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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 28th November, 2024***Pronounced on: 10th January, 2025***

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CRL.A. 639/2023**PITAMBAR BISHWA KARMA****.....Appellant**

Through: Mr. Anwesh Madhukar
(DHCLSC), Mr. Ishat Singh
and Ms. Prachi Nirwan,
Advocates.

versus**THE STATE (GOVT OF NCT) DELHI****.....Respondent**

Through: Mr. Aman Usman, APP for the
State.
Insp. Rishi Sharma, PS
Safdarjung Enclave.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal has been filed under Section 374(2) read with Section 383 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') assailing the judgement dated 19th November, 2022 and order on sentence dated 1st March, 2023 passed by Ms. Manisha Khurana Kakkar, Ld. ASJ-01 (FTC)-01 South District, Saket Courts, Delhi whereby the Appellant has been convicted in ***Sessions Case No. 172/2015*** arising out of ***FIR No. 131/2012*** registered at Police Station, Safdarjung Enclave under Section 302 of the Indian

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Penal Code (hereinafter referred to as 'IPC').

2. *Vide* the aforesaid impugned judgement of conviction and order on sentence, the Appellant had been convicted for the offence punishable under Section 302 of the IPC. The Appellant has been sentenced to undergo imprisonment for life and a fine of Rs.5,000/- and in default of payment of fine, to further undergo a rigorous imprisonment for a period of six months.

BRIEF BACKGROUND

3. Prosecution's case before the learned Trial Court is as follows:

i) On 24th April, 2012 at about 6:20 a.m., the body of the deceased was found at the *Naala* behind Green Fields School, A-1 Block, Safdarjung Enclave, New Delhi. It is stated that the first call was received by the Police Control Room ('PCR') at 6:55 a.m. regarding the recovery of a dead body. The said phone call was made by one Rajesh Kumar Ranjan (PW-2) who worked as a guard on night duty at the Central Market, Safdarjung Enclave. When PW-2 had reached the spot, he found a man lying unconscious with blood after which he called the Police from his mobile phone which he had purchased from his neighbor Rajeev Gupta, in whose name the said telephone number was registered.

ii) Upon receiving the information, the Station House Officer, Inspector Sandeep Ghai (PW-25) along with other Police officers had reached the spot *i.e.*, *Ganda Naala* from where the dead body was recovered which belonged to a male aged about 40-42 years having

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stab injuries on the left side of his chest and neck. The clothes of the deceased were also smeared with blood and mud. Inquiries were made at the time to identify the deceased, and a black bicycle with two sacks of garbage was found lying on the service road near the *Naala*. It was found that the bicycle had belonged to a rag picker of *Jhuggi* Cluster, Sector-1, R.K. Puram after which one Mahender Singh (PW-3) was traced who identified the deceased as Dharampal, who resided in the *Jhuggi* cluster of Sector 1, R.K. Puram and was a native of Bijnor, Uttar Pradesh.

iii) Upon personal search of the deceased by Head Constable Yadvir (PW-16), one Samsung mobile phone in red and black colour, cash amounting to Rs. 150/- and a bundle of *bidis* and matchbox was recovered which were seized *vide* seizure memo (Ex. PW12/A). At the time, Inspector Naresh Kumar (PW-8) along with the crime team had also reached the spot around 7:30 a.m. pursuant to which a crime scene report (Ex. PW8/A) was prepared and was handed over to the Investigation Officer, Sandeep Ghai (PW-25) in which it was recorded that the injuries were inflicted by a sharp-edged weapon on the neck and the chest of the deceased.

iv) Then, the body was sent to the mortuary of Jai Prakash Narayan Apex Trauma Centre, AIIMS through PW-16. Further, a rough site plan (Ex. PW12/B) was prepared by PW-25 and the exhibits were lifted from the spot *i.e.*, blood from the place where dead body was lying, blood which was found at a distance of 8-10 feet from the dead body, earth, pair of *chappals* belonging to deceased and the bicycle which belonged to deceased were taken into possession by the Police

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apart from two garbage sacks which were lying on the deceased's bicycle. All the exhibits were sealed in separate parcels and taken into possession by the Police *vide* seizure memo Ex.PW 12/C.

v) Then, PW-25 also prepared the *rukka* (Ex. PW-25/A) on DD No. 6A for the registration of the FIR which was handed over to Constable Naresh (PW-20) who took the same to P.S. Safdarjung Enclave, pursuant to which ***FIR No. 131/2012*** was lodged at P.S. Safdarjung for the offence under Section 302 IPC, at about 10:30 a.m. on the date of the incident. Upon inquiries being made by the Police, one Smt. Ram Pyari (PW-1) who ran a shop of cigarettes, *bidis*, matchbox and bangles in the Central Market, Safdarjung Enclave stated that on 24th April, 2012, the Appellant, who worked at Chawla Chicken Shop came to her asking for a *bidi* to which she had refused, she further stated that the Appellant went towards the *Naala*, where one *Kabari* (rag-picker) was present as well.

vi) PW-1, Ram Pyari had also stated that she saw the Appellant taking a knife from his chicken corner and going towards the *Naala* after which she saw the Appellant giving 3-4 knife blows to the rag-picker. Thereafter, the Appellant ran away with the said knife. As per PW-1, there were blood stains on the shirt of the accused person and that the *Kabari* had died later. It was also stated that the Appellant had a habit of taking *Ganja*. The statement of the said eye-witness was recorded by PW-25.

vii) It was stated by PW-25 that around 9:00 p.m. on the date of the incident, *i.e.*, 24th April, 2012, he had received secret information

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about the presence of the Appellant, who was hiding himself in the forest area behind R.K. Khanna Stadium, Safdarjung Enclave. A raiding team was prepared by the Investigating Officer (PW-25) consisting of Head Constable Sunil (PW-24) and Constable Naresh (PW-20) to apprehend the accused person. The Appellant was then arrested *vide* arrest memo (Ex. PW7/F) based on the identification of one Harjeet Singh Chawla (PW-7) who owned the shop named 'Chawla Chicken'. Then, the disclosure statement of the Appellant was recorded *vide* Ex. PW7/A. The Appellant, thereafter, had led the Police officials to the bushes near F-Block, Nauroji Nagar where a knife was recovered with blood stains from the said bushes. A sketch of alleged murder weapon, *i.e.*, the knife was prepared *vide* Ex. PW7/B and the same was seized *vide* seizure memo (Ex. PW7/C). The site plan of the place of recovery of the knife was also prepared *vide* Ex. PW7/E.

viii) Further, the blood sample of the Appellant was also obtained and seized *vide* seizure memo Ex. PW25/B. Blood-stained clothes worn by the Appellant at the time of the incident had also been seized *vide* seizure memo Ex. PW7/D in the presence of PW-7. The samples of the blood of the deceased Dharampal, blood-stained clothes of the Appellant and the recovered knife were sent to the Forensic Science Laboratory, Rohini on 5th June, 2012 which were examined by Dr. D.S. Paliwal (PW-27) to generate DNA profiles from the abovementioned samples. The FSL: DNA Report bearing No-2012/DNA-4042/1555 dated 6th June, 2013 (Ex. PW25/F) was then sent to the SHO, P.S. Safdarjung Enclave which was signed by PW-27. In the said report, it was stated that the DNA profile generated

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from the blood of the deceased Dharampal was found to be “similar” as that of the DNA profile generated on the blood-stained knife, which was the alleged murder weapon in the present case recovered at the instance of the Appellant.

ix) Then, the MLC Report of the deceased (Ex. PW10/A) dated 24th April, 2012 was prepared. The Post-Mortem Report of the deceased (Ex. PW4/A) was prepared on 25th April, 2012 wherein it was opined by Dr. Sanjay (PW-4) that the time of death of the deceased was one and a half days ago. As per the said Post-Mortem Report, several incised wounds were present on the neck and chest area of the deceased which were produced by a sharp weapon which were sufficient to cause death in the ordinary course of nature. As per the subsequent opinion (Ex. PW4/B) given by PW-4, in respect of the Post-Mortem Report as well as the MLC Report, the said injuries on the deceased were possible to have been inflicted by the recovered weapon, *i.e.*, the knife.

4. After the investigation was concluded, charges were framed on 22nd August, 2012 by the learned Trial Court against the Appellant for inflicting knife injuries upon him with an intention to kill Dharampal, thereby committing an offence punishable under Section 302 of the IPC. The Appellant pleaded not guilty to the aforesaid charge and claimed trial.

5. Prosecution has examined 27 witnesses in order to prove the charges levelled against the Appellant. Learned Trial Court after examining the testimonies of the prosecution witnesses and various



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other evidences placed on record convicted and sentenced the Appellant for the offence punishable under Section 302 of the IPC. Hence, the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

6. Ld. Counsel for the Appellant, Mr. Anwesh Madhukar appearing on behalf of the Delhi High Court Legal Services Committee ('DHCLSC') has addressed the following submissions on behalf of the Appellant:

i. As per the PCR Form (Ex. PW14/A), the call regarding the discovery of a dead body was made by one Rajeev Gupta, whose address and parentage are mentioned in the form. However, the said person has not been examined by the prosecution. Instead, the prosecution has relied on the testimony of one Rajesh Kumar Ranjan (PW-2) who claims to have made the PCR call using a phone he had purchased from his neighbor Rajeev Gupta. It is argued that this statement contradicts the details in Ex. PW14/A, which unequivocally attributes the call to Rajeev Gupta. Moreover, the PCR call stated that *"Jhagde pe ek aadmi dead pada hai"* which strongly indicates that the caller may have witnessed the incident firsthand. Therefore, it was incumbent upon the prosecution to examine Rajeev Gupta to establish the veracity of the PCR call. Ld. Counsel for the Appellant submitted that the failure in doing so undermines the case of the prosecution and an adverse inference may be drawn for withholding such a crucial witness.



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ii. It is further stated that the *Rukka* (Ex. PW25/A) was prepared at 10:15 a.m. and the FIR (Ex. PW9/A) was registered at 10:30 a.m. It is to be noted that till the time the *Rukka* was prepared no eyewitness had been found by the Police officials.

iii. Further, if the allegation against the Appellant taking a knife from the Chawla Chicken shop, as stated by PW-1, Ram Pyari were to be believed, the prosecution had not examined any other witness from the said chicken shop to corroborate the fact that the accused went to the shop to collect the knife. This witness has admitted that there were other employees in the shop at that time.

iv. As per the Ld. Counsel for the Appellant, there are contradictions in the Post-Mortem Report (Ex. PW4/A) and the MLC Report (Ex. PW10/A). The former states that there were 7 stab wounds on the body of the deceased, however, the latter mentions only 5 stab wounds. Thus, there is an evident contradiction in both the medical examinations.

v. It is submitted that as per the arrest memo (Ex. PW7/F), the Appellant was arrested at 9:30 p.m. on 24th April, 2012 from DDA Jungle, Africa Avenue Road, New Delhi. However, PW-1, in her examination-in-chief had stated that the accused was brought to her shop in the evening. Similarly, PW-1 in her cross-examination states that the Appellant was brought to her shop for identification between 4-5 p.m. as to whether it was the same person who had committed the murder of Dharampal. Likewise, PW-7, Harjeet Singh Chawla was made a witness to the arrest memo whereas Sandeep Ghai, the



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Investigating Officer (PW-25) had stated in his cross examination that PW-7 was not present when the Appellant was arrested. These contradictions create doubt in the prosecution's case.

vi. Ld. Counsel for the Appellant further submits that the arrest of the Appellant as well as the recovery of the knife has not been proved beyond reasonable doubt, as PW-7 in his examination-in-chief had resiled from his statement under Section 161 Cr.P.C. Further, during the cross-examination, PW-7 had stated that the Appellant was not arrested in his presence, furthermore, he could not remember whether the clothes of the Appellant and recovered weapon, *i.e.*, the knife were seized in his presence. The same fact has been reiterated by PW-25 who had stated in his cross-examination that PW-7 was not with him at the time of arrest and at the time when the weapon was recovered.

vii. Ld. Counsel further submits that ASI Sri Krishan (PW-12) and HC Yadvir (PW-16) were the first to reach at the scene of the crime, however, notably they had stated that no other eyewitness was found at the spot till 12:30-1:00 p.m. on the day of incident. Thus, it would show that PW-1, Ram Pyari was not present at time of the incident and was introduced only subsequently.

viii. It is further submitted that the site plans, *i.e.*, Site Plan without scale (PW-12/B), Site Plan with scale (PW22/A) and Site Plan without scale of the weapon recovery (Ex. PW7/E) cannot be relied upon as there is material discrepancy in the positioning of PW-1, from where she had allegedly witnessed the crime and further there is a



discrepancy in the position of the recovery of the alleged murder weapon, *i.e.*, the knife.

ix. Ld. Counsel for the Appellant submits that there was no blood found on the Appellant to establish his presence at the spot and to corroborate the allegation of murdering the deceased. As per the FSL Report (Ex.PW25/F) no DNA profile could be generated from the alleged blood-stained clothes of the Appellant.

7. Ld. Counsel for the Appellant further submits that there are contradictions in the statements of Smt. Ram Pyari (PW-1) and Harjeet Singh Chawla (PW-7). Following contradictions have emerged from the statements of the two prosecution witnesses:

7.1. It is submitted that PW-1, who is allegedly the only eyewitness in the present case had changed her statements numerous times, and thus is not a reliable witness. In her statement under Section 161 Cr.P.C. (PW1/DA) she had stated that she witnessed the incident after waking up when she followed the Appellant and saw him inflicting knife blows to the deceased, however, in her examination-in-chief, she had deposed that she witnessed the alleged murder from the bridge where she had gone to dry her clothes.

7.2. It is also submitted that, PW-1 in her statement under Section 161 Cr.P.C. had stated that she left for work to the hospital where she worked as a private nurse whereas in her examination-in-chief she states that after the incident she had gone to her work in a *Kothi* (bungalow) situated in A-Block of Safdarjung Enclave, New Delhi.



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Ld. Counsel submits that these inconsistencies in the statement of PW-1 as well her deposition renders her testimony to be unreliable.

7.3. It is further submitted by the Ld. Counsel for the Appellant that the statements of Harjeet Singh Chawla (PW-7) cannot be relied upon as well as there are material discrepancies in his testimony. In his examination-in-chief, PW-7 had resiled from his statement under Section 161 Cr.P.C. Furthermore, PW-7 in his cross-examination had stated that the Appellant was not arrested in his presence and he does remember whether the clothes and knife were seized in his presence or not despite the fact he had been made a witness in the arrest memo and recovery memo of the knife. The same fact regarding the absence of PW-7 during the arrest of Appellant and recovery of the alleged murder weapon has been reiterated by Inspector Sandeep Ghai (PW-25), who was the Investigating Officer in the present case.

8. Ld. Counsel for the Appellant further submits that in the present case, the forensic evidence cannot be relied upon in view of the following reasons:

8.1. It is submitted that the established position regarding the accuracy of DNA profiling should be hundred per cent. The mere fact that forensic expert opined DNA to be similar does not support the prosecution's case in the absence of an exact DNA match. Thus, in the present case the DNA report stands inconclusive, and cannot become a basis for conviction of the Appellant. To support this contention, Ld. Counsel relies upon the following decisions:



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- I. **Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Anr.**¹
- II. **Manoj v. State of Madhya Pradesh**²
- III. **Bhagwan Bairwa v. State of Rajasthan**³
- IV. **Sudhir Sahni v. State**⁴

8.2. Ld. Counsel for the Appellant further states that the conviction of the Appellant in the present case is based on only one circumstance, which is the inconclusive FSL report. In support of his argument, Ld. Counsel placed reliance on the settled proposition of law as laid down in **Sharad Birdhichand Sarda v. State of Maharashtra**⁵ to state that in a case of circumstantial evidence, every circumstance must be proved beyond reasonable doubt.

9. Lastly, the Ld. Counsel for the Appellant submits that in view of the aforesaid submissions, it stated that the alleged eye witness, *i.e.*, Ram Pyari (PW-1) appears to be a planted witness and, thus, her deposition cannot be relied upon, as she in fact tried to make improvements in her depositions, contradicting her statements under Section 161 Cr.P.C. Therefore, the case is then based on circumstantial evidence. It is submitted that the contradictions starting with the PCR call, statements of prosecution witnesses, to the contents of MLC Report as well as the Post-Mortem Report would show that there are multiple instances where the evidence produced by the prosecution is

¹ 2014 (2) SCC 576

² 2023 (2) SCC 353)

³ DB Criminal Appeal No. 357/2022, pronounced on 02.02.2023 by Hon'ble High Court of Judicature at Rajasthan)

⁴ 2023 SCC OnLine Del 722)

⁵ AIR 1984 SC 1622



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inconsistent with the alleged facts, thus breaking the chain of events on numerous occasions and in such circumstances, the conviction of the Appellant deserves to be set aside.

SUBMISSIONS ON BEHALF OF THE STATE

10. Mr. Aman Usman, Ld. APP for the State has made his submissions highlighting the following facts:

i. Based on the photographs of the spot, the Ld. APP has argued that the murder was committed, at a particular spot, however, the dead body was thereafter pushed to the point about 8 to 10 feet away. Ld. APP submits that the place where the murder was committed was between the pillars which was fully visible. Thus, too much emphasis cannot be laid on the fact that the Investigating Officer made a statement that from the position of the body, was not visible from the two pillars, which are marked in the site plan.

ii. Ld. APP for the State drew the attention of the Court to the testimony of Harjeet Singh Chawla (PW-7) to further highlight the fact that the recovery was affected in his presence. His initial examination was conducted on 27th November, 2012 but cross-examination was conducted almost 10 years later. It was submitted that after resiling from the statement under Section 161 Cr.P.C. he was declared hostile and upon cross-examination by the Ld. APP, he admitted that the recovery and arrest were made in his presence. Even in his cross-examination, he does not dispute that the recovery was affected, though he tried to contradict his own testimony, which was



given earlier by him. He further submits that the witness cannot be expected to remember all the facts almost 10 years after an incident had occurred. According to the Ld. APP, the important aspect is that the Appellant was arrested in the presence of PW-7 and the recovery of the murder weapon was affected. The sum and substance of his testimony is that he was part of the raiding team which apprehended the Appellant and the knife was recovered in his presence. Thus, the evidence of PW-7 deserves to be given credence.

iii. On the question of DNA profiling report of the Forensic Science Laboratory, Rohini, the Ld. Counsel had submitted that too much emphasis cannot be laid on the fact that the expert has given a report saying that the DNA is similar. In fact, the chart which is on record would show that there is a perfect match in the DNA by way of the allele count in the report.

iv. The Ld. APP further submits that the other evidence which supports the case of the prosecution is that the subsequent opinion of Dr. Sanjay (PW-4) relating to the knife which was exhibited *vide* Ex. PW4/B. Further, the blood stains on the clothes of the Appellant which showed the same blood group as that of the deceased.

v. Therefore, according to the Ld. APP, the above factors when clubbed with the fact that the Appellant was not present at his workplace on the date after the incident took place and went missing. Thus, even if testimony of PW-1 is discarded, there is sufficient evidence to convict the Appellant in view of his absence from the spot



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after the incident, recovery of the weapon and the DNA match of the deceased's blood sample with that of the blood on the said knife.

vi. Ld. APP further submitted that insofar as the arguments of the Appellant regarding PW-1 being a planted witness is concerned, it is submitted that the mere inconsistency in her evidence as to where she went after the incident would not invalidate the fact that she saw the accused committing the murder. As per the Ld. APP, the place from where the body was recovered was not visible from the shop only because the body was pushed up but it would not take away the fact that the spot where the murder itself was committed *i.e.*, between the two pillars, was visible from the shop.

vii. Even though, PW-7 may have not identified the knife to be from his shop but he confirms the recovery of the same. Further the motive *i.e.*, the non-giving of the *beedi* and dispute arising between the deceased and the accused is also reaffirmed by recovery of the *beedi* bundle from the deceased along with the mobile phone and a sum of Rs.150/-. The Appellant did not steal anything from the deceased but the presence of the *beedi* bundle corroborates that the dispute had arisen due to non-giving of the *beedi* bundle to the accused.

viii. Ld. APP further states that insofar as the position of PW-1, Smt. Ram Pyari in the site plan is concerned, since her statement was recorded on the same day after the preparation of the site plan her position has been marked subsequently on the site plan. Hence, it cannot be argued by the Appellant that there were any *mala fides* on



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behalf of Police marking this position. Further, it is stated that the murder weapon, *i.e.*, knife had not been planted as no motive or enmity existed between the Appellant and the deceased. The arrest on the date of the incident and the recovery of knife was on the same day and, the FSL report point towards the guilt of the Appellant.

ANALYSIS AND FINDINGS

11. Heard learned Counsels for the parties and perused the record.

12. The case of the prosecution as discussed hereinabove primarily rests on testimony of an alleged eye witness PW-1, Smt. Ram Pyari and the alleged recovery of the murder weapon *i.e.*, the knife and subsequent DNA report matching the blood sample on the knife with that of the deceased.

Testimony of PW-1

13. PW-1, Smt. Ram Pyari is stated to have witnessed the alleged incident during which the Appellant had given knife blows to the deceased on the date of the incident *i.e.*, 24th April, 2012. Her examination-in-chief before the Id. Trial Court for the sake of completeness is reproduced hereinunder:

“I run a small shop of selling cigarette, bidi, match box and bangles in the central market and I also work in different houses On 24.4.12, I was present at my shop at about 5 or 6 A.M., washing cloth, then accused present in court today, who was working in Chawla Chicken shop and asked me for a bidi to which I said that since I had not sold anything by that time so I would be give him the

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bidi. Then he went towards the nala. Then I saw one Kabari who used to pick up waste items was there in the nala. Then, I saw accused taking a knife from his chicken corner and went to the nala. **As I went to make my cloth dry on the bridge then I saw accused giving 3 - 4 knife blows to that kabari and after causing injuries accused then ran away with the said knife and his shirt was also got stained with blood.** Later on, the said kabari died. I do not remember the name of that person. The accused was also In the habit of taking ganja. **Then, I took a telephone from somebody and informed the police and after some time police came there and then after some time local police also reached there. I had gone to then my work.** In the evening, police had apprehended. Accused and police and accused had come to the spot. Pointing out memo prepared by police which is Ex. PW-1/A. When the police made inquiry from me, I had narrated them all the incident of cleaning and dusting.”

(emphasis supplied)

14. During the cross-examination of this witness the following circumstances have come on record:

- i. There were other shops besides her shop including those of Shankar and Ramdin which were situated in front of her shop.
- ii. Anyone sitting in her shop cannot see inside the *Naala*. She had seen the incident at about 6:00 a.m. and thereafter she had gone to work in a *Kothi* situated in A- Block, Safdarjung Enclave, New Delhi.
- iii. She had gone to the said *Kothi* informing that she would not be working that day which took her about 5 minutes and thereafter she returned to her shop and remained there throughout the day.



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iv. Her statement was recorded by the Inspector after 8:30 a.m. Police had brought the Appellant to her shop between 4-5 p.m. in order to identify him.

v. The fact that PW-1 was drying her clothes at about 5-6 a.m. was not mentioned by her in her statement under Section 161 Cr.P.C. (Ex.PW-1/DA).

vi. The fact that she took the mobile from someone and informed the Police was also not recorded in her statement under Section 161 Cr.P.C. (Ex.PW1/DA).

vii. She was confronted with her statement under Section 161 Cr.P.C. (Ex.PW1/DA) where she had stated that she was working as a private nurse in a hospital and after the incident had gone there.

viii. There were other boys present at the Chawla Chicken Corner at that time.

15. In order to analyse the aforesaid testimony of PW-1, the following timeline as per the case of the prosecution is relevant and is noted as below:

i. DD No. 6A dated 24th April, 2012 (Ex.PW-11/A) records that about 6:55 a.m. a call was received at the Police Station, Safdarjung Enclave from Control Room informing that at the *Naala* behind the



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Chawla Chicken Corner behind Green Fields School, Safdarjung Enclave “झगडे में एक आदमी डेड पड़ा है”.

ii. PW-25 in his testimony states that after receiving the aforesaid call which was recorded *vide* the aforesaid DD No. 6A (Ex. PW-11/A), the call was assigned to ASI Shri Krishan who left for the spot along with the Head Constable Yadvir and at about 7:50 a.m. he also left for the spot and reached there within 10 minutes.

iii. PW-12, ASI Shri Krishan in his cross-examination states that he had reached the spot within 5-7 minutes of the receipt of the DD entry. He further states in his cross-examination that few workers were present in the shop *i.e.*, Chawla Chicken Corner, however he did not record the statements of any other witnesses. He further states that the SHO Inspector Sandeep Ghai, PW-25 reached the spot at about 7:35 a.m. As per this witness, he remained at the spot till 12:30-1:00 p.m. It is pertinent to note that this witness does not say anything regarding presence of PW-1 on the spot till about 12:30-1:00 p.m.

iv. Head Constable Yadvir, PW-16 who accompanied ASI Shri Krishan, PW-12 upon receiving the aforesaid DD in his cross-examination states that there was a *Paan Bidi* shop near the spot but it was not open as it was early in the morning and that the said *Paan Bidi* shop remain closed till he remained at the spot. He has stated in his examination-in-chief that he remained at the spot till about 10:45 a.m.



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v. *Rukka* (Ex.PW25/A) was prepared at 10:15 a.m. where it has been categorically recorded that no eye witness was found at the spot.

vi. FIR (Ex.PW9/A) was registered at 10:30 a.m.

vii. Crime Scene Report (Ex.PW8/A) prepared at the spot by Inspector Naresh Kumar, PW-8 records that the date and time of occurrence to the intervening night of 23rd April-24th April, 2012.

viii. Post-Mortem Report (Ex. PW4/A) records the approximate time since death “about one and half day”. It is further recorded that the date and hour of starting the autopsy was 11:55 a.m. on 25th April, 2012 and the date and hour of concluding the autopsy was 13:00 hours on 25th April, 2012.

16. The case of the prosecution as per the statement given by PW-1 under Section 161 Cr.P.C. was that the Appellant was working as a cleaner at Chawla Chicken Corner and had come to her shop in the morning of 24th April, 2012 and asked for a *bidi* and when she refused, he went down towards the *Naala* and at about 6:15/6:20 a.m. she heard loud noises from the *Naala* and after 5-10 minutes she saw the Appellant running upwards from the *Naala* towards the Chawla Chicken Corner from where he picked up the knife and ran back towards the *Naala*. It was the case of the prosecution, as per the said statement, that PW-1 followed him and saw the Appellant inflicting the knife blows on the deceased. In the said statement, she had further stated that in the morning she had gone to the hospital where she used to work as a private nurse. This version of PW-1 is totally



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contradictory to what she had stated before the Id. Trial Court. The fact that she had stated regarding her being a private nurse at the hospital and had left at the morning to work there was probably introduced in order to cover up the fact from morning since approximately 7:00 a.m. till 10:50 a.m. when the *Rukka* was sent for registration of the FIR, the Police found no one at the spot to have seen the alleged incident. This witness in fact categorically states in her examination-in-chief that after witnessing the incident she had gone to the *Kothi* where she was supposedly working and had come back to the spot immediately after informing her employer that she would not be able to work and remained at the spot. She further states that her statement was recorded by the police at 8:30 a.m. in the morning. As noted hereinbefore, PW-16 Head Constable Yadvir has come on record to state that the shops at the spot were all closed. It is also pertinent to note that this witness even changed her location from where she had allegedly witnessed the incident. The fact that she had gone to the bridge to dry her clothes was not stated by her in her statement under Section 161 Cr.P.C. for which she was duly confronted with.

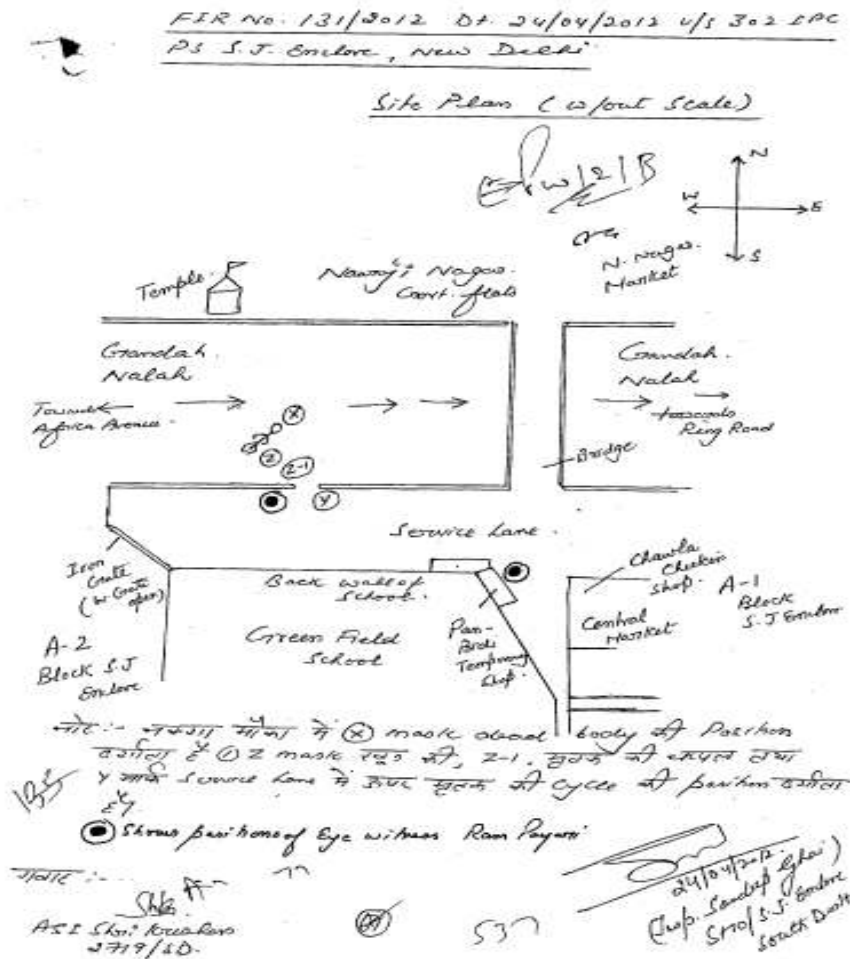
17. The version of PW-1 that she saw the incident from the bridge where she had gone to dry her clothes is not reflected in the Scaled Site Plan (Ex. PW-22/A) which is reproduced as hereinunder:



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18. Similarly, in the Site Plan without scale (Ex. PW12/B) which is reproduced as hereinunder:



The position of the eye witness Ram Pyari has been clearly inserted later on.

19. The explanation given by the Ld. APP for State to the affect that since her statement was recorded subsequently and, therefore, her position was marked later on may be acceptable in case of (Ex.PW12/B) which was prepared at the spot without scale, however, the said explanation cannot be accepted for (Ex.PW22/A) which was prepared on 12th July, 2012.

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20. It is pertinent to note that this witness has categorically stated that after witnessing the incident she had taken a telephone from someone and informed the Police and after a lapse of sometime, the Police had reached there. It is a matter of record that the PCR call as per the case of the prosecution itself was made by PW-2, Mr. Rajesh Kumar Ranjan and not this witness. Similarly, PW-25 in his cross-examination has stated that PW-1, Ram Pyari had come to the spot on her own after about one hour of his reaching there.

21. It is also relevant to note that as per the Post-Mortem Report time since death was assigned to be one and a half days. The Post-Mortem Report was prepared between 11:55 hours-13:00 hours on 25th April, 2012 which puts the time of death between 12 a.m. to 1 a.m. in the intervening night of 23rd April-24th April, 2012. Even the Crime Scene Report (Ex. PW8/A) records that the approximate time and date of occurrence to be night of 23rd April- 24th April, 2012. As noted hereinabove, PW-1 claims to have witnessed the incident between 5 a.m.- 6 a.m. when she was drying her clothes at the bridge. Although, the date and time of death as per the Post-Mortem Report is not always accurate, however, the gap in the timings as reflected in the Post-Mortem Report and with the claim for PW-4 is wide enough to create a doubt on testimony of PW-1.

22. It has also come on record that there were other workers present at the Chawla Chicken Corner, however, none of them have been sighted as a witness or examined by the Investigating Officer in the present case. In view of the above discussion, this Court is of the



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considered opinion that the testimony of PW-1, Smt. Ram Pyari is wholly unreliable and, therefore, has to be discarded.

Recovery of the knife and FSL (DNA Report)

23. The next circumstance sought to be relied by the prosecution is with regard to the recovery of knife from the present Appellant *vide* Ex. PW-7/C. One of the witnesses to the said recovery is PW-7, Harjeet Singh Chawla who was the employer of the present Appellant. This witness in his examination-in-chief resiled from his statement under Section 161 Cr.P.C. and, therefore, at the request of Ld. APP he was declared hostile and was cross-examined. In his cross-examination he admitted to the fact of arrest of the Appellant and recovery from the Appellant being made in his presence. This witness was not cross-examined. However, on an application moved on behalf of the Appellant under Section 311 Cr.P.C. this witness was recalled for cross-examination. In his cross-examination this witness again stated that the Appellant was not arrested in his presence, nor did he remember if the recovery of the knife from the Appellant was affected in his presence.

24. PW-25, the Investigating Officer, in his cross-examination stated that secret information regarding whereabouts of the Appellant was received when he was on patrolling duty and, therefore, straightaway went for the search and categorically states that PW-7 did not accompany him and neither was he present at the time of arrest of the Appellant. He further states that he does not know whether PW-7 had joined at time of the recovery of the knife at the instance of the

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Appellant. In these circumstances, the recovery of the knife at the instance of the Appellant is highly doubtful and has not been proved beyond reasonable doubt.

25. It is further pertinent to note here that the case of the prosecution is that the knife belonged to Chawla Chicken Corner and the Investigating Officer admitted in his cross-examination that he did not get TIP of the knife conducted by PW-7, Harjeet Singh Chawla who was the owner of the said shop.

26. In addition to the above, it is noted that the case of the prosecution was sought to be proved by way of the eye witness PW-1. In the circumstances as noted hereinbefore, this Court is of the considered opinion that PW-1 was a planted witness. The manner in which PW-1 was sought to be shown as an eye witness to the incident clearly indicates the attempt made by the prosecution to create evidence in order to implicate the present Appellant.

27. In the backdrop of the circumstances and the testimony of PW-7 and PW-25, as discussed hereinabove, this Court is of the considered opinion that the recovery in the present case cannot be relied upon and the same has to be discarded.

28. In view of the fact that the recovery could not be proved beyond reasonable doubt, the DNA Report regarding matching of the blood samples from the knife with the samples of the deceased is of no consequence and need not be delved into.



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29. In view of the aforesaid discussion, this Court is of the considered opinion that the prosecution has not been able to prove the case *qua* the Appellant beyond the reasonable doubt.

30. In the circumstances the impugned order of judgment dated 19th November, 2022 and sentence dated 1st March, 2023, respectively, are set aside and the Appellant stands acquitted.

31. The Appellant be released from judicial custody, if not required in any other case *forthwith*.

32. Copy of the judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

33. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J.

PRATHIBA M. SINGH, J.

JANUARY 10, 2025/*kr*