the present matter. It was further contended that even the identity of appellant Narender is doubtful as it was in fact some other Narender son of Ram Kishan who was involved in the murder of the deceased, who was murdered by the family of the deceased in revenge. Learned counsel further contended that no public person was made a witness to the recovery proceedings and therefore, the recoveries become doubtful and reliance was placed on the decision in (1988) 3 SCC 609 Kehar Singh v. State (Delhi Admin.). It was also contended that as per the testimony of PW-13, the appellant was in possession of an iron rod and not a stick which is shown to have been recovered at the instance of the appellant, and hence, the recovered *danda* is planted on the appellant. Even otherwise, as per the MLC of the deceased, the death occurred due to stabbing with a sharp object and not with a *danda* or *saria*, which again shows that the appellant is not connected with the offence alleged. It was submitted that in the light of these contentions, the appellant must be given benefit of doubt, and be acquitted.

7. Further, learned counsel appearing on behalf of appellant Irshad submitted that the prosecution failed to establish any motive of appellant and Irshad to kill the deceased and even if the version of the prosecution



with respect to the altercation in the morning of 30th December, 2016 is to be believed, the same does not make out any cogent motive for appellant to commit or plan the murder of deceased. It was further submitted that no stains of blood or any other mark were found on the clothes of the appellant which could link the appellant with the commission of the offence.

8. On the other hand, learned APP appearing for the State submitted that the prosecution had successfully established the chain of circumstantial evidence against the appellants and the judgment of learned Trial Court is based on proper appreciation of evidences, and therefore the impugned judgement be upheld and the present appeals be dismissed. To buttress his contention, learned APP relied upon the following facts:

- i. That Veena Devi (PW-11) was the eye witness to the incident and her presence at the scene of crime which was her house at 9 PM was natural. Veena Devi categorically stated that Vikram and his associates entered her house and that Vikram and Shiva stabbed the deceased while the others had beaten the deceased with lathis and *dandas*.
- ii. That Neelu (PW-13) and Sushma (PW-15) who were the sisters of the deceased have consistently deposed that both of them had gone to the market on 30th December, 2016 at about 7-7:30 PM and when they were returning to their house at about 9-9:30 PM, they saw appellants standing outside their house and accused Shiva, Vikram, Vishnu and Narender coming out of their house with Vishnu and Vikram having knives in their hands and Narender having *Saria/danda* in his hand. The presence of these two



witnesses is also corroborated by the testimony of Veena Devi (PW-11) who stated that right after the incident both her daughters had come back to the house and therefore, their testimonies become admissible in view of Section 6 of the Indian Evidence Act, 1872. Reliance was placed on the decision in (2011) 6 SCC 308 Rajput Jabbarsingh Malaji v. State of Gujarat.

- iii. That as per the MLC (Ex.PW-4/A), the deceased was found dead when examined and as per the post mortem report (Ex.PW-3/A), 12 injuries were found on the body of the deceased. It was opined that the *deceased died due to hemorrhage, secondary injury to the right carotid artery and lungs by a sharp cutting/ stabbing instrument*, and three injuries were found to be sufficient to cause death.
- iv. That all the appellants were arrested on 02nd January, 2017 near the Boat Club, Bhalswa Jheel at about 4 PM when the police team along with Neelu (PW-13) notice them sitting in the park. After their arrest, pursuant to their disclosure statement, *dandas* were recovered from all five appellants, i.e. Ex.PW-6/Article 1 from appellant Praveen, Ex.PW-6/Article 2 from appellant Narender, Ex.PW-6/Article 3 from appellant Bijender @ Vishnu, Ex.PW-6/Article 4 from appellant Rahul and Ex.PW-6/Article 5 from appellant Irshad @ Babloo. All these recoveries were duly proved by Ct. Pawan (PW-16), HC Sikander (PW-18) and Insp. Manoj (PW-20).



- v. That as per the FSL Report (Ex.PW-19/A), the DNA profile generated from the blood found on the sweater of appellant Narender (Ex.7b/ Ex.PW-6/ Article 6) and the *danda* (Ex.S-1/ Ex.PW-6/Article 2) tallied with the DNA of the deceased.
 - vi. That motive of the appellant is evidently clear from the testimonies of PW-13 and PW-15 who categorically deposed about the quarrelling incident which took place at about 11-11.30 AM on 30th December, 2016 between the deceased and Bijender @ Vishnu, Rahul, Babu, JCL‘J’ and other boys.
 - vii. That PWs 11 to 15 have clearly deposed that on their way to the hospital, when they were in the TSR, the deceased told them that Vikram, Shiva, Narender, JCL‘J’, Kalu, Rahul and Irshad had caused injuries to him.
 - viii. That Ms. Kadambari Awasthi (PW-2) had categorically deposed that the appellant had refused to participate in the TIP proceedings and their denial was duly recoded in Ex.PW-2/A – E, for which adverse inference must be drawn against the appellant. Reliance was placed on the decision in (2020) 7 SCC 391 Mohd. Anwar v. State (NCT of Delhi).
9. Learned APP further countered the contention put forth on behalf of the appellant. He submitted that the fact that PW-13 stated that Narender was carrying a *saria*, while PW-15 stated that Narender was carrying a *danda* is a minor contradiction and does not go to the root of the matter, and in this regard reliance was placed on the decision in (2013) 14 SCC 434 Rohtash Kumar v. State of Haryana. With respect to the argument that no



public person joined the recovery proceedings, it was submitted that mere non-joining of independent witness is not fatal to the case of the prosecution and reliance was placed on the decision in (2013) 6 SCC 595 Kashmiri Lal v. State of Haryana. It was also the case of the appellants that the deceased had died at the house and therefore, the dying declaration was concocted by the witness, however, it was submitted by learned APP that a suggestion to this effect was categorically denied by the PW-11, PW-13 and PW-15, and furthermore, PCR record of the call made by PW-12 at 21.17.10 hours records “*Chanchal naam ka injured aaya hai BJRM me*”. And these strengthen the fact that deceased was in fact alive when he reached the hospital.

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

11. Veena Devi (PW-11) was the mother of the deceased and an eye-witness to the incident. She stated that her son/deceased was once involved in a case of beating in which he was arrested and thereafter, the police pressurized him to sell Ganja and make payment to them, otherwise they will issue an externment order against him. Fearing this, her son/deceased started selling Ganja and making payments to the police. On 30th December, 2016, due to illness, her son/deceased could not go to sell Ganja and Vikram reached there to sell Ganja. When her son/deceased got to know about the same, he reached there and asked Vikram not to sell Ganja there otherwise he will have nothing to make payment to the police. And on this, a quarrel took place between her son/deceased and Vikram and his companions. Thereafter, her son/deceased returned back to his house and at about 9 PM,



Vikram, Shiva, Irshad, JCL‘J’, Kalu, Babu, Rahul and Vishnu came to her house and knocked the door which was answered by her son/deceased. Thereafter, Vikram started stabbing her son with knife and other associates started beating her son with lathis and *dandas*. She came out of her kitchen and requested all the assailants not to kill her son but they pushed her aside and continued assaulting the deceased. The deceased tried to escape from the clutches of the assailants and run on the staircase, but Vikram and Shiva stabbed him on his back and neck and gagged her son so that he may not raise any alarm. Thereafter, her son fell on the ground and the assailants fled away. At the same time her daughters Neelu and Sushma returned home and saw the assailants running away from their house. She further stated that initially they took an e-rickshaw upto police chowki, red light crossing from there, they took a TSR and shifted the deceased in the TSR and reached hospital at Jahangir Puri. She stated that at the time they took TSR, her husband, daughters and son were with her. At the hospital, her son was declared dead by the doctor. Police met her at the hospital and recorded her statement (Ex.PW-11/A). She further deposed that after 3-4 days of the incident, she went to the police station where she identified the accused persons and at that time, her daughters and son were also with her. She further stated that in the TSR, her son Anchal spoke with the deceased and that the deceased told the name of the assailants to Anchal and his father. In her cross-examination, she stated that on her raising the alarm, the neighbours came out of their house, but as some of the assailants were standing outside the door of her house with dandas, no neighbour came forward to save her son. She denied the suggestion that Narender son of



Ram Kishan was also involved in the murder of her son/deceased. She further stated that her house was triple-storied and that she used to reside on the ground floor and also that no tenant used to reside on the first and the second floor of a house at the time of the incident. She further stated that Vikram and Shiva gave knife blows to her son.

12. Neelu (PW-13) was the sister of the deceased. She stated that on 30th December, 2016, at about 11-11:30 AM, she had gone to the matrimonial home of her sister Sushma which was a distance of about 10-15 minutes from her house. While she was sitting on the roof and talking with her sister Sushma, she saw many persons gathered in the street and quarrelling with each other. On seeing this, she made a call at number 100 and informed the police about the incident. Thereafter, she reached the spot and found that those boys were quarrelling with her brother/deceased, and on asking her brother/ deceased, he told her “*didi yeh Vikram Jahangirpuri ka BC hai*” and he is selling ganja in this area using his name and that today he has caught hold of him. Police arrived at the spot and beat all the boys there and thereafter, made Vikram run away and also asked her brother/deceased to go away. She stated that in the evening at about 7.00-7:30 PM, she along with her sister Sushma went to the market and at about 9-9:30 PM, when she and Sushma were returning back from the market, they saw a large crowd gathered in the street. Babu, Rahul, JCL‘J’, Kalu, Shiva were standing outside her house with the *danda* and knives in their hands. On seeing her and Sushma, the said persons started running away and thereafter, Shiva, Vikram, Vishnu and Narender came out of their house, with Vishnu and Vikram having knives in their hand and Narender having *saria* in his hand.



On entering the house, they found blood all over the house and found her brother/deceased lying on the bed in the outer room having bleeding injury over his body. She with the help of her mother and sister Sushma shifted her brother/deceased to e-rickshaw and reached the '*chowk*' from where they hired one TSR and took her brother/ deceased to the BJRM hospital. She stated that Anchal met them at the *chowk* and accompanied them. On the way to the hospital, her father also met them and sat on the said TSR. On the way to the hospital, her brother/deceased told them that Vikram, his brother Shiva, Narender (brother-in-law of Vikram) and Vishnu along with some other boys of Jahangir Puri had come to the house and that Vishnu and Vikram gave him knife blows, while JCL 'J', Rahul and Praveen caught hold of him. In her cross-examination, she stated that on seeing her, the accused persons raised alarm and before she reached the entrance of her house, the accused person inside her house also came out and started running. She denied having seen Narender son of Ram Kishan, but stated that she saw Narender facing trial in the present case. She stated that at that time, her mother was not present in the *gali* and was inside the house. She stated that the accused persons were arrested in her presence from near Bhalswa Jheel on 2nd January, 2017.

13. Sushma (PW-15) was the sister of the deceased and corroborated the version of Neelu (PW-13). She stated that when they reached the door of their house, 4-5 persons came out of their house i.e. Vikram, Shiva, JCL 'J' and Kalu. Vishnu and Vikram had knives in their hands and other three were having *dandas*. Narender was standing outside the house with *danda* in his hand. Irshad and 2-3 other boys were also standing at the door but she



did not remember the name of those boys. She further stated that on the way to the hospital, her brother/deceased told her that Vikram, Vishnu, Shiva, brother-in-law of Vikram i.e. Narender, JCL‘J’, Kalu, Rahul and Irshad caused injuries to him. In her cross examination, she stated that the assailants were carrying *danda*, cricket wicket and *saria*. Narender and Irshad were carrying *saria* and others were carrying *dandas*. In her cross-examination, she stated that her brother/deceased had quarrel with Vikram, Shiva, Vishnu, Irshad, Praveen, Babu @ Bijender, Rahul, JCL‘J’ and Narender on 30th December, 2016 at about 10.30 AM but she did not know the reason for the quarrel.

14. Anchal Mishra (PW-12) was the brother of the deceased. He deposed that at about 9.15-9.30 PM, he received a call from his father who informed him that the deceased had sustained injuries and thereafter he reached Mukand Pur Chowk where he saw his brother/deceased in a battery rickshaw with his sister Neelu, Sushma and his parents. He also boarded the three-wheeler and asked his brothers/deceased as to who had injured him. His brother/deceased replied that Vikram, his brother Shiva, Vishnu, Rahul, Praveen, Irshad, Narender, JCL‘J’, Kalu and 3-4 other associates had caused injuries. They reached BJRM Hospital where his brother/deceased was examined and after 10-15 minutes he was declared brought dead. On 31st December, 2016, he along with his family members went to BJRM Hospital mortuary, where he identified the dead body of his brother/deceased (Ex.PW-12/A) and after the postmortem examination, the dead body was handed over to them. In his cross-examination, he stated that his brother/deceased did not tell the father’s name of these accused persons as



she was already knowing the accused persons prior to the incident and that the deceased also did not disclose the description of the accused persons for the same reason.

15. Dalip Mishra (PW-14) was the father of the deceased. He deposed that on 30 December 2016, he left for his duty at golf course, Bhalswa Jheel at about 1:30 PM. At about 9 PM, one neighbour informed him that some boys had entered his house and had beaten his son, on which, he came running to the house and made a call at number 100. On reaching his house, he came to know that his son was already taken to the hospital by his family members. Thereafter, he made a call to his son Anchal and informed him about the incident and Anchal told him that he was reaching Mukand Pur Chowk, on which, he also ran and reached Mukand Pur Chowk where he noticed that his son/deceased was taken by his family members in battery rickshaw. He stated that from Mukand Pur Chowk, they hired one TSR and shifted his son/deceased in the TSR and took him to BJRM Hospital. On their way to the hospital, she asked his son/deceased as to who had injured him on which his son/deceased replied that Vikram, Vishnu gave him injuries with knives and at that time 2- 3 more boys caught hold of him and he stated the name of those boys as Shiva, JCL'J', Rahul, Narender, Bablu @ Irshad and Praveen. At the hospital, the doctor examined his son/deceased and told him that he was dead. Next day at the hospital, he identified the dead body of his son (Ex.PW-14/A) and after the postmortem examination, the dead body was handed over to him.

16. SI Rohit (PW-21) deposed that on 30th December, 2016, he received information recorded vide DD No. 39A regarding a boy being stabbed by



entering in a house at C Block, Gali No. 29, Bhalswa dairy. He called the caller who informed him that he was taking his son/deceased to Jahangir Puri Hospital, on which, he along with Ct. Pawan reached BJRM Hospital and met mother of deceased/eyewitness Veena Devi and recorded her statement (Ex.PW-11/A), prepared the Rukka on which FIR was got registered. He also called the crime team and thereafter, further investigation in the matter was handed over to Insp. Manoj. In his cross-examination, he stated that at the hospital she met both the sisters of deceased and his mother, and denied having met Dalip Mishra at the hospital.

17. Insp. Manoj Kumar (PW-20) was the investigating officer in the present case. He deposed that on 30 December 2016, he received a message that an information was received at the police station from one Dalip Kumar that his son Chanchal Mishra was stabbed and in the meantime, information was also received from BJRM Hospital about admission of one injured Chanchal Mishra at the hospital. He along with his staff reached the Hospital where Chanchal Mishra was already declared dead and SI Rohit was also present at the hospital. From the hospital, he went to the place of incident that is Gali number 21, Mukand Pur and inspected the scene of crime. Crime team also reached the spot and inspected the scene of crime. He collected the blood samples, bloodstained earth and seized them vide memo Ex.PW-17/D and Ex.PW-17/E. Bloodstained towel and *gamchha* were also seized vide memo Ex.PW-17/E. Bloodstained blanket cover were seized vide memo Ex.PW-17/I. From the inner room of the house, bloodstained earth and earth control were also seized in three separate



containers vide memo Ex.PW-17/A, B and C, and one Fast Track watch was also seized vide memo Ex.PW-17/H. at the instance of Veena Devi, he prepared the site plan Ex.PW-20/A. On 2nd January, 2017, Neelu Mishra came to the police station to enquire about the case, and he took her with himself and searched the accused persons in the Mukandpur area and near Bhalswa Lake. Thereafter, Neelu Mishra pointed towards five boys sitting in the park near Bhalswa Lake, all the five boys were apprehended and after interrogation, all of them were arrested and their disclosure statements were recorded. Rahul and Irshad got recovered *dandas* from the left side of the road passing through the forest and the other three accused got *dandas* recovered from the other side of the road. All these *dandas* were seized vide memo Ex.PW-6/A-4 to E-4. Efforts were made to search the remaining accused but they could not be found. Thereafter, he moved an application for TIP but the same was refused. NBWs were obtained against Sachin @ Kalu, Vikram and Shiva and after completion of investigation, chargesheet was filed.

18. Appellant Narender in his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") denied his presence at the place of incident. He stated that he was arrested from his house and that his disclosure statement was recorded at the police station under pressure and signatures were obtained on blank papers.

19. In their respective statements under Section 313 Cr.P.C., appellants Vijender @ Vishnu, Praveen and Irshad @ Babloo denied their presence at the place of quarrel on 30th December, 2016 at about 11-11.30 AM at Shardhanand Colony and Swaroop Nagar Bhalswa Dairy. They further



stated that they refused to join the TIP as his photographs were taken by Sushma and Neelu at the police station and were shown to the other witnesses. They stated that they were innocent and were falsely implicated in the present case.

20. Appellant Rahul in his statement under Section 313 Cr.P.C. stated that he had made a call at no. 100 with respect to quarrel in the morning of 30th December, 2016 and informed the police about the incident as well as the location.

21. Daya Wati (DW-1), Shakila Begum (DW-2), Ruksar (DW-3) and Shambhi Mandal Rai (DW-4) deposed that the police had arrested Rahul, Vishnu, Praveen and Irshad on 30th December, 2016 at about 10.30 PM from the house of Raju son of Nafe Singh at Khasra No.51, Gali No. 13, D-Block, Najafgarh.

22. From the crime scene report Ex.PW-8, it has been clearly established that incident took place on the ground floor of H.No. 1494, Gali No.21, D Block, Part-1, Mukundpur where blood was found scattered on the floor, bed, household articles and jute sack kept over there including in the gallery of the house. Since the incident took place at night in the house of Chanchal, the presence of Veena Devi at the place of occurrence was natural and thus her testimony as a eye-witness cannot be brushed aside.

23. Veena Devi was candid enough even to speak about the fact that after her deceased son Chanchal was first arrested in a case of beating, thereafter under the pressure of Police he started selling ganja failing which there was threat of externment and as his son could not go to sell ganja due to illness, Vikram reached the spot to sell the ganja, on which conflict arose between



them, due to which quarrel took place between them which quarrel is even deposed to by her two daughters who had witnessed the same in the morning of 30th December, 2016, namely, Neelu (PW-13) and Sushma (PW-15). According to Veena Devi at 9.00 PM on 30th December, 2016 Vikram, Shiva, Irshad, JCL'J', Kalu, Babu, Rahul and Vishnu came to their house and the door of the house was opened by Chanchal. Vikram started stabbing Chanchal and his associates started beating him with lathis and dandas. This version of Veena Devi is duly corroborated by the post-mortem report of Chanchal which notes as many as 12 superficial injuries on the deceased Chanchal. She further stated that she was in the kitchen and on coming out requested all of them with folded hands not to kill her son, but she was pushed aside. When her son tried to escape from their clutches and ran towards staircase, Vikram and Shiva stabbed him on his back and neck, which injuries are also noted in the post-mortem report. She clarified, at that time she and Chanchal were the only persons at home and she raised alarm, on which the accused persons fled away after her son Chanchal fell down. She further stated that at the same time her daughters Neelu and Sushma returned home and they had seen the accused running from her house. She thus reiterated her statement made to the Police vide Ex.PW-11/A which bore her thumb impression at point 'A' on which ruqqa, the FIR was registered. She clarified that Babu was also known by the name of Praveen. Thus, out of the five assailants before this Court Veena Devi has clearly named Vijender @ Vishnu, Irshad @ Bablu, Parveen @ Babu and Rahul as the four assailants who had come with Vikram, Shiva, JCL'J' and Kalu to her house at 9.00 PM and assaulted them. This witness has though



named Narender as one of the accused with whom his son had a quarrel in the morning, as told by her son, however at 9.00 PM it was the other four accused besides Vikram, Shiva, JCL‘J’ and Kalu who came to her house and attacked Chanchal.

24. Version of the eye-witness Veena Devi is duly corroborated by her two daughters Neelu (PW-13) and Sushma (PW-15). Both of them deposed about the morning incident which took place near the house of Sushma and that while they were sitting on the roof at around 11.00 – 11.30 AM there was some quarrel going on near the shop of Gupta Building Material and she found that Vishnu, Rahul, Babu, JCL‘J’ and other boys were carrying dandas and sariyas and that she made a call at 100 number and ongoing closer they found that they were quarelling with her brother Chanchal and when she asked Chanchal as to why they were quarelling, Chanchal said “*didi yeh Vikram Jahangirpuri ka BC hai*” and he is selling ganja in this area using his name, as told to him by other boys and today he has caught hold of Vikram and when Chanchal inquired from Vikram as to why he was using his name while selling ganja, the quarrel ensued. In the meantime, Police reached and they started beating the people standing over there. Further, the Police Officer said that on small issues don’t call at 100 number. As regards the evening incident Neelu stated that at about 7.00 – 7.30 PM she along with her sister went to the market and while they were coming back at around 9.00 – 9.30 PM she saw large crowd in the street and that Babu, Rahul, JCL‘J’, Kalu, Shiva were standing outside her house having dandas and knives. She and Sushma started running to reach their house, on which the accused persons named above said *bhag bhag*. She



stated that she saw Shiva, Vikram, Vishnu and Narender coming out of their house. Vishnu and Vikram were having knives in their hand. Narender was having sariya in his hand about one and a half feet long. They raised alarm but all the accused persons fled away. She entered the house and found that there was blood all over the house and Chanchal was lying on the bed in the outer room, bleeding from his injuries over the body and her mother was sitting besides Chanchal and weeping. In the meantime, some public persons called e-rickshaw with the help of her sister Sushma, they shifted Chanchal in an e-rickshaw and thereafter they hired a TSR and took Chanchal to BJRM hospital. She further stated that on the way Anchal, their brother met them and accompanied them besides their father Dilip Mishra, who also sat in the said TSR. On the way she made calls at 100 number. According to her the three sons of tankerwala i.e. Rahul, Babu and Vishnu and their servant Irshad @ Babloo, Narender and thereafter JCL 'J' were arrested by the Police. She identified Rahul, Babu, Vishnu, Irshad and Narender in the Court.

25. Similar is the testimony of Sushma who also states that when they reached the home at around 9.00 – 9.30 PM on seeing them one boy said bhag bhag. From the testimony of these two witnesses, it is evident that besides four appellants named by Veena Devi, namely, Vijender @ Vishnu, Irshad @ Babloo, Parveen @ Babu and Rahul this witness also names Narender coming out of the house, who is not named by Veena Devi.

26. Learned counsels for the appellants have contended that there are material contradictions in the testimonies of the witnesses. Undoubtedly, Neelu deposed that Vishnu and Vikram were having knives in their hands



whereas Sushma stated that Vikram, Shiva, Vishnu, JCL‘J’ and Kalu were having knives in their hands. However, this is not a contradiction which goes to the root of the case for the reason, when a crowd is seen outside the house with weapons in the hand; it is but natural for people to be overcome by the course of events and each witness will not be in a position to observe every minute details of each member of the unlawful assembly. Further, the testimonies of Veena Devi and Neelu are consistent as they both say that Vishnu and Vikram were armed with knives, rest with dandas/sariyas. Merely because one of the witnesses states about a different weapon of offence in the hands of the assailants, which could be due to fading of the memory or even failure to observe each one in that traumatic situation, it cannot be said that there are any material contradictions.

27. Further, according to the prosecution witnesses, the deceased made a dying declaration to his family members when Anchal on the way asked him as to who assaulted him. The fact that Anchal accompanied Chanchal to the hospital is corroborated by the MLC Ex.PW-4/A which notes brought by Anchal, the brother. In view of the fact that Anchal accompanied the deceased in the TSR and got him admitted in the hospital, even though there is force in the deposition that the deceased informed the names of his assailants, however, this evidence is required to be accepted with caution for the reason after Chanchal was admitted in the hospital, his BP was not recordable and thus his physical condition was very poor. Therefore, this Court is inclined to discard the so-called dying declaration purportedly made by the deceased in TSR to his family from consideration.



28. Though the defence has examined witnesses, namely, Daya Wati, Shakila Begum and Ruksar who deposed that all appellants herein except Narender were arrested at 10.30 PM on 30th December, 2016 from the house of Raju son of Nafe Singh at Gali No.13, D Block, Mukundpur, however these depositions do not inspire confidence and are liable to be discarded. It may be noted that the incident itself took place between 9.00 – 9.30 PM on 30th December, 2016. The first PCR call in this regard was received at 9.17 PM on 30th December, 2016 and the closing time of the PCR itself was 11.10 PM and by that time FIR had also not been registered, as the ruqqa was dispatched only at 11.40 PM on 30th December, 2016 whereafter the FIR was registered. Hence, the arrest of four appellants except Narender could not have taken place at 10.30 PM as deposed to by the defence witnesses.

29. Rahul also examined Manoj Sisodiya (DW-12) to claim that he used to exercise in gym and that Rahul left the gym between 8.30 to 9.00 PM on 30th December, 2016. However, as noted above, the incident took place somewhere between 9.00 – 9.30 PM in the house of Veena Devi and thus even if Rahul had left the gym at 8.30 or thereafter, there was sufficient time for him to have reached D Block at the house of Chanchal for the reason the gym was also in village Mukundpur near Shiv Mandir, Main Road and further no register was produced to show the exact time when Rahul left the gym.

30. Since Veena Devi is a natural witness and her testimony stands corroborated by the evidence of Neelu and Sushma qua the four appellants, namely Vijender @ Vishnu, Irshad @ Babloo, Parveen @ Babu and Rahul,



the prosecution has proved beyond reasonable doubt that these four appellants along with other accused who were not arrested formed an unlawful assembly and participated in the commission of offence of murder of Chanchal.

31. Learned counsel for Narender has contended that the present Narender has been mistakenly involved in the incident and the actual accused was Narender son of Ram Kishan who was killed by the family members of Chanchal with the motive that he was one of the accused who killed Chanchal. Though in cross-examination suggestions have been given to witnesses, Neelu and Sushma in this respect who have denied the same, however the said denial could be also for reason that an admission of this fact by Neelu and Sushma who are accused in FIR No.204/2017 would have adversely affected them in the said trial.

32. Identity of the appellant Narender is disputed for the reason after the death of Chanchal on 30th December, 2016, Anchal, Neelu, Sushma and Dilip Mishra i.e. brother, two sisters and father of Chanchal were allegedly involved in the murder of one Narender son of Ram Kishan and the motive attributed in that case is that the said Narender was one of the assailants of Chanchal on the 30th December, 2016.

33. Be that as it may, without going into the aspect whether the present Narender has been mistakenly identified or not, in view of the fact that the eye-witness of the incident Veena Devi has not mentioned Narender as an assailant who came inside the house and assaulted her son, this Court is of the considered view that Narender is entitled to grant of benefit of doubt.



34. Therefore, the impugned judgment of conviction and order on sentence qua Narender is set aside and upheld qua the other four appellants i.e. Vijender @ Vishnu, Irshad @ Babloo, Parveen @ Babu and Rahul. Consequently, Crl.A.No.1269/2018 is disposed of whereas Crl.A.Nos. 926/2018, 927/2018, 928/2018 and 934/2018 are dismissed. Appellant Narender who is in custody be released forthwith if not required in any other case.

35. Copy of the judgment be uploaded on the website of this Court and be also sent to Superintendent Tihar Jail for updation of records, intimation to the appellants and necessary compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023

'vn/ga'

न्यायमेव जयते