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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 10th July, 2025**Pronounced on: 3rd November, 2025*

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CRL.A. 260/2023

ABID

.....Appellant

Through: Mr. Amit Gupta, Mr. Kshitij Vaibhav,
Ms. Muskan Nagpal & Mr. Harisankar
Mahapatra, Advs. (DHCLSC)
(8826237988) Mr. Abid (through VC)

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Aman Usman APP with Mr.
Vinod Kumar, Insp., ATO, M.S. Park
Mr. Prateek Vaish, Ms. Ananya Kar
Sanghi and Mr. Vipul Pankaj Sanghi,
Advs. for Complainant. Mr. Afaq
Husain Ansari, Pairokar.

2(SDB)

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WITH

CRL.A. 38/2023

ARIF

.....Appellant

Through: Mr. Bipin Kumar Jha & Ms. Komal
Jha, Advs. (M: 9350132202)

versus

STATE (GOVT OF NCT DELHI)

.....Respondent

Through: Mr. Aman Usman APP with Mr. Vinod
Kumar, Insp., ATO, M.S. Park Mr.
Prateek Vaish, Ms. Ananya Kar Sanghi
and Mr. Vipul Pankaj Sanghi, Advs.
for Complainant. Mr. Afaq Husain
Ansari, Pairokar.

3(SDB)

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WITH

CRL.A. 338/2023

JAVED

.....Appellant



Through: Mr. Bipin Kumar Jha & Ms. Komal Jha, Advs.

versus

STATE

.....Respondent

Through: Mr. Aman Usman APP with Mr. Vinod Kumar, Insp., ATO, M.S. Park
Mr. Prateek Vaish, Ms. Ananya Kar Sanghi and Mr. Vipul Pankaj Sanghi, Advs. for Complainant Mr. Afaq Husain Ansari, Pairokar.

4(SDB)
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WITH
CRL.A. 66/2023

ISRAIL PEHALWAN AND ANR

.....Appellants

Through: Mr. Bipin Kumar Jha & Ms. Komal Jha, Advs.

versus

STATE (GOVT OF NCT DELHI)

.....Respondent

Through: Mr. Aman Usman APP with Mr. Vinod Kumar, Insp., ATO, M.S. Park Mr. Prateek Vaish, Ms. Ananya Kar Sanghi and Mr. Vipul Pankaj Sanghi, Advs. for Complainant Mr. Afaq Husain Ansari, Pairokar.

5 (SDB)
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AND
CRL.A. 912/2023

GUFRAN

.....Appellant

Through: Mr. Kanhaiya Singhal, Mr. Prasanna, Mr. Pulkit Jolly, Mr. Rahul Bhaskar, Ms. Ankita Makan, Mr. Binvwan Singh, Mr. Rishabh & Mr. Ajay Kumar, Advs. (M: 9212424765)

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Aman Usman APP with Mr. Vinod Kumar, Insp., ATO, M.S. Park. Mr. Prateek Vaish, Ms. Ananya Kar Sanghi and Mr. Vipul Pankaj Sanghi, Advs.



for Complainant Mr. Afaq Husain
Ansari, Pairokar

CORAM:

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeals under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'CrPC') have been filed assailing the common impugned judgment of conviction dated 20.09.2022 and order on sentence dated 19.11.2022 passed by learned Special Judge (PC Act) (CBI)-12, Rouse Avenue Court Complex, Delhi, whereby the present Appellants/Convicts have been convicted in Sessions Case No. 422/2016 arising out of FIR No.101/2013, under Sections 148/149/449/302/427/506(2)/307/323/34 of the Indian Penal Code, 1860, (for short, 'IPC') and Section 27 of the Arms Act, 1959, registered at Police Station Man Sarovar Park.

2. *Vide* the impugned judgment of conviction, all the Appellants have been convicted for the offences punishable under Section 302 read with Sections 149/34, Section 148 read with Section 149, Section 449 read with Sections 149/34 and Section 427 read with Section 149 of the IPC. Appellant/Convict, Israil Pehalwan, has also been convicted for the offences punishable under Sections 323/506(Part-II) of the IPC. Appellant/Convict, Arif, has also been convicted for the offences punishable under Section 307 of the IPC and Section 27 of the Arms Act. Appellants/Convicts, Tarif and Gufran, have also been convicted for the offences punishable under Section



323 read with Section 34 of the IPC. Learned Trial Court *vide* the impugned order on sentence had sentenced the appellants in the following manner: -

“17. This Court has thoughtfully weighed the aggravating and mitigating circumstances of the convicts while deciding the quantum of sentence. Considering the totality of their social, personal and financial conditions, the Court finds it appropriate to impose varying fine upon all the convicts. Thus, the convicts are sentenced as under :-

A. Israil Pehalwan:

(i) **U/s 302 IPC read with Section 149/34 IPC** : - Imprisonment for life and a fine of Rs.2,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of six months.

(ii) **U/s 148 IPC read with Section 149 IPC:-** Imprisonment to undergo simple imprisonment for two years and a fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:-** A rigorous imprisonment for 10 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** A simple imprisonment for 6 months and a fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

(v) **U/s 506 Part II IPC:-** A simple imprisonment for 03 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(vi) **U/s 323 IPC:-** A simple imprisonment for 06 months and a fine of Rs. 1,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

B. Javed and Abid:-

i) **U/s 302 IPC read with Section 149/34 IPC:-**Imprisonment for life and a fine of Rs.1,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of three months.

(ii) **U/s 148 IPC read with Section 149 IPC:-** Imprisonment to undergo simple imprisonment for two years and a fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15



days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:-** A rigorous imprisonment for 10 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** A simple imprisonment for 6 months and a fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

C. Arif:-

(i) **U/s 302 IPC read with Section 149/34 IPC:-** Imprisonment for life and a fine of Rs.1,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of three months.

(ii) **U/s 148 IPC read with Section 149 IPC:-** Imprisonment to undergo simple imprisonment for two years and a fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:-** A rigorous imprisonment for 10 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** A simple imprisonment for 6 months and a fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

v) **U/s 307 IPC:-** A rigorous imprisonment for 10 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(vi) **U/s 27 Arms Act:-** A rigorous imprisonment for 7 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

D. Tarif:-

(i) **U/s 302 IPC read with Section 149/34 IPC:-** Imprisonment for life and a fine of Rs.1,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of three months.

(ii) **U/s 148 IPC read with Section 149 IPC:-** Imprisonment to undergo simple imprisonment for two years and a fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.



(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:** - A rigorous imprisonment for 10 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** A simple imprisonment for 6 months and a fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

(v) **U/s 323 IPC:-** A simple imprisonment for 06 months and a fine of Rs. 1,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days..

E. Gufran :-

(i) **U/s 302 IPC read with Section 149/34 IPC:-** Imprisonment for life and a fine of Rs.2,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of six months.

(ii) **U/s 148 IPC read with Section 149 IPC** Imprisonment to undergo simple imprisonment for two years and a fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC :-** A rigorous imprisonment for 10 years and a fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC :-** A simple imprisonment for 6 months and a fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

(v) **U/s 323 IPC :-** A simple imprisonment for 06 months and a fine of Rs. 1,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.”

18. All the sentences of imprisonment of the convicts shall run concurrently. The benefit of Section 428 Cr.P.C. be given to the convicts. Fine amount realized from the convicts qua offences U/s 148 IPC read with Section 149 IPC and U/s 427 IPC shall be payable to State against the expenses incurred in litigating the present litigation (this Court has considered the affidavit of State filed through Ld. Addl. PP for the State). The rest of the fine amount realized from convicts qua all the other offences be disbursed to the dependents of deceased Ibrahim (mother, wife and son) as monetary compensation.”



FACTUAL BACKGROUND

3. Brief facts necessary for the disposal of the present appeals are as under: -

i) An information was received *vide* DD No. 6A (Ex.PW-6A) at Police Station Mansarovar Park on 22.04.2013 at 12:31 AM, that gun shots have been fired and injured is present. On receipt of this information, Insp. Surender Rana, SHO, MS Park (PW-33), Insp. Amar Singh (PW-32) and SI Rajiv (PW-30) reached the alleged place of occurrence, *i.e.*, Shop of H. No. B-105, Gali No.10, New Modern Shahdara, Delhi. There, it was found that ASI Jagdish Narayan (PW-35) with Ct. Shamim Khan (PW-11) were already present on the spot as calls of quarrel were already made *vide* DD entries No. 4A and 5A (Ex.PW-4/A & Ex.PW-5A), which were marked to them. It was further revealed that the victim had already been taken to GTB Hospital by PCR Van. SI Rajeev and Ct. Shamin Khan were left at the aforesaid place to guard it and other police personnel went to GTB Hospital and obtained the MLC of victim (C-1514/13), Ibrahim, the deceased in the present case, who was declared brought dead. No eye-witness met police officials at the hospital.

ii) SHO/PW-33 along with two other officials (PWs-32 & 35) came back to the alleged place of occurrence and there, they met one Yogender Kasana @ Kalu, complainant-eye witness (PW-1) of the incident and recorded his statement (Ex.PW-1A colly 02 pages).



iii) PW-1 in his statement stated that he is resident of 1/3354, Ram Nagar, Shahdara, Delhi and resides with his family there and owns a dairy shop under the name and style of, Sree Ram Dairy. Yesterday, i.e., on 21.04.2013, at around 11:45 PM in night, he had gone to the workshop of his friend, Ibrahim Nissar (deceased), in *gali No. 10*, New Modern Shahdara, for replacing the battery of his 'ALTO' car. He stated that his car's battery was not getting started and he had gone to the deceased's shop during the day and the latter had told him that he should manage it during the course of day as the battery cannot be repaired during daytime and he will replace (change) it at night. When PW-1 reached the deceased's shop, Tahir and Noman Umar (brother/PW-6 and Uncle/*Chacha* (PW-7) of the deceased respectively,) were also sitting there and four of them started discussing about cricket. After around 15 minutes later, there was noise and hustle in the street and the deceased asked his uncle (PW-7) to see what is the matter. So, Noman Umar, uncle of deceased, (PW-7) after seeing from the corner of shop, told that people are looking at his shop only. After a while, Israil Pehalwan, who was a resident of the same street (*gali*) as that of the deceased, and his four sons, Javed, Abid, Arif and Tarif and his son-in-law (*daamaad*), Gufran (Appellants/Convicts herein), while carrying *laathi*, knives, pistol and stumps ambushed/entered into the deceased's shop. Out of them, Israil Pehalwan was holding *laathi* in his hand, Javed and Abid were holding knives in their hands, Arif, a pistol, Tarif and Gufran had stumps in their hands and PW-1 knew them beforehand. When all of them started beating, hitting and abusing the



deceased, then, his uncle/*chacha*, started raising hue and cry by shouting *bachao-bachao*. When Arif started pulling the slider of pistol back and forth, out of fear, uncle of deceased fell down and slipped through the stairs of the shop to the road. Arif fired a shot aiming *chacha* (uncle of deceased/PW-7) which did not hit him and he ran away to save his life. Brother of the deceased, Tahir (PW-6), tried to rescue the latter, however, Tarif and Gufran, hit him with the stumps and he ran way to save his life as those people were very aggressive. The deceased entered into the inner portion of his shop, where “printing press offset” was installed, to save himself from the Appellants. The Appellants while chasing the deceased also entered behind him and Arif fired several shots on person of the deceased. Javed and Abid gave several knife blows on person of the deceased and Tarif and Gufran (son-in-law of Israil Pehalwan) with stumps and Israil Pehalwan with *laathi* hit the deceased. In order to save the deceased, when PW-1 held the hand of Israil Pehalwan then, the latter pushed PW-1 and hit PW-1 on his hand and threatened him to go away otherwise they will kill PW-1 as well. When Javed and Abid were giving knife blows on person of the deceased, Israil Pehalwan told them to kill the deceased and the latter should not survive and to get it over with the deceased today. Then, the Appellants after giving severe blows to the deceased, Ibrahim, destroyed the deceased’s car No. DL 5 CB 6484, Honda City, Silver Colour, which was parked on the road and ran away.

iv) PW-1 further stated that thereafter, PCR car arrived at the spot and PCR staff and PW-1 took the deceased in PCR van to GTB



Hospital. Deceased's uncle, Noman Umar, Brothers, Tahir and Tayyab, also reached GTB Hospital, however, they got to know that Ibrahim has passed away. PW-1 further stated that all of them then, came back to Ibrahim's shop and met police officials, who recorded his statement.

v) Thereafter, one fired cartridge was found lying on the road in front of shop with 7.65 KF on its base, one damaged Honda City silver colour car, DL 5CB6484, standing opposite the shop with broken glasses lying on the outer portion of the shop was found. On inspection, it was found that in the inner portion of the shop in which the printing press offset was established, lot of blood was lying on the floor. One empty shell of a fired cartridge on which 7.65 KF was engraved was found in front of road of situated at shop B-105, Gali No.10, Near Masjid Al Huda, New Modern Shahdara, Delhi. Three fired and three live cartridges on which 7.65 KF was engraved were found lying on the spot, *i.e.*, inside the shop near the partition of *offset printing machine* where blood was found. One blood-stained sports shoe of brand, *Columbus*, two blood stained damaged/broken cricket stumps, one blood-stained wrist watch with name Rolex, one cap of brand, *Addidas*, were found inside the shop situated at B-105, Gali No.10, Near Masjid Al Huda, New Modern Shahdara, Delhi, and taken into possession. Crime scene was photographed and inspected by mobile crime team. On the basis of the statement of eye-witness, Yogender Kasana/PW-1, inspection of MLC No. C-1514/13 of the deceased, Ibrahim, and facts as illustrated above, offences punishable under Sections 302/307/452/427/506/34 of the IPC and Sections 25/27 of the Arms



Act, 1959, were found to be committed and accordingly, *rukka* was prepared by Insp. Amar Singh and present FIR was registered and investigation of the same was undertaken by Insp. Amar Singh.

vi) During the course of investigation on 22.04.2013, IO/Insp. Amar Singh (PW-32) prepared the site plan at the instance of PW-1 and seized following things/items from the alleged place of occurrence *vide* respective seizure memos: -

- a) Blood from the spot in gauze piece (Ex.PW-30/C);
- b) Blood-stained earth (Ex.PW-30/D);
- c) Earth without blood (Ex.PW-30/E);
- d) Four fired and three live cartridges (Ex.PW-30/G);
- e) One blood stained *laathi* (Ex.PW-30/B: Ex.PW-7/Article-1);
- f) Two partly damaged blood-stained cricket stumps (Ex.PW-30/F-Ex.PW-30/Art-8; Art-9);
- g) One blood-stained wrist watch with Rolex name (Ex.PW-1/C:PW-1/Art-4);
- h) One blood-stained *Columbus* sport shoe (Ex.PW-1/B:PW-1/Art-3);

vii) PW-1 stated that the *laathi* and cricket stumps were left by the appellants/convicts after the attack and that the wrist watch and shoe belong to deceased, Ibrahim. Blood-stained clothes of PW-1 were also taken into possession by the IO, Insp. Amar Singh, and he was medically examined at GTB Hospital and his MLC No. A-1519/13 was obtained wherein, nature of injury under observation (u/o) blunt was



stated. Final opinion with respect to the nature of injury of PW-1/complainant were stated to be simple. Post-mortem of the deceased was conducted in mortuary of GTB Hospital and thereafter, corpse of the deceased was handed over to Tahir, brother of deceased, Ibrahim, and sealed blood-stained clothes of deceased, blood in gauze piece and two sample seals were handed by doctor to Insp. Amar Singh and same were taken into possession *vide* seizure memos Ex.PW-30/C to Ex.PW-30/A-18.

viii) Thereafter, Appellant, Israil Pehalwan, was arrested and his arrest memo, personal search memo, disclosure memo and pointing out memo were prepared. Statements of witnesses were recorded under Section 161 of the CrPC. Clothes of Appellant, Israil Pehalwan, worn during the commission of alleged offences were also seized. During investigation, on 24.04.2013, Appellants-Tarif, and Gufran, were arrested and the clothes which were worn by them during the aforesaid incident were also taken into police custody separately. Post-mortem report, PM Report No. 503/13, from GTB Hospital was obtained as per which deceased had received twenty injuries. The aforesaid seized products were sent to FSL for examination and scaled site plan of the place of occurrence was prepared by the Draughtsman (PW-14). Appellant, Javed, was arrested on 21.06.2013 by police officials of PS Jamia Nagar *vide* DD No. 36A of the even date and he was formally arrested in the present FIR on 25.06.2013 and was taken on two days police remand/custody. During investigation, weapon of offence, knife, was recovered at the instance of Appellant, Javed, and at his instance



only, memo of place of occurrence was prepared and the clothes which were worn by him at time of occurrence of the present incident were taken into possession.

ix) Appellants, Abid and Arif, surrendered in the Court on 01.07.2013 and subsequently, they were formally arrested. During investigation, Motor Cycle No. DL 7 SAS 3940, *Discover*, was recovered which they had used to flee from the spot after commission of the alleged offences in the present case and at their instance as well, pointing out memos of place of occurrence were also prepared. A magazine of pistol was recovered at the instance of Appellant, Arif, and weapon of offence, knife, was recovered at the instance of Appellant, Abid. Subsequently, Sections 147/148/149 of the IPC were added.

x) Based on the evidences collected during investigation, as noted hereinabove, it was opined that sufficient evidence has emerged against the present Appellants/Convicts for commission of offences punishable under Sections 302/307/452/427/506/323/147/1148/149/34 of the IPC and chargesheet dated 19.07.2013 was filed before the Court of competent jurisdiction.

4. Learned Metropolitan Magistrate *vide* order dated 22.08.2013 committed the present FIR for trial to Sessions Court. Learned ASJ *vide* order dated 24.09.2014 framed charges against the present Appellants/Convicts for the offences punishable under Section 148 read with Section 149 of the IPC, Sections 449/34/149 of the IPC, Sections 302/34/149 of the IPC, Sections



427/34/149 of the IPC, Sections 506(2)/34/149 of the IPC. Additional charges for the offences punishable under Section 307 of the IPC and Section 27 of the Arms Act was also framed against Appellant, Arif, and for offences punishable under Sections 323/34 of the IPC against Appellants, Gufran and Tarif, and for offence punishable under Section 323 of the IPC against Appellant, Israil Pehalwan. The Appellants pleaded not guilty to the aforesaid charges framed against them and claimed trial. Prosecution in order to prove the charges levelled against the Appellants examined 37 witnesses before the learned Trial Court. After conclusion of prosecution witnesses, separate statements of the Appellants under Section 313 of the CrPC were recorded by the learned Trial Court wherein they took separate defences which are as follows: -

- a) Appellant, Israil Pehalwan, had stated that the prosecution witnesses have wrongly identified them as accused persons and on 21.04.2013, there was function of engagement of his son, Abid (who is also a co-convict in the present FIR) and there was no occasion for the Appellants to assault Ibrahim (deceased) or any other person on that day, as they were busy in the said function and he does not know as to why police had apprehended him and other Appellants/accused persons.
- b) Appellant, Arif, claimed to be innocent and stated that deceased Ibrahim had performed love marriage and had several enemies as his wife was Hindu and it was an inter-faith marriage. He further stated that deceased Ibrahim did not reside at his parental house and after a



long gap, deceased had joined his parental family. On the day of alleged incident, the Appellant-Arif, stated that he was busy in function of engagement of his brother Abid. He further stated that he had good relations with deceased and he was surety of deceased Ibrahim in FIR No. 24/2011, under Section 411 of the IPC, registered at PS Seelampur.

c) Appellant, Abid, stated that the case against him is a false case and the witnesses have deposed falsely against him. He stated that he is innocent and on 21.04.2013, there was function of his engagement and there was no occasion for them to assault Ibrahim or any other person on that day.

d) Appellant, Tarif, stated that on 21.04.2013, there was a function of engagement of his brother, Abid and he was present in the house and he heard a noise from outside and when he came out, he saw that police officials had apprehended his father, Israil (co-convict). He further stated that he used to work with deceased in an hotel, two years prior to the alleged incident and he had left the said job as police officials used to visit the said work place and perhaps, there were some cases against the deceased, Ibrahim Nisar.

e) Appellant, Javed, stated that on 21.04.2013, there was a function of engagement of his brother, Abid and he was present in the house and he did not commit any offence.

f) Appellant, Gufran, stated that he is son-in-law of co-convict,



Israil, and brother-in-law of other co-convicts and has no concern with their family except attending functions organised by them or visiting them on occasions of festivals and being their relative, he has been implicated in the present case.

5. Thereafter, the Appellants were given opportunity to lead defence evidence. Except Appellant-Gufran, to disprove the case of prosecution and to prove their innocence, other Appellants examined three defence witnesses, DW-1-HC Jhabar Ram, PS Seelampur; DW-2- Mohd. Raffiq R/O of Gali No.4 Subhash Vihar, an old friend of Appellant-Israil Pehalwan; DW-3- Feroz Khan, President of Delhi State Meo Sabha. DW-1, HC Jhabar Ram, was a summoned witness who had brought summoned record pertaining to FIR No. 24/2011 dated 30.01.2011, under Section 379 of the IPC, registered at PS Seelampur and copy of FIR was exhibited as Ex.DW-1/A and in his cross-examination, he admitted the fact that the aforesaid FIR No.24/2011 was registered against unknown persons. DW-2, Mohd. Raffiq, stated that Appellant, Israil Pehalwan, is his friend and their relationship was going to be converted into relationship and he visited the house of Israil Pehalwan in April 2013 with his 2-3 relatives for performing engagement of his daughter with son of Israil, *i.e.*, Abid. He stated that they reached the house of Israil at about 8-9 PM and remained there till 11:45 PM-12:30AM in the night and he do not remember the exact time when they left and till they remained there, he did not hear any hue and cry. DW-3, Feroz Khan, president of Delhi State Meo Sabha stated that he had come to the house of convict Israil Pehalwan on the occasion of engagement of his son and he does not know the name of the son. DW-3 stated that he was invited from both the sides and he reached there



at about 10-10:30 PM and rituals had already been performed and he met public persons attending the function there. He stated that he remained there for almost 1.5-2 hours and cannot tell the exact time when he left the function, however, it may be probably 11:45 PM-12 midnight.

6. Learned Trial Court, after appreciating the testimonies of the prosecution witnesses as well as the defence witnesses and material placed on record by the prosecution during the course of trial *vide* the aforesaid impugned common judgment of conviction and order on sentence convicted the Appellants and sentenced them accordingly as noted hereinabove. Hence, the present appeals have been filed by the Appellants assailing said judgment.

SUBMISSIONS ON BEHALF OF THE APPELLANTS-ISRAIL PEHALWAN, TARIF, JAVED, ARIF

7. Learned counsel for the **Appellants, Israil Pehalwan, Tarif, Javed and Arif**, has made the following submissions in support of their appeals which are as follows: -

- i) It is submitted that learned Trial Court has passed the impugned judgment primarily based on the testimony of eye-witness-Yogendra Kasana (PW-1), who is also the complainant in the present case and a stranger to the family of the deceased. It is further submitted that the medical and ocular evidence revealed during the investigation in the present case is in contrast to the testimony of PW-1, eye-witness, whose conduct itself is not trustworthy. As per PW-1, he had gone to



deceased's shop to get the battery of his car repaired at 12 in the night on the date of alleged incident as the deceased was a motor mechanic. It is pointed out that it has come on record by way of testimonies of PW-6 and PW-7 (brother and uncle/*chacha* respectively) of the deceased that the latter was not a car mechanic and was in the business of sale-purchase of cars. Learned counsel has argued that PW-1 was not present at the spot when the alleged incident has happened as he did not meet the police officials, PWs-30,32,33,35; at the spot as well as in hospital and had met the said officials when they came back to the spot after receiving the MLC of the deceased (Ex.PW-5/A), and thereafter, PW-1's statement was recorded. This, as per learned counsel, shows that PW-1 is a planted witness inasmuch as the distance between his house and the deceased is nearly ½ kilometres and the purpose of his visit to the deceased's shop, as stated in the statement (Ex.PW-1/A colly: *Rukka* statement) given to IO/PW-32 based on which FIR in the present case has been registered, and the time when he had visited deceased's shop is quite surprising and beyond imagination as no reasonable person would go to a place at hand's distance in the middle of night merely to get the battery of his car repaired/replaced. It has been argued that the claim of PW-1 that he had called the police lacks merit because as per CAF (Customer Application Form: Ex.PW-37/A) traced to the mobile number (9911102102) from which PCR call, Ex.PW-15/B, was made does not show PW-1 as its owner and the original owner of said mobile number, *i.e.*, Prakash Chand Bhati, has not been examined by the prosecution during trial. It is further submitted that Babar, brother of the deceased, who was examined as



PW-8 before the learned Trial Court, has also stated that he had made a call at 100 number using his mobile number, 9136555040, in pursuance of which DD entry No.5A (Ex.PW-4/B) was recorded; however, during investigation, it was revealed that said mobile number was in the name of one Shahzad, who was not examined during the course of trial. It is further submitted that similar is also the case of call made by PW-10, wife of the deceased, who had made a call at 100 number from mobile number 9654968814 in pursuance of which DD entry No. 4A (Ex.PW-4/A) was registered and the said number was found to be registered in the name of one Manish as per CAF (Ex. PW-37/E). It is, thus, the case of the Appellants that making of PCR calls the mobile numbers of other persons and not from their personal contact numbers by PWs-1, 8 and 10 creates a doubt over the case of prosecution. It is further the case of the Appellants that no document has been placed on record by the prosecution pertaining to the car of PW-1 for which he had allegedly gone to the deceased's shop for replacing the battery. Further, the said car was not recovered/seized during investigation and nor there is any document placed on record by the prosecution which could show that PW-1, in fact, owned a car.

ii) The claim of PW-1 was that he had received a *laathi* blow on his right hand, however, in his MLC No.1519/13 (Ex.PW-3/A), it has been recorded that his left hand/forearm has been injured. PW-1's medical examination was done on 22.04.2013 at 10:10 AM, *i.e.*, after a delay of approximately 8 hours after the happening of the present incident and no reasons regarding such delay were mentioned by PW-1 or



prosecution during trial. It has been contended that PW-1 has not stated anything in respect of the fact why his medical examination was not done at the hospital in the intervening night of 21-22.04.2013 when the deceased was declared dead. In view of the aforesaid circumstances, it has been argued that the testimony of PW-1 suffers from material contradictions and lacunas and the same cannot be relied on and learned Trial Court erred in relying on his testimony while passing the impugned judgment.

iii) Learned counsel has argued that, as per the case of prosecution, Appellant-Arif, had fired several shots at the deceased and PW-7, Noman Umar, his *chacha*, however, none of them hit either the deceased or PW-7 which is unbelievable and it casts doubt over the prosecution story as the same has not been mentioned in site plan (Ex.PW-14/A) as also no bullet marks were found at the shop by Crime Team during inspection of the crime spot (Ex.PW-36/A-Scene of Crime Visit Report). Further, the story of watching IPL cricket match has been belied as no recovery of TV was made during investigation and same was also not captured in the pictures of the crime spot taken by Investigation Team. It is further pointed out that there was no mention of TV in the rough site plan as well as main site plan prepared with the help of Draughtsman (PW-14).

iv) It has been pointed out that PWs-6,7,8,10 are planted witnesses and they are not eye-witnesses and at best, their testimonies can be considered as hearsay evidence, and therefore, the same cannot be read



in evidence as none of them had witnessed the incident in entirety. PWs-6&7 were stated to have left the spot to save themselves from the Appellants. Further, there are several contradictions in their testimonies and reliance placed on same by learned Trial Court is misplaced. It has also been argued that relatives of deceased, *i.e.*, PWs-6,7,8,10- brother, uncle/*chacha*, brother and wife respectively, had not made any complaint in the present case and strangely, prosecution has lodged FIR in the present case based on the statement of PW-1, who is a complete stranger to the family of the deceased. It is pointed out that Investigating Officer, PW-32, and other police officials, PWs-30, 33 & 35, have stated in their testimonies that no family member of the deceased was there in the hospital or at the alleged crime spot. Further, that PWs-6 & 7, who were allegedly present at the spot with the deceased had also not accompanied the deceased to the hospital. It has also been pointed out that, as per the statement of PW-1/eye-witness, Tahir/PW-6 and Noman Umar/PW-7 had also received injuries during the alleged incident when they came to the rescue of the deceased. However, their medical examination was not conducted by IO/PW-32 during investigation. It is further pointed out that Noman Umar/PW-7, as per the case of prosecution, had accompanied the PCR police official (PW-19) in the PCR van in which the deceased was taken to the GTB Hospital, and no blood stains were found on his clothes which is unlikely in view of the facts of the present case.

v) Learned counsel has further submitted that, as per the case of the prosecution, there were three PCR calls registered pertaining to the



present case, *i.e.*, *vide* DD Nos. 4A, 5A, 6A, and as per each of the said DD entries, the description of place of occurrence is different and distinct, and in fact, the substance and contents of each DD entry do not correspond or corroborate each other.

vi) It is further submitted that the prosecution has failed to ascribe any motive to the Appellants for committing the murder of the deceased and on the date of alleged incident, engagement ceremony of Appellant-Abid was going on in the house of Appellant-Israil Pehalwan. It is the case of the Appellants that the motive attributed to the Appellants by the testimony of Ashu Choudhary/PW-16 does not withstand as the dispute regarding transaction of mortgage against vehicle, a car-DL5CH4979, by PW-16 with Appellant-Javed was resolved between the parties two years prior to the happening of the incident in the present case by return of the said vehicle itself. It is further pointed out that PW-16 himself has stated that the deceased, Appellant-Israil Pehalwan, was present along with two police officials when his vehicle was returned to him and he had paid Rs.1,10,000/- to Appellant-Israil Pehalwan.

vii) Insofar as the alleged recovery of magazine of pistol *vide* seizure memo Ex.PW-30/A-13 (exhibited as Ex.PW-30/Art-3) at the instance of Appellant-Arif is concerned, it is submitted that the same has been planted by police as the recovery has been effected from an open place and that too after a gap of 2½ months from the date of the incident and such a long delay has not been explained by prosecution during trial.



viii) In respect of alleged recovered weapon of offence, *i.e.*, knife, at the instance of Appellant-Javed *vide* seizure memo Ex.PW-30/Z, it is submitted that the said weapon of offence was never sent for obtaining opinion of the Doctor to corroborate that alleged injuries reflected in the post-mortem report could have been caused with said weapon. It is further the case of Appellants that the site plan was not prepared at the instance of any of the eye-witnesses and the testimonies of IO/PW-32 and police officials, PWs-30, 33, 35, do not corroborate the testimony of PW-1. It is further submitted that as per the FSL report, Ex.PW-29/A, pertaining to an iron knife (Exhibit 15), it has been concluded that no DNA profile could be generated from the said knife due to presence of inhibitors.

ix) It is further submitted that ocular evidence in the present case does not corroborate the medical evidence. The case of the Appellants is that the prosecution has failed to place on record any material to show that the injuries mentioned in the post-mortem report (Ex.PW-13/A) could have been caused by the alleged weapon of offence, *i.e.*, knife (*vide* seizure memo Ex.PW-30/Z: Ex.PW-30/Art-1), recovered at the instance of Appellant-Javed. It is submitted that two knives were recovered in the present case at the instances of Appellants-Javed and Abid, and nothing has been brought on record to demonstrate as to by which knife alleged injuries were caused to the deceased. It is further submitted that same is also the case with respect to the live and fired cartridges which were recovered during investigation *vide* seizure



memo Ex.PW-30/G from the partition of printing machine (offset) in the shop of the deceased and were not sent for obtaining any opinion with respect to the injuries which could be caused with the said cartridges. Learned counsel has pointed out that as per the testimony of eye-witness/PW-1, Appellant-Arif is stated to have fired several bullet shots at the deceased, however, there are no bullet injuries caused to the deceased by the said shots, as per post-mortem report (Ex.PW-13/A).

x) It is further the case of the Appellants that the case properties were deposited in *Maalkhana* on 04.09.2013, *i.e.*, approximately 6 months after date of the incident, and therefore, the possibility of tampering with the crucial evidence of the case could not be ruled out. Attention of this Court has been drawn towards the testimony of PW-22, Ballistics Expert from CFSL, who had stated that there was no identification mark on the magazine allegedly recovered at the instance of Appellant-Arif.

xi) The statements of PW-8, brother of Tahir/PW-6, and Zara Ibrahim (PW-10: wife of the deceased) was recorded by IO/PW-32 after 2½ months of the alleged incident and no explanation with respect to the said delay has come on record from Investigating Officer/PW-32.

xii) Insofar as the recovery of the alleged motor cycle (Ex.PW-30/Art.-7) *vide* seizure memo Ex.PW-30/A-9, from Karkardooma Court is concerned, it is submitted that the same was recovered after the Appellants were arrested and lodged in prison and the said recovered



motor cycle does not link the complicity of the Appellants in the present case in any manner.

xiii) Learned Trial Court has failed to appreciate the fact that DWs-2 & 3 have stated before the learned Trial Court that on the day of the alleged incident, there was a family function in the house of the Appellants and that the Appellants as well as said defence witnesses were present at their house for the said function when the alleged incident had happened and Appellants were busy in the function. It is further case of the Appellants that the testimonies of defence witnesses have also been corroborated by the testimony of PW-9, who had also stated that he had come to the function of engagement ceremony of the son of Appellant-Israil Pehalwan (Abid: Co-convict: Appellant herein).

xiv) Learned counsel for the Appellants has relied on following precedents in the support of the present appeals: -

- a. Rajesh@ Sharkhar v. State of Haryana¹,**
- b. Ramvir v. State of Uttar Pradesh²,**
- c. Amar Singh v. State NCT of Delhi³,**
- d. Mustkeem @ Bhura v. State govt. of NCT⁴,**
- e. Khanbha Raja Reddy v. Public Prosecutor High court of**

¹ 2021 (1) SCC 118 (PAGE NO. 1 TO 34)

² 2019 (2) SCC 237 (PAGE NO. 35 TO 42)

³ (2020) 19 SCC 165 (PAGE NO. 43 TO 55)

⁴ Criminal Appeal No. 419 of 2018 dated judgment dated 02.11.2020 passed by Hon'ble High Court of Delhi at New Delhi" (page no.56 to 97)



Andhra Pradesh⁵,

f. Abdul Wahab v. Abdul Majid Baloch⁶,

g. State of Uttar Pradesh v. Punni & Ors.⁷,

h. Samsul Haqua v. State of Assam⁸,

i. Duleshwar & Anr. v. State of Madhya Pradesh⁹,

j. Ashoksinh Jayendrasinh v. State of Gujarat¹⁰,

k. Sattatiya alias Satish Rajanna Kartalla v. State of Maharashtra¹¹;

xv) Thus, it is prayed that the present appeals deserve to be allowed and appellant be acquitted of the charges levelled against them.

SUBMISSIONS ON BEHALF OF THE APPELLANT-ABID

8. Learned counsel for the **Appellant, Abid**, has made the following submissions in support of his appeal which are as follows: -

i) It is submitted that the Appellant-Abid was the person who was, in fact, getting married and would have no interest in getting involved in such an incident. He further submitted that the IO/PW-32 has failed to place on record relevant evidence and statements of relatives of the deceased were recorded belatedly after a lapse of more than two

⁵ 2003 (3) JCC 1775 (PAGE NO. 98 TO 103)

⁶ 2009 (11) SCC 625 (PAGE NO. 104 TO 116)

⁷ 2008 (11) SCC 153 (PAGE NO. 117 TO 125)

⁸ 2019 (18) SCC 161 (PAGE NO. 126 TO 136)

⁹ 2020 (11) SCC 440 (PAGE NO. 137 TO 163)

¹⁰ 2019 (6) SCC 535 (PAGE NO. 164 TO 170)

¹¹ 2008 (3) SCC 210 (PAGE NO. 171 TO 182)



months and immediately prior to the filing of the chargesheet. It is the case of the Appellant that the conduct of PWs-6&7 is highly suspicious as they were allegedly present at the spot, however, they did not take any steps to intervene or stop the Appellants or try to rescue the deceased and had instead run away from the spot to save themselves.

ii) Learned counsel for the Appellant has further submitted that there is neither scientific nor forensic evidence which could show the complicity of the latter in the commission of murder of the deceased. As per the case of the prosecution, the present appellant had accompanied other co-convicts/Appellants to the shop of the deceased by carrying a knife and the role described to him is of stabbing the deceased multiple times. He has further submitted that PW-1 was not on the crime spot when the entire incident had taken place. Attention of this Court has been drawn towards the testimony of PW-19, who was the PCR official and was first to reach the crime spot, and it is submitted that PW-19 had not mentioned anything regarding PW-1. It is, thus, submitted that the deceased was unattended till the arrival of PW-19. It is further submitted that PW-1 had not helped the deceased in any manner either during assault or after the assault even if he was present at the spot. Learned counsel has drawn attention of this Court towards *rukka*, Ex.PW-1/A colly, initial statement of PW-1 to show that the latter in the said statement not stated as to who had accompanied the deceased in PCR van. It is, however, submitted that in his deposition before the learned Trial Court, PW-1 had improved his statement regarding the said fact and had stated that Noman Umar/PW-



7, uncle/*chacha* of the deceased along with PCR officials had gone to hospital. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Amar Singh (*supra*)**¹², to contend that the statement of a person whose conduct just after the incident is against normal human behaviour and makes his presence at the spot doubtful cannot be taken into consideration and has to be discarded.

iii) Learned counsel has further submitted that the conduct of PW-1 was quite unnatural and improbable as, when he came to the rescue of the deceased, he was merely threatened and given a minor injury whereas family members of the deceased, PWs-6&7, had run away to save their lives. As per the statement of PW-1, the Appellants were aggressive towards the deceased and were carrying dangerous weapons, however, they did not cause any harm to him. It has been pointed out that in his deposition, PW-1 had stated that the deceased, PWs-6&7 (brother and uncle of deceased) were watching IPL match on TV; however, he has not stated so in his statement (Ex.PW-1/A) based on which the FIR in the present case was registered. It is also pointed out that IO/PW-32 had not seized any TV from the shop of the deceased and the site plan also does not mention of any TV in the said shop. This shows that PW-1 has himself concocted a story and improvised his version of the alleged incident.

iv) Learned counsel has further submitted that PW-1 has not explained why he did not get his medical examination conducted when

¹² (2020) 19 SCC 165



he had allegedly gone to GTB hospital in the night. It is the case of the Appellant that the conduct of PW-1 in the present case does not inspire confidence and there has been material improvements and lacunae in his statements and the same are not reliable and learned Trial Court has erred in relying on the testimony of PW-1 to convict the present Appellants.

v) Learned counsel has further submitted that PW-1 had gone to the shop of the deceased to get his car batteries replaced, however, site plan does not mention about the same and there is also no explanation as to how a printing press was inside an auto workshop. It is further submitted that Appellant-Arif, as per PW-1, had fired on the deceased, however, there are no bullet injuries on the deceased or anyone else and even bullet marks were also not seen during investigation inside the shop and has also not been reflected in the site plan. It is pointed out that PWs-6 and 7 (brother & uncle/*chacha*) are not eye-witnesses of the alleged incident as both of them had ran away to save their lives after the Appellant-Arif had fired a shot from the pistol at PW-7.

vi) It is the case of the Appellant-Abid that there is no link between the latter and alleged recovery of knife. As per the case of prosecution, the knife used by the Appellant to stab the deceased was recovered on 05.07.2013 *vide* seizure memo Ex.PW-30/A-18 from an open highway; however, the knife of which FSL report has been obtained is not the one which was allegedly recovered at the instance of the Appellant-Abid as the knife of which FSL report has been sought matches the



dimensions of knife (length 19.5 cm approx.) which was recovered from Appellant-Javed *vide* Ex.PW-30/A-Z. It is further the case of Appellant-Abid that the knife recovered at his instance was never sent to FSL for examination and no DNA or fingerprints were lifted from the knife. It is pointed out that the description of knife given by PW-7 during the alleged incident is highly generic and such kind of knives are easily available in the market. Further, no blood was detected on the knife allegedly recovered at the instance of the present Appellant and none of the prosecution witness has identified the said knife during the trial. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Manjunath and Others v. State of Karnataka**¹³, to argue that recoveries effected from a place accessible to public compromises the sanctity of such recovery and takes away veracity thereof and same cannot be used to prove the guilt the accused persons.

vii) It is further the case of the Appellant-Abid that recovery of alleged knife at his instance is doubtful as the same was purportedly effected after 2 months of the alleged incident from an open space near the highway. It is submitted that the possibility of planting of such kind of commonly available knives on the Appellant cannot be ruled out and no explanation has been given by prosecution in this regard. It is further pointed out that the Appellant in his disclosure statement, Ex.PW-30/A-7, had stated that clothes and knife can be recovered from house at Hapur, however, in a subsequent disclosure statement, Ex.PW-30/A-15, it has been stated that the clothes and knife were thrown on Delhi-

¹³ 2023 SCC OnLine SC 1421



Hapur Road. Further, there has been no recovery of clothes, and the knife has been recovered whereas both, clothes and knife, were stated to have been disposed of at the same place and same time. This shows that the recovery has been planted by the prosecution to falsely implicate the present Appellant-Abid and thus, same cannot be read in evidence against him.

viii) Learned counsel for the Appellant has further submitted that prosecution has failed to attribute any motive towards the Appellant or other co-convicts and PWs-8 & 10, who are relatives of the deceased, had not disclosed to the police officials present at the spot that they had made PCR calls. Moreover, their statements under Section 161 of the CrPC were recorded belatedly and no explanation has been provided for the same by IO/PW-32 in the chargesheet.

ix) Learned counsel for the Appellant-Abid has relied on following precedents in the support of the present appeal: -

- a. **Ramvir v. State of Uttar Pradesh**¹⁴,
- b. **Amar Singh v. State of NCT of Delhi**¹⁵,
- c. **Namdeo v. State of Maharashtra**¹⁶,
- d. **Mano Dutt and Anr. v. State of U.P.**¹⁷,
- e. **Mustakeem @ Bhurav. State (GNCT of Delhi)**¹⁸

¹⁴ 2019 (2) SCC 237

¹⁵ 2020 (19) SCC 165

¹⁶ 2007 (14) SCC 15

¹⁷ (2012) 4 SCC 79

¹⁸ Criminal Appeal no. 419 of 2018 decided on 02.11.2020



x) Therefore, it is prayed that the Appellant-Abid has been falsely implicated in the present case and present appeal deserves to be allowed.

SUBMISSIONS ON BEHALF OF THE APPELLANT-GUFRAN

9. Learned counsel for the **Appellant, Gufran**, has made the following submissions in support of his appeal which are as follows: -

i) It is submitted that the present case is primarily based on ocular evidence and the testimonies of the alleged eye-witnesses which are not reliable as they have improved their version of the incident thereby falsely implicating the Appellant-Gufran in the present case. Learned counsel has submitted that, in the present case, three PCR calls were stated to have been made by PW-10, PW-8 and PW-1 pursuant to which three respective DD entries Nos. 4A, 5A, 6A were registered, however, none of the said calls were made by the said witnesses from their own mobile phones. It is pointed out that as the DPCR form and CAF of the numbers from which said calls were stated to have been made were registered in the name of some other persons and not the aforesaid prosecution witnesses. It is further pointed out that the said registered SIM card owners were not examined by the prosecution during the course of trial. It is further submitted that in none of the aforesaid PCR calls, name of the present Appellant was stated to have been mentioned.



ii) Learned counsel has drawn attention of this Court towards the rough site plan (Ex.PW-1/D-4) and has submitted that the said site plan does not mention the about the position of alleged eye witness (PW-1) of the prosecution as well as the location of the Appellants/Convicts of the present case. It has been pointed out that IO/PW-30 in his cross-examination has admitted that the aforesaid exhibit does not show the position of the convict or the complainant or the deceased. It is further submitted that a perusal of the testimonies of police officials, PWs-30, 32, 33, 35, would show that no eye witness/public witness was found present at the alleged crime spot for a long period of time nor there was any friend or relative of the deceased at the hospital who had accompanied him and the alleged eye witness (PW-1), who claims to have been present at the spot as well as hospital is a planted witness by the prosecution.

iii) Learned counsel has further submitted that PW-8 in his cross-examination admitted the suggestion that there was a function organised in the house of Convict/Appellant, Israil Pehalwan and the same lends credence to the fact and the defence of the Appellants that there was, in fact, a function in the family of the Appellants on 21.04.2013. It has been further argued that this admission by PW-8 corroborates the testimony of PW-9 who had also deposed on similar lines. Thus, the alleged eye-witnesses, *i.e.*, PW-1, 6 and 7, who were present at the spot had concealed the fact there was function in the house of Appellant's father-in-law, Israil Pehalwan, and false motives have been attributed by prosecution towards this Appellant and



therefore, the testimonies of so-called eye-witnesses are not truthful and reliable.

iv) Learned counsel has further submitted that PW-1 is a tutored witness as he has deposed at the instance of the relatives of the deceased and the same can be seen for his testimony. The dock identification of the Appellants in the present case was not proper as it was merely noted that, “All accused persons are present in the Court today (correctly identified).” It is further submitted that statement of PW-1 is not believable inasmuch as it is the case of prosecution that he was not harmed by the Appellants despite him being present there at the spot throughout the occurrence and only the deceased and PWs-6&7 were beaten and PW-1 was left with only a simple warning/threat. It is further pointed out that there has been unexplained delay in conducting the medical examination of PW-1 as he had allegedly gone to hospital in the night and his MLC is of 22.04.2013 at 10:10 AM. It is further pointed out from MLC of PW-1, Ex.PW-3/A, that MLC only mentions simple injuries (Abrasions and tenderness) and the same can be self-inflicted. Learned counsel has further submitted that the story of watching IPL is also false and concocted as the said fact has not been stated by PW-1 in his earlier statements, Ex.PW-1/D1 & Ex.PW-1/D2, and in fact, there is no recovery of a television from the alleged crime spot, *i.e.*, shop of the deceased and the same was also not captured in any of the pictures of the crime spot taken by the Investigation Team.

v) Learned counsel has further submitted that the testimony of the



brother of the deceased, PW-6, is also not trustworthy as in his case as well dock identification of the Appellants has been done by merely stating that, “I can identify the accused persons, and they are present in the court today (correctly identified).” It is further submitted that PW-6, during his deposition on 27.07.2015, had expressed his inability to identify the alleged weapon of offence, *i.e.*, *laathi*, knife or other weapons because of long lapse of time and also because he had not seen them very minutely at the time of incident. It has also been argued that no medical examination of this witness was conducted and thus, the same belies the factum of him being beaten up during the incident in the present case and the same is an improvement from his earlier statement recorded under Section 161 of the CrPC during investigation. Similar arguments have also been advanced by learned counsel regarding the testimonies of PWs-7, 8 & 10 in respect of dock identification.

vi) Learned counsel has drawn attention of this Court towards the statements of PWs-8 & 10 recorded on 11.07.2013 under Section 161 of the CrPC (Ex.PW-8/D-1 and Ex.PW-10/D-1) and to submit that the same were recorded 80 days after the occurrence of the incident and just prior to the filing of the chargesheet in order to fill the lacunae in the case of the Prosecution and create false and concocted evidence. Reliance has been placed on the judgment of Hon’ble Supreme Court in **Harbeer Singh v. Sheeshpal**¹⁹, to contend that delay in recording statement under Section 161 of the CrPC is itself fatal to the case of

¹⁹ (2016) 16 SCC 418



prosecution. Attention of this Court has also been drawn towards the DPCR Form of PCR call (Ex.PW-17/A) made by Zara Ibrahim/PW-10, wife of the deceased, wherein the name of this Appellant has not been mentioned and that the prosecution has set up an entire false case against the present Appellant. It is further submitted that PW-10 had not seen the present Appellant-Gufran at the place of the incident as the name of this Appellant has not been mentioned and the same has been improvised by her afterwards.

vii) Learned counsel has further submitted that as per the case of prosecution and testimonies of PWs-1, 6 and 7, all of them were watching IPL match on TV, so there is also a possibility that the deceased and his brothers were carrying cricket stumps to cheer their team and dispute broke out between two groups. It has been argued that the allegations against this Appellant is of giving beatings to the deceased with stumps, however, said stumps were seized from the crime spot and no fingerprints were found which could show the complicity of the Appellant in the present case. Thus, there is no connection between the recovery of the said stumps and the present Appellant and it is not the case of prosecution that the recoveries of the stumps were effected pursuant to disclosure statement of the present Appellant.

viii) Attention of this Court has also been drawn towards the FSL report (Ex. PW-29/A) wherein, it has been stated that blood could not be detected on biological examination of exhibits, '9a' and '9b', i.e.,



clothes of the Appellant-Gufran. It is further submitted that even otherwise, if it is presumed that blood of the deceased was there on the clothes of this Appellant then, also mere presence of the blood of the deceased would not implicate him in the present case.

ix) Learned counsel has further submitted that the Appellant has been convicted for the offences punishable under Section 302 of the IPC read with Sections 149/34 of the IPC, however, the prosecution has failed to discharge its burden of proof to show that the Appellant shared common intention/object to commit the murder of the deceased. It is submitted that, as per the case of Prosecution the allegation against the Appellant of carrying a stump and giving beatings to deceased, regarding which no subsequent opinion was obtained with respect to any injury being received by deceased with the stump allegedly carried by the Appellant.

x) It has been argued that by way of testimony of PW-9, it has come on record that there was a function in the family of Appellant's father-in-law, Israil Pehalwan, and there was some altercation as the car of their relative got punctured and thus, it would be unrealistic and unjust to presume that Appellant, who is son-in-law of Israil Pehalwan (Co-convict in the present case) and had gone to attend the said function, would have had shared common intention/object to commit murder of the deceased.

xi) Without prejudice to the aforesaid arguments, learned counsel



has submitted that even if the case of prosecution is taken as gospel truth against the present Appellant, the same would take the Appellant within the ambit of Section 304 Part-II of the IPC. It is pointed out that the learned Trial Court has concluded that the prosecution has not been able to establish any motive against the Appellants to commit the murder of the deceased. Thus, in these circumstances, it has been argued that the case of the Appellant does not fall within the ambit of Section 302 of the IPC as in the present case, there was a sudden fight between two groups which ensued into a scuffle and lead to the death of the deceased and the Appellant did not intend to cause death of the deceased thereby, making their case as culpable homicide not amounting to murder. Reliance has been placed on following judgments to contend that even though it has been found that deadly injuries were inflicted by dangerous weapons, the Court(s) still have modified the conviction for the offence punishable under Section 302 of the IPC to Section 304 Part-II of the IPC: -

a) Reliance has been placed on **Sukhdev Singh v. State of Punjab**²⁰, to show that in the said case, four (4) accused attacked the deceased with deadly weapon *gandasa* however, considering the factor of knowledge and intention, the conviction of Appellant therein was converted from Section 302 of the IPC to Section 304-II of the IPC;

b) Reliance has also been placed on **Molu v. State of Haryana**²¹, to

²⁰ 1992 Supp (2) SCC 470

²¹ (1976) 4 SCC 362



submit that in this case, the deceased suffered sharp cutting multiple injuries on various parts which were inflicted by the appellant therein, however the Hon'ble Supreme Court modified the conviction under Section 302 of the IPC to Section 304 (Part-II) of the IPC by considering the aspect of knowledge;

c) Reliance has also been placed on **Gurwinder Singh @ Sonu v. State of Punjab**²², to contend that in this case, the deceased suffered multiple fractures on the head due to axe blow by the appellant therein, still the Hon'ble Supreme Court converted the conviction to the appellant from Section 302 of the IPC to Section 304 (Part-II) of the IPC;

d) Reliance has also been placed on **Daulat v. State (Govt. of NCT Delhi)**²³, to show that in this case this Hon'ble Court converted the conviction Appellant herein from Section 302 of the IPC to Section 304 (Part-II) of the IPC even when there were allegations of multiple knife stabbing to the deceased at various parts of his body;

e) Reliance has also been placed on **Krishan Kumar @ Monu v. State**²⁴, to show that in this case, there was the allegation of 21 knife stabbing by the appellant therein to the deceased however, considering the facts and circumstances of the case and further considering the ingredients of Section 302 of the IPC and Section 304 (Part-II) of the

²² (2018) 16 SCC 525

²³ ILR (2009) IV DELHI 101

²⁴ 2014 SCC OnLine Del 4615



IPC, the conviction of Appellant therein was converted into Section 304 (Part-II) of the IPC from Section 302 of the IPC;

f) Reliance has also been placed on **Vineet Kumar Chauhan v. State of Uttar Pradesh**²⁵, to contend that in this case, considering the manner in the alleged incident happened even though there was allegation of gunshot hit to the deceased by the appellant therein, the conviction of Section 302 of the IPC was set aside and conviction was modified into Section 304 (Part-II) of the IPC.

xii) Learned counsel for the Appellant-Gufran has relied on following precedents in the support of the present appeal: -

- a. **Bajwa and Others v. State of U.P.**²⁶,
- b. **Dinesh Kumar @ Kalu v. State Govt. of NCT of Delhi**²⁷
- c. **C. Muniappan and Others v. State of Tamil Nadu**²⁸,
- d. **Anand Ramachandra Chougule v. Sidarai Laxman Chougala and Others**²⁹,
- e. **Thadiyantevida Nazeer and Ors. Vs. State of Kerala and The Superintendent of Police Vs. Abdul Halim and Ors.**³⁰,
- f. **Vayalali Girishan and Ors. Vs. State of Kerala**³¹,
- g. **Darshan Singh v. State of Punjab**³²,

²⁵ (2007) 14 SCC 660

²⁶ (1973) 1 SCC 714

²⁷ In CRL.A. 901/2013 and connected matters

²⁸ (2010) 9 SCC 567

²⁹ (2019) 8 SCC 50

³⁰ CrL. A. Nos. 1699 of 2011 and 1914 of 2011

³¹ 2016/KER/8036



- h. Rohtash v. State of Haryana³³,**
- i. Harbeer Singh v. Sheeshpal and Others with State of Rajasthan v. Sheeshpal and Others³⁴,**
- j. Rudrappa Ramappa Jainpur and Others v. State of Karnataka³⁵,**
- k. Laxman v. State³⁶,**
- l. Ganesh Datt v. State of Uttarakhand³⁷,**
- m. Chandra Pratap Singh v. State of Madhya Pradesh³⁸,**
- n. Allauddin Mian and Others Sharif Mian and Another v. State of Bihar³⁹,**
- o. Rajendra Shantaram Todankar v. State of Maharashtra And Others⁴⁰,**
- p. Najabhai Desurbhai Wagh v. Valerabhai Deganbhai Vagh and Others⁴¹,**
- q. Sarwan Singh and Others v. State of Punjab⁴²,**
- r. Pankaj Sharma v. State of NCT of Delhi⁴³**
- s. Sukhdev Singh v. State of Punjab⁴⁴,**
- t. Molu and others v. State of Haryana⁴⁵,**

³² (2024) 3 SCC 164

³³ (2012) 6 SCC 589

³⁴ (2016) 16 SCC 418

³⁵ (2004) 7 SCC 422

³⁶ 2011 SCC OnLine Del 4517

³⁷ (2014) 12 SCC 389

³⁸ (2023) 10 SCC 181

³⁹ (1989) 3 SCC 5

⁴⁰ (2003) 2 SCC 257

⁴¹ (2017) 3 SCC 261

⁴² (1978) 4 SCC 111

⁴³ In CRL.A. 255/2015 and connected matters

⁴⁴ 1992 Supp (2) SCC 470

⁴⁵ (1976) 4 SCC 362



- u. Gurwinder Singh Alias Sonu and others v. State of Punjab and Another⁴⁶,**
- v. Daulat v. The State (Govt. of NCT Delhi)⁴⁷,**
- w. Krishan Kumar @ Monu v. State⁴⁸,**
- x. Vineet Kumar Chauhan v. State of Uttar Pradesh⁴⁹,**

xiii) Therefore, without prejudice to the aforesaid arguments advanced on behalf of this Appellant, it has been prayed that in case this Court does find the Appellant guilty his conviction may be modified to culpable homicide not amounting to murder punishable under Section 304 Part-II of the IPC.

SUBMISSIONS ON BEHALF OF STATE

10. Learned APP for the State, assisted by Id. counsel for the family of the deceased, while refuting the submissions made by learned Counsels on behalf of the Appellants, has made the following submissions which are as follows: -

- i)** It is the case of the prosecution that the eye-witness, Yogendra Kasana/PW-1, was present at the crime spot where the incident in the present case had happened, *i.e.*, shop of the deceased, Ibrahim, and his acts and conduct was natural as he had tried to intervene and help the

⁴⁶ (2018) 16 SCC 525

⁴⁷ ILR (2009) IV DELHI 101

⁴⁸ 2014 SCC OnLine Del 4615 and other connected matter

⁴⁹ (2007) 14 SCC 660



deceased, however, Appellant-Israil Pehalwan had threatened PW-1 and warned him not to intervene. As per the case of prosecution, PW-1 was actively involved in taking the deceased to the hospital by PCR van and he was personally involved in shifting. PW-1 had accompanied the PCR van in his own Alto car to GTB hospital. It is further the case of the prosecution that as the deceased was declared brought dead, PW-1 came back to the spot where he met the police officials, SI Rajiv/PW-30 and IO/PW-32 and gave his statement, Ex.PW-1/A colly, to them based on which the FIR was registered at 02:40 AM. Learned APP has submitted that the delay of 02:35 hours in registration of FIR as raised on behalf of the Appellants, was the natural time which was taken for seizure of articles, preparation of *rukka*, taking deceased to the hospital and returning to the spot.

ii) Learned APP for the State has submitted that the testimony of the eye-witness/PW-1 bears crucial significance in the present case as he had named all the Appellants in his initial statement along with the weapons carried by each of them separately and the same had been consistent throughout the course of trial. It is submitted that as per the statement of PW-1, Israil Pehalwan was holding *laathi* in his hand, Javed and Abid were holding knives in their hands, Arif, a pistol, Tarif and Gufran (son-in-law) had stumps in their hands and he knew all the Appellants beforehand. It is pointed out that the Appellants/Convicts in the present case are four sons, their father, and son-in-law who all belong to same family. As per the case of prosecution, PW-1 had gone to the shop of deceased to get the battery of his car repaired/replaced



and deceased was present at his shop along with his brother-Tahir/PW-6, uncle/*chacha*-Noman Umar-PW-7. Initially, Israil Pehalwan gave *laathi* blow to Tahir/PW-6 and Noman Umar (PW-7), uncle/*Chacha* of the deceased who eventually fell from the stairs and slipped to the road. As per the case of prosecution, Appellants were trying to even their scores in respect of a financial transaction between them and the deceased as the latter used to call them *chor*/thieves. Another reason for the Appellants to come to shop of the deceased was stated to be that, they wished to put '*Kanaath*' (side piece of tent put in periphery to maintain privacy) on the window of the deceased's shop as there was function in family at their house and the deceased was not permitting them to do so. The Appellants were clear in their motives and to put an end to the everyday chaos with the deceased, they entered into an unlawful assembly with the object of eliminating the deceased and barged into his shop.

iii) Insofar as the contention of the Appellants that PW-1 was a planted witness is concerned, learned APP has submitted that the said allegations is baseless and has not been supported by any material on record and the prosecution could have cited PWs-6 or 7, *i.e.*, Tahir-brother of deceased or Noman Umar-uncle/*chacha* of deceased, as their key witness, however, they had not witnessed the whole incident in the present case and due to this reason, they were examined accordingly during the course of trial. Learned APP has further submitted that even though the owner of the mobile phone through which DD entry No.6A (Ex.PW-4/C) was registered by PW-1 has not been examined, however,



it has not been disputed that the said mobile phone was in possession of PW-1 at the said relevant point in time and the location of the said phone as per the CDRs was in that particular vicinity where the incident in the present case had occurred. It is further the case of prosecution that the claim of the Appellants that PW-1 was a planted witness is bereft of merit as it is not possible to plant a witness in two hours and that too, in the middle of the night. Moreover, the facts stated by PW-1 have been duly corroborated through the testimonies of PWs-6, 7, 10, who were the relatives of the deceased and had witnessed the incident while they were present at the crime spot.

iv) Learned APP for the State has submitted that PW-1 has described the role of each Appellant and arms/weapons of offence carried by each of them and how as also the manner in which the injuries as demonstrated in the post-mortem report were inflicted by them on the deceased. Regarding the absence of PW-1 at the hospital and crime scene which has surfaced through the testimonies of police officials, IO/PW-32, PW-30, PW-33, and PW-35, it is the submission of learned APP that the same could be a possibility as he was in his Alto car on his way to the hospital behind the PCR van and therefore, could not have been seen at the spot when the aforesaid local police officials arrived there. It is, however, submitted that after the deceased was declared brought dead and PW-1 then, had come back to the crime spot, and thereafter, his statement (Ex.PW-1/A colly) based on which present FIR was registered was recorded by IO/PW-32 and the same has not been disputed by the Appellants.



v) With respect to the medical non-examination of PW-1 on the same day, it is submitted that the FIR in the present case is dated 22.04.2013 and the medical examination of PW-1 was also conducted on the same day at 10:10 AM. Learned APP has submitted that PW-1, even though might not have sustained any severe injuries and was given *laathi* blows, had witnessed a horrific case of murder wherein deceased was beaten to death by six persons, the Appellants herein. Learned APP for the State has further submitted that the contention of the learned counsels for the Appellants that the blood stains on the clothes of PW-1 were planted by prosecution is wrong as the blood could have been transferred on the clothes of PW-1, when he and PW-19/ASI, PCR van operator, had brought the deceased from his shop into the PCR van to take him to hospital. It is further the case of prosecution that this fact has also been corroborated by the testimony of Noman Umar/PW-7 who has stated that when he returned to the spot, after the Appellants left, he saw that PW-1 and PW-19 were taking the deceased into the PCR van.

vi) Learned APP has drawn attention of this Court towards the testimonies of PW-8, PW-7 and PW-16 to show that there was an old grudge between the deceased and Appellants and the deceased used to call them *chor/cheater* which clearly establishes the motive of the Appellants to even the disputes and harassment. Regarding the three PCR calls, *i.e.*, DD Entries No.4A, 5A, 6A, it is the case of prosecution that it is not important that who is the owner of the mobile phones from



which the said calls were made but it has to be noted that the mobile phones were in possession of the callers whilst the calls were made and the same were not hoax calls. Substance of the said PCR calls had clearly demonstrated the happening of the incident as narrated by PW-1 and same was sufficient enough for the investigating authorities to come to the spot for verification and further action.

vii) Learned APP for the State has further submitted that the MLC of the deceased (Ex.PW-5/A) and the post-mortem report (Ex.PW-13/A) completely supports the testimony of PW-1. It is the case of the prosecution that the injuries mentioned in the post-mortem report could have been caused by the weapons carried by the Appellants. It is submitted that the Appellants had not challenged the said opinion in respect of injuries inflicted on the deceased and the concerned doctor has not been cross-examined by the Appellants in this regard. Reliance has been placed on the judgments of Hon'ble Supreme Court in **Prasad Pradhan v. The State of Chhattisgarh**⁵⁰, and **State of Uttarakhand v. Sachendra Singh Rawat**⁵¹, to contend that in a case like the present one, if the prosecution has proved that the accused person(s) has inflicted an injury which would have been sufficient in the ordinary course of nature to cause death of the victim, the determinative factor would be the intention to cause such injury. Learned APP has submitted that, in the present case, the prosecution has proved, by way of MLC (Ex.PW-5/A) and post-mortem report (Ex.PW-13/A), that the

⁵⁰ (2023) 11 SCC 320: 2023 SCC OnLine SC 81: MANU/SC/0074/2023

⁵¹ (2022) 4 SCC 227: 2022 SCC OnLine SC 146: MANU/SC/0144/2022



injuries inflicted on the deceased by the Appellants were sufficient in ordinary course of nature to cause death of the deceased.

viii) Regarding the delay in recording the statement under Section 161 of the CrPC of PW-10, wife of the deceased, it is submitted that she was observing *iddat* period and was not supposed to meet any outsider during the said period. In respect of delay in recording the statement of PW-8, it is submitted that IO/PW-32 had already recorded the statements of PW-1/eye-witness, and PWs-6, 7, who had witnessed the incident prior to their leaving the spot.

ix) Insofar as the recoveries effected from the Appellants are concerned, learned APP for the State has submitted that in the FSL report (Ex.PW-29/A) blood stains detected on the clothes of the Appellant-Israil Pehalwan as also on the *laathi* recovered at his instance, have matched with that of the deceased. In respect of the clothes of Tarif and Gufran, it is submitted that their clothes and weapons, *i.e.*, stumps were recovered at their instance and in respect of Javed, the knife was recovered near the railway line at his instance only and the blood stains detected on the said knife are of human species as per the FSL report. Lastly, it is submitted that Abid and Arif had surrendered before the learned Court on 01.07.2013 and subsequent thereto, there was recovery of empty magazine of pistol and knife from Hapur at their instance.

x) Regarding the motive attributed to the Appellants, learned APP



has submitted that in the said transaction pertaining to the mortgage of car the deceased had suffered loss of Rs.80,000/- in 2012 and following the same, he used to call the Appellants as *chor*/thieves and on the date of incident, the Appellants wished to put tent (*kanaath*) on the window of the shop of the deceased and the latter was not agreeing to same and it proved to be a triggering moment and flared up the resentment and led to the present case.

xi) Learned APP for the State, assisted by learned counsel for the family of deceased, has drawn attention of this Court towards the cross-examination of PW-1/injured-eyewitness conducted on 23.01.2015 wherein, learned counsel for the Appellants- Israil Pehalwan, Tarif, Javed, Arif, had put a suggestion that, “when Numan (PW-7) raised hue and cry, accused Arif fired at him immediately.”, thereby conceding to the case of prosecution against the said Appellants. It is the case of the prosecution that the said suggestion put to PW-1 on behalf of the Appellants would tantamount to and should be considered as an admission on part of the Appellants. The relevant portion of the cross-examination of PW-1 conducted on 23.01.2015 reads thus: -

“There was gap of five minutes between the noise being raised by accused and entering inside the workshop of ibrahim. They attacked upon ibrahim immediately after entering the workshop (ghuste hi hamla kar diya). Numan raised hue and cry immediately after the Ibrahim was attacked by the accused persons. Tahir tried to intervene after 2-3 minutes of start of the assault. It is correct to suggest that when Numan raised hue and cry, accused Arif fired at him immediately.



(**Court observation:** At this stage the examination was stopped and Id. defence counsel was asked to take a break and to consult his colleague counsel before proceeding further, finding the last suggestion to be unusual. After having consulted with his colleague, the defence counsel Mr. Aggarwal has submitted that the last suggestion has been wrongly recorded and it was not so meant by him. However, I am not in agreement with his submission because it was recorded in the manner the suggestion was put to the witness and answered by the witness. Id. counsel can be only advised to take care while putting his suggestions or questions, rather than impressing upon the court that he did not put such suggestions.)

At this stage, Id, counsel seeks to get recorded his submissions in his words and it is being recorded in his words once again:-

"I had put a leading question to the witness and not a suggestion. Unfortunately in the recording of his answer the expression 'to suggest' was also recorded. In any case in the course of examination it is the witness's version that is being questioned and this cannot tantamount to conceding the case of the prosecution."

xii) It is, thus, prayed that the impugned judgment of conviction and order on sentence has been passed after due appreciation of material placed on record during the course of trial and the same be upheld.

SUBMISSIONS BY THE PROSECUTION IN RESPONSE TO THE SUBMISSIONS ON BEHALF OF THE APPELLANTS- ISRAIL PEHALWAN, TARIF, JAVED, ARIF

11. Learned APP for the State has responded to the submissions made by learned counsel for the Appellants-Israil Pehalwan, Tarif, Javed, Arif, in the



following manner: -

i) With respect to the unreliability of PW-1 and that he was not present on the spot, it is submitted that he was an injured eye-witness and had made the PCR call with respect to the present incident (DD entry No. 6A: Ex.PW-4/C) and the location of the phone from which call was made has been reflected to be in the same location. It is further submitted that the role ascribed to the Appellants, as per the statement of PW-1, has been duly corroborated by medical evidence, post-mortem report (Ex.PW-13/A), FSL report (Ex.PW-29/A) revealed during the investigation. It is the case of prosecution that it is not possible to plant a witness in just two hours and there was no motive for PW-1 to become a witness and depose falsely against the Appellants. The absence of PW-1 at the hospital was quite coincidental as he had accompanied the PCR van in his own Alto car and time taken to register the FIR was the natural time which could have been taken in preparation of *rukka*, seizure memos etc. Regarding the claim of Appellants in respect of defective investigation, it has been submitted that the ownership of the mobile phones is not of essence, however, it is pertinent to note that the location of said phones was of the same vicinity where the incident had occurred.

ii) Regarding the occupation carried on by the deceased, it is submitted that for changing/replacing battery a proper workshop is not required and same can be done at car sale and purchase shop and it has come on record during the course of trial that deceased used to do



minor repairs for his own vehicles and non-mentioning of fact of repair being conducted at the shop of the deceased is not fatal to the case of prosecution and does cause serious prejudice to the Appellants.

iii) Learned APP for the State has further submitted that the contention on behalf of the Appellants that PW-19, who was the first police official to come to the spot after the incident, has not stated anything regarding the presence of PW-1 is without any merit as at that point in time, PW-19 could not have known whether PW-1 was related to the deceased as family or friend. It is pointed out that even otherwise it has come on record through the testimony of Noman/UmarPW-7, uncle/*chacha* of the deceased, that he had accompanied PW-19 and deceased to the hospital in PCR van.

iv) Insofar as the argument of no blood group found on the knife, it is submitted that the said recovery was effected at the instance of the Appellant-Javed, however, the knife was recovered after a lapse of 2 ½ months from the date of incident in July 2013 and there is high possibility that the blood on the knife could have washed away. It is, however, submitted that this does not convey that the said knife was not used in commission of the offences alleged in the present case.

SUBMISSIONS OF PROSECUTION PERTAINING TO APPELLANT-ABID

12. Learned APP for the State has responded to the submissions made by



learned counsel for the Appellant-Abid in the following manner: -

- i) In respect of recovery of the knife at the instance of Appellant-Abid, it is submitted that it is not that the said recovery has been planted against the Appellant as the said knife was recovered at his instance only. Further, even if the said recovery is discarded, his conviction is likely to be sustained in view of ocular evidence that has come on record during the course of trial.
- ii) Learned APP for the State has submitted that the delay caused in recovery of the weapon of offence and other recoveries was on account of the fact that this Appellant was absconding and had subsequently, surrendered only on 01.07.2013, and thereafter, the recovery was effected on 05.07.2013, *i.e.*, within 5 days and therefore, no unreasonable delay has been made by the Investigating Authority in effecting the said recovery. It is further submitted that even if recovery of knife after lapse of approximately 3 months from the date of incident is considered as suspicious, there is ocular evidence of an eye-witness of sterling quality against the Appellant which cogently proves his role in the present case and the same has also been corroborated by medical evidence as well.
- iii) Insofar as the contention of this Appellant that he was engaged and therefore, there was no likelihood of him being involved in the present case is concerned, it submitted that there was an old enmity between the Appellants and the deceased and prosecution witnesses,



PWs-1,16,8,16 have testified to this extent and thus, the attack on the deceased was premeditated.

SUBMISSIONS OF PROSECUTION PERTAINING TO APPELLANT-GUFRAN

13. Learned APP for the State has responded to the submissions made by learned counsel for the Appellant-Gufran in the following manner: -

- i) It is submitted that the said PCR calls made and DD entries recorded pursuant thereto were only intimation of the incident and not a detailed *tehrir*. Further, PWs-1,6,7,8,10 had clearly deposed with respect to the involvement of the Appellant-Gufran and recovery of stump, weapon of offence, carried by him further fortifies the case of the prosecution.
- ii) With respect to the conviction of the Appellant with the aid of Sections 34/149 of the IPC, reliance has been placed on **Rohtas v. State of Haryana**⁵², to contend that one can be substituted for the other, sometimes it may overlap depending on the fact and circumstances of the case.
- iii) Insofar as the contention of the Appellant with respect to casual dock identification of the Appellant(s) during the trial is concerned, it is

⁵² (2020) 19 SCC 465: 2020 SCC OnLine SC 1014



submitted that the same was not required to be conducted in detail since the parties were known to each other and familiarity among the parties can be manifestly seen from testimonies of prosecution witnesses and the fact that they were neighbours.

iv) Regarding the contention of the Appellant that there was no intention to murder the deceased even though the Appellant(s) had a pistol and yet they did not fire at the deceased, it is submitted that the pistol carried by the Appellants got stuck and due to this reason, no firearm injury was caused to the deceased. Learned APP has further submitted that all Appellants were carrying deadly weapons which they used to achieve a common objective, *i.e.*, to kill the deceased and further the common objective can be formed at the spot when Appellant-Israil Pehalwan exhorted at the other Convicts to kill Ibrahim, the deceased and they ensured the same. It is the case of prosecution that the intention of the Appellants can be seen from the weapons carried on by them and the injuries caused both by blunt as well as the sharp weapons were independently sufficient enough to cause death of the deceased.

v) Learned APP for the State has relied on following precedents to oppose the present appeals: -

- i. **Yogesh Singh v Mahabeer Singh and Others⁵³,**
- ii. **Rakesh and Another v. State of Uttar Pradesh and Another⁵⁴,**

⁵³ 2016 SCC OnLine SC 1163



- iii. **Amar Singh v. State (NCT of Delhi)**⁵⁵,
- iv. **Manjunath and Others v. State of Karnataka**⁵⁶,
- v. **State of Gujarat v. Thakore Chamanji Motiji and Others**⁵⁷,
- vi. **Subhash Aggarwal v. The State of NCT of Delhi**⁵⁸,
- vii. **Nitya Nand v. State of Uttar Pradesh and Another**⁵⁹,

REJOINDER SUBMISSIONS

14. In rejoinder, learned counsels for the Appellants have made the following submissions: -

i) Learned counsel for the Appellant-Gufran has submitted that in none of the PCR calls, the name of Gufran as one of assailants was mentioned. It is submitted that why would one person name the four brothers and leave out the son-in-law. This has not been explained by the prosecution. It is further submitted that the dock identification of the Appellant(s) by the relevant witnesses, *i.e.*, PWs-1, 6, 7, 8, 10, was very casual in nature and no specific identification of the Appellants was done during the course of trial. It is further the case of this Appellant that as per the testimony of IO/PW-32, PW-31 and PW-9, the issue in the present case pertains to parking/puncture of tyre and the defence of the Appellant(s) is to be seen on the basis of *preponderance of probabilities*. Reliance has been placed on the judgment of a

⁵⁴ 2021 SCC OnLine SC 451

⁵⁵ 2020 SCC OnLine SC 826

⁵⁶ 2023 SCC OnLine SC 1421

⁵⁷ 2022 SC OnLine Guj 1131

⁵⁸ SLP (CrI) No. 1069/2025

⁵⁹ 2024 SCC OnLine SC 2363



Coordinate Bench of this Court in **Pankaj Sharma v. State of NCT of Delhi & other connected appeals**⁶⁰, to contend that going to the spot and participating in the commission of crime are two different things and a Coordinate Bench of this Court in this case, had acquitted one of the accused person as the prosecution was not able to establish ‘common object’ to murder the deceased therein.

ii) Learned counsel for the Appellant-Abid has submitted that in the FSL report, Ex.PW-29/A, obtained with respect to the knife recovered at his instance no blood was stated to have been found thus, the link evidence to show the complicity of the Appellant-Abid in the present case is missing inasmuch as the recovery of the said knife was made after more than 2 of the incident and from an open highway and the case properties were also stated to have been deposited after more than six months and same casts doubt over the legitimacy of the prosecution evidences.

iii) Learned counsel for the Appellants-Arif, Javed, Israil Pehalwan and Tarif has submitted that in case any mistake is done by advocate while conducting cross-examination of the prosecution witness on behalf of the accused persons/Appellants, the latter cannot be held responsible for the same. To hold otherwise would be prejudicial to the interest of the Appellants.

⁶⁰ 2018: DHC: 4618-DB



ANALYSIS AND FINDINGS

15. This Court has heard learned counsels perused the record of the present case along with written submissions filed on behalf of the Appellants and prosecution.

16. The Hon'ble Supreme Court in **Balu Sudam Khalde v. State of Maharashtra**⁶¹, with respect to principles for appreciation of ocular/oral evidence in a criminal case has observed and held as under: -

“25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind

⁶¹ (2023) 13 SCC 365



that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a



short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [*Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], *Leela Ram v. State of Haryana* [*Leela Ram v. State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and *Tahsildar Singh v. State of U.P.* [*Tahsildar Singh v. State of U.P.*, 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]]

26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.



26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

In the present case, the prosecution relies primarily on the ocular evidence as given by PW-1/complainant (injured eye-witness) and PWs-6, 7, 8 and 10.

PRESENCE OF PW-1

17. As noted hereinbefore, the case of the prosecution is primarily based on



the testimony of PW-1. Learned counsel for the Appellants have strenuously argued that the presence of PW-1 at the spot is highly doubtful. Various submissions have been made to dispute the case of the prosecution with regard to the presence of PW-1, on whose statement the FIR was registered.

18. It is the case of the prosecution that on the intervening night of 21-22.04.2013 at about 12:25 AM, an information was received by SI Jagdish Narayan/PW-35 regarding beating of husband of caller by neighbours after entering the house, which was reduced as DD entry No. 4A (Ex.PW-4/A). The second information was received by PW-35 *vide* DD entry No. 5A (PW-4/B) on phone was that that some boys are banging the gate of House No. B-105, *Gali* no. 10, New Modern Shahdara. It has also come on record by testimony of PW-35 that while he was at the House No.D-75, a third call, *vide* DD entry No. 6A (Ex.PW-4/C) was received that near DDA Flat *Masjid*, 10-12 bullets have been fired.

19. Subsequently, at about 12:30 AM, after receiving aforesaid DD entry No. 6A (on a call at 100 by the complainant/PW-1), the SHO Surender Rana (PW-33), Inspector (IO) Amar Singh (PW-32) and SI Rajeev (PW-30), reached at *Gali* No. 10, where PW-35 and PW-11 were already present. As per these witnesses, they were informed that the injured has already been taken to the hospital and there was no eyewitness present at the spot.

20. It is pertinent to note that it is the case of the prosecution that PW-1 had made a call to the police on 100 number at about 12:22 AM as reflected in the PCR form (Ex.PW-15/B). Incident, as per testimony of PW-1 occurred at



about 12:05 AM. As per PW-1, he was present at the time when the PCR came at the spot and after putting the deceased in the PCR van, he went to the hospital in his own vehicle. PW-7, who had accompanied the PCR officials confirms the presence of PW-1 at the spot. In turn, the presence of PW-7 at the spot had been confirmed by PW-19, who was one of the PCR officials, who had taken the deceased to the hospital.

21. Learned counsel for the Appellants had vehemently argued that IO/PW-32, who was in the hospital had given a statement that he did not find any witness at the hospital. At this stage, it is apposite to refer to the CDRs details (Ex. PW-37/C) of the mobile number, 9911102102, which on 22.04.2013 from 12:22 AM to 12:26 AM was used to make three calls at 100 number and the location of the aforesaid mobile number has been shown as New Modern Shahdara, *i.e.*, the area of the incident. The location chart (Ex.PW-37/P) also reflects that on 22.04.2013 at about 12:46 AM, a call had been made from the aforesaid mobile number and the first cell ID of the said call was shown as “3015”. The location code in Ex.PW-37/P of the cell ID “3015” is Guru Teg Bahadur Enclave. Thus, the case of the prosecution that PW-1 had gone to the GTB hospital from the spot of the incident is corroborated by the aforesaid CDR details.

22. As per the case of the prosecution, PW-35 along with PW-11 reached the spot first and thereafter, PW-32, PW-33 and PW-30 also reached and by that time, the deceased was already taken to GTB hospital by PCR van, and therefore, the statements given by the witnesses were to the effect that there was no eyewitness found at the spot. It is further noted that PW-32 along with



PW-33 and PW-35 went to the hospital and reached there at about 12:50-12:55 AM. It is pertinent to note that PW-11 (who along with PW-30 remained at the spot) deposed that after one hour, SI Jagdish Narayan (PW-35), Insp./IO Amar Singh (PW-32) and Surender Rana/SHO (PW-33) came back and prior to their coming back, one Yogender Kasana, PW-1 had already reached that place. During his cross-examination, PW-1 has stated that he reached the spot five minutes prior to the arrival of the IO and the others. Thus, the sequence of events would show that when these officials came to the spot at the first instance, PW-1 had accompanied the deceased to the hospital and during the time when these police witnesses were in hospital, he had come back to the spot. It is relevant to point out that the clothes of PW-1 were also seized, which as per FSL report (Ex.PW-29/A) were found to be stained with the blood of the deceased. The said report shows that the DNA Profile generated from his clothes is similar to the DNA profile generated from the blood gauze of the deceased. IO/PW-32 also deposed that when he came back to the spot. PW-1 was already present there.

23. Next significant fact corroborating the presence of PW-1 at the spot of occurrence is the injury suffered by him, which has come on record by way of MLC (Ex.PW-3/A). In his testimony, PW-1 had deposed that Appellant-Israil Pehalwan had hit him on his right hand with a *laathi* and the MLC shows the injury on his left hand. It has been argued on behalf of the Appellants that PW-1 did not get himself examined during his first visit to the hospital along with the deceased, when he followed the PCR. Cross-examination of the aforesaid witness (PW-1) would show that no clarification has been sought on behalf of the Appellants on this aspect. This Court has also perused the



testimonies of PW-3 (Doctor) and IO/PW-32 which reveals that no question with respect to the aforesaid facts was put to said witnesses. It is also the case of the prosecution that his MLC was conducted on 22.04.2013 at 10:10 AM, when he was sent by the Investigating Officer (PW-32) to the hospital for the medical examination. It is pertinent to note that FIR was registered on 22.04.2013 at 02:40 AM based on the statement (Ex.PW-1/A colly) of PW-1, and thus, his MLC was conducted after recording of his statement. As per the case of prosecution, PW-1 had accompanied the PCR van which had taken the deceased to the hospital and when the deceased was declared brought dead, this witness (PW-1) came back to the spot. Such conduct in these circumstances is natural and this delay in conducting medical examination of PW-1 cannot be a ground to disbelieve his testimony. Insofar as the discrepancy with respect to right/left hand is concerned it may be noted that in his statement (Ex.PW-1/A colly) PW-1 does not specify whether he was hit on right or left hand. This discrepancy has come in his deposition in examination-in-chief. However, this discrepancy was never put to this witness (PW-1) for any clarification.

24. Another ground taken by learned counsel for the Appellants to dispute the presence of PW-1 at the spot is that the latter in his statement has stated that he had visited the workshop of Ibrahim on 21.04.2013 at about 02:00-02:30 PM with his Alto car in respect of charging of car battery. As per this witness, the deceased had made some temporary arrangement and asked him to use the car for that day and visit him in the evening for further repair of the battery. It is argued on behalf of learned counsels for the Appellants that the deceased was not running a workshop for repair of vehicles, however, he was



in the business of sale and purchase of cars. Therefore, there was no occasion for this witness to have approached the deceased with regard to complaint of his battery. However, it was never put to this witness that the deceased was not running a workshop and only thing that was put to him is that deceased did not work as mechanic. It is further pertinent to note that in the cross-examination of PW-1 conducted on 23.01.2015, a suggestion was put to him that the workshop of the deceased was situated at B-105. It is pertinent to note that in testimony of PW-12 certain photographs have been exhibited wherein the said witness admitted presence of batteries at the spot. It has come on record by way of testimony of PW-16 that the deceased used to work for servicing the vehicles. It is pertinent to note that PW-1 has not stated that deceased was a mechanic. Even if, it is assumed that the deceased was in the business of sale-purchase of cars, it cannot be said that the deceased could not have been in a position to help PW-1 with his minor problem of replacement of batteries.

25. It is apposite to refer to the cross-examination of PW-1 conducted on behalf of the Appellants on 23.01.2015 wherein, PW-1 had admitted a photograph (Ex.PW-1/D-3) shown to him which was already placed on record depicting the front portion and sign board of the workshop of the deceased. It is pertinent to note that said photograph (Ex.PW-1/D-3) displays the name of shop under name and style, “A.B. MOTOR SALE & PURCHES OLD & NEW CARS”. PW-1 had deposed that 2-3 persons used to work under deceased as repairing mechanic. He further stated that the deceased used to sell and purchase car batteries and used to exchange batteries if so required. It is further stated that minor troubles were dealt with by deceased himself and



other troubles were dealt by his mechanics. PW-1 has also named Javed as one of the mechanics of the deceased. Thus, the presence of PW-1 at the workshop of the deceased on account of the reason given by him cannot be doubted.

26. Similarly, it has been argued on behalf of the Appellants that the alleged Alto car belonging to PW-1 was never seized by the Investigating Officer during the course of the investigation. It is submitted that, as per this witness (PW-1), he had come to shop of the deceased in his Alto car and had also accompanied the PCR van to the hospital in the same car, however, the said vehicle was never seized, which creates doubts on the credibility of this witness *qua* his presence at the spot. No doubt, the said vehicle was never seized by the Investigating Officer/PW-32 during the course of investigation, however, mere non seizure of vehicle would not otherwise create a doubt with regard to version of PW-1 regarding his presence at the spot. In a catena of judgments, the Hon'ble Supreme Court had held that defect in investigation would not otherwise affect the prosecution case.

27. The Hon'ble Supreme Court in **C. Muniappan (supra)**⁶², while noting that defect in the investigation by itself cannot be a ground for acquittal, has observed and held as under: -

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is

⁶² (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946



given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandrakant Luxman v. State of Maharashtra [(1974) 3 SCC 626 : 1974 SCC (Cri) 116 : AIR 1974 SC 220] , Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] , Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : AIR 1998 SC 1850] , Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] , State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715 : 2000 SCC (Cri) 61 : AIR 2000 SC 185] , Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] , Allarakha K. Mansuri v. State of Gujarat [(2002) 3 SCC 57 : 2002 SCC (Cri) 519] and Ram Bali v. State of U.P. [(2004) 10 SCC 598 : 2004 SCC (Cri) 2045])”

(emphasis supplied)

28. The Hon’ble Supreme Court in **Ram Bali v. State of U.P.**⁶³, has observed and held as under: -

“12. The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

This extract is taken from Ram Bali v. State of U.P., (2004) 10 SCC 598

⁶³ (2004) 10 SCC 598 : 2004 SCC (Cri) 2045 : 2004 SCC OnLine SC 504



: 2004 SCC (Cri) 2045 : 2004 SCC OnLine SC 504 at page 604

13. In *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that **if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined de hors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand in the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the community at large."**

(emphasis supplied)

29. In the present case, PW-1 has been consistent with his stand of coming to the workshop of the deceased in his Alto car bearing Registration No. DL 2 CAG 2373. Mere non-seizure of the said vehicle by IO/PW-32 cannot be ground to disbelieve his presence at the spot despite other evidence coming on record.

30. As per learned counsel for the Appellants, the mobile number which has been attributed to PW-1 did not belong to him. It was submitted that as per the documents brought on record, the Customer Application Form (CAF) was in the name of one Prakash Chand Bhati, who was not made a prosecution witness to prove that the phone number belonging to him was being used by PW-1.

31. PW-1 in his testimony has stated that the mobile number was in the



name of his uncle, Prakash Chand Bhati, but he was the constant user of the same for around last 5-6 years. Nothing by way of cross-examination has been brought on record to dispute or disbelieve testimony to the said effect. In the entire cross-examination of PW-1 conducted on behalf of the Appellants, no question was put to this witness with regard to the use of the mobile phone, from which he claimed to made a call at 100 number as stated by him in the examination-in-chief.

32. Reliance placed on the judgment of Hon'ble Supreme Court in **Amar Singh (*supra*)** by learned counsel for the Appellant-Abid is misplaced as in the said case, there were three eye-witnesses out of which two had turned hostile and not supported the case of the prosecution and the presence of the other eye-witness on the spot was also found to be unnatural and inconsistent with the ordinary course of human nature. The Hon'ble Supreme Court, in paragraph 21 of the said judgment had observed as under: -

“**21.** The other unnatural conduct of two brothers PW 1 and PW 11 just after the incident again makes their presence on the spot extremely doubtful. There was a medical clinic of Doctor Bhardwaj just nearby the place of incident and the first endeavour of the two brothers would have been to take injured brother to the clinic for immediate medical aid or try and get some medical aid from the clinic of Doctor Bhardwaj. Admittedly, according to the statement of Parminder Singh PW 1 PCR van arrived after about 15 minutes. During this period no effort was made to either take the injured brother to the clinic or to call Doctor Bhardwaj for some first aid. This is totally against normal human behaviour.”

However, in the present case, this Court, as noted hereinabove, has concluded that the presence of PW-1 in the circumstances has been proved by the prosecution.



33. Apart from above, it pertinent to note that the statement of PW-1 (Ex.PW-1/A colly) was recorded on spot after about 2 hours 20 minutes of the incident. The FIR was registered at 02:40 AM at 22.04.2013. The statement given by PW-1 giving the details of the attack on deceased is corroborated by the post mortem report (Ex.PW-13/A) of the deceased. Thus, the timeline in respect of incident and the consequent FIR does not in any manner suggest a possibility of fabricating such a detailed narration of facts. Applying the principles enumerated in **Balu Sudam Khalde (supra)**, the reading of testimony of PW-1 along with aforesaid attending facts and circumstances, his evidence “as a whole appears to have a ring of truth”.

34. Thus, in view of the above discussion, this Court is of the considered opinion that prosecution has been able to establish beyond reasonable doubt, the presence of PW-1 at the spot on the said date and time of the incident.

THE INCIDENT

35. For the sake of completeness, examination in chief of PW-1 is reproduced herein under: -

“07.11.2014

PW-1 Sh. Yogender Kasana, S/o Sh. Rajinder Kasana, Aged about: 32 Years, R/o House No. 1/3354, Ram Nagar, Shahdara, Delhi-110032, Qualification: 12th passed, Occupation: Running Milk Dairy.

On SA

I knew Ibrahim for last six-seven years as I used to get my vehicles repaired and serviced through him at his workshop at B-



174 or 175, Gali No. 10, Near Masjid, New Modern Shahdara, Delhi. This work shop at aforesaid given address started functioning for last 3-4 years. My residence is near to his workshop.

On 21.04.2013, at about 02:00-02:30 PM, I had visited workshop of Ibrahim with my Alto car bearing No. DL2CAG-2373, with complaint of charging of battery. Ibrahim made some temporary arrangement and asked me to use this car for the day and to visit him any time after evening giving assurance that he will permanently repair this problem or shall change the battery. Thereafter, at about 11:45 PM, I again visited workshop of Ibrahim with my same car because had again faced problem of start of the vehicle during the same day. Ibrahim, Tahir (younger brother of Ibrahim) and Numan Umar (his uncle) were present inside the workshop. Their workshop is situated around 5 feet above the ground level. They were watching IPL match on TV. I asked Ibrahim to change the battery of my car, telling him the problem of start faced by me during the day time. Ibrahim asked me to sit along with them for sometime assuring to look into my car and its problem. I also joined them and after around 15 minutes, some noise of persons came from the side of 'gali'. Ibrahim asked his uncle to see, who were raising noise in the 'gali'. Uncle of Ibrahim looked in the 'gali and informed that 5-6 persons were coming towards the workshop...Around 6 persons came in front of the workshop. I knew all of them. They were Israin Pehelwan, his four sons namely Javed, Abid, Arif, Tarif and his son-in-law (damad) namely Irfan. All these persons were in agitated mental condition (gusse me the) and were also equipped with weapons i.e. Javed and Abid were having knives in their hands, Arif was having a pistol, Tarif and Gufran were having cricket wickets and Israil was armed with bamboo stick (lathi). They came upstairs upto workshop and started abusing and beating Ibrahim. Meanwhile, Numan Umar started raising hue and cry (bachao bachao chillane laga). Then, Arif loaded his pistol (pistol ka upar wala hissa aage peeche kiya). He fired upon Numan Umar but he fell on the road as he was standing near the stairs. The bullet instead of him, hit the road. Thereafter, Numan Umar fled away from that place. Tahir (brother of Ibrahim) tried to save Ibrahim but Tarif and Gufran hit Tahir with cricket wickets on his head and hand as well as on his other parts. Tahir also pushed both these persons and jumped downstairs on the road and thereafter, fled away. Ibrahim also fled inside the



workshop and Arif fired on him for around 5-6 times. Ibrahim took shelter at the side of a printing machine inside that workshop. All aforesaid persons also went inside the workshop. By this time, I was also standing there but I was not physically assaulted by these persons, who only abused me and asked me to leave that place stating that they had no grudge against me. I was also having verbal conversation with them to ask why they were after Ibrahim and I told that Ibrahim was my friend, so how could I leave him. I also pleaded and requested before them to leave Ibrahim asking them that why they were so much adamant to take his life, but they did not melt down.

When all the accused persons followed Ibrahim inside the workshop, I also followed them. All accused persons had surrounded Ibrahim at the same place i.e. near the printing machine. **Javed hit Ibrahim with a knife on his back. Abid hit Ibrahim with a knife on the left side of the chest. Ibrahim was left handed person and he had raised his left hand to save himself, when Abid hit him with knife on the left side of his chest.** Tarif and Gufran were hitting Ibrahim with cricket wickets and Israil was hitting him with his bamboo stick, throughout this period. I tried to stop Israil Peהלwan by holding his hand, but he shrugged me off with force and hit on my right hand with his lathi. He threatened me to either leave the place or he would kill me also. Israil exhorted his sons and son-in-law to kill Ibrahim and to ensure that he does not remain alive anymore. As far as I remember, due to continuous beatings with cricket wickets, both wickets had also broken into two pieces. All this process continued for 10-15 minutes. Ibrahim was lying in pool of blood in unconscious condition without any movement. When the accused persons became sure of lack of any movement in the body of Ibrahim, they left the spot. While leaving the spot, Abid and Arif told me to see the condition of my friend, which they had caused and threatened me to ensure same fate of mine, if I said anything to anyone about them. While leaving the workshop, they also smashed the articles of workshop like TV, glasses etc. as well as Honda City car of Ibrahim, which was standing on the road in the gali. When they left, then I took out my mobile phone and made call at 100 number. I made call at 100 number on two or three occasions as I was not able to speak properly at 1st instance because I had become too nervous at that time. PCR van reached there and PCR officials took Ibrahim to GTB hospital. I helped them to put Ibrahim in PCR van.



By this time, Numan Umar had also come back along with two-three family members. He also went along with PCR officials. I also followed them to hospital in my own vehicle i.e. Alto car. In the Emergency of GTB Hospital, doctor declared Ibrahim brought dead, immediately after checking his condition. Some more persons had also come at the hospital me to know that police officials had already gathered at the place of offence and then, I came back at the place of occurrence. One Inspector met me on the spot of incident, who recorded my statement. He collected shoes and wrist watch from the workshop and I had told him that these articles belonged to Ibrahim. He also collected fired cartridges and broken cricket wickets and probably lathi as well, from the workshop. My statement recorded by that Inspector is placed on the record and bears my signature at point X. Same is exhibited as Ex.PW1/A (colly. 02 pages). Police put these shoes and watch in separate cloth pullanda and had sealed them with some seal. He also prepared two documents in this respect, which were signed by me. Those documents are placed on the record bearing my signature at point X. They are exhibited as Ex.PW1/B and Ex.PW1/C. IO also seized my clothes i.e. my T-shirt of green and white colour and lower (pajama) of white colour having stripes. These clothes were having blood stains.

All accused persons are present in the Court today (correctly identified).

I can identify the case properties, if shown to me.

At this stage, MHC(M) as well as SHO inform that certain case properties are still lying in FSL Rohini. The case properties brought by MHC(M) today, do not pertain to this witness and the relevant case properties are yet to be received from FSL Rohini.

Further examination-in-chief is deferred for want of case property.

RO & AC

22.01.2015

PW-1: Sh. Yogender Kasana, aged about 32 years, S/o. Sh. Rajinder Kasana, R/o. H.No. 1/3354, Ram Nagar, Shahdara, Delhi. Qualification: 12th passed. Occupation: Running Milk Dairy. (Recalled for further examination-in-chief in continuation of his testimony dated 07.11.2014)

On S.A.



I had called police at 100 number from my mobile number i.e. 9911102102. This number was belonging to my uncle namely Prakash Bhati, but was being used by me since beginning i.e. around last 5-6 years. I am still using this number. There was a dispute between accused Javed and deceased Ibrahim on the issue of one Wagon-R car deal and due to this the present crime was committed. Deceased Ibrahim had suffered loss of Rs.80,000/- in this deal. In fact Ibrahim had pledged one Wagon-R car (belonging to Ashu Chaudhary) to accused Javed and on this issue there was some dispute regarding payment of money between Ibrahim and Javed.

I had shown the place of incident to the police in the intervening night of 21 and 22.04.2013 after the incident. Police had prepared site plan. Thereafter, also after about one month I had visited the place of incident along with the IO and a police team comprising 3-4 persons. In this incident, I sustained injuries only on my left arm. The house number of deceased Ibrahim is B-175.

Q. Please tell me the status of property no. B-174.

Defence has raised objection and it is being recorded in the language of Id. defence counsel :-

1. "The prosecutor must elicit from the witness the case as made out in the chargesheet. In the present instance the witness is making an improvement on his previous statement recorded in the course of his testimony on 07.11.2014"

(Court observation :- The question is only related to the status of a property, which finds mention in the first paragraph of the testimony dated 07.11.2014, however, I do not find any case of improvement being made either by prosecution or witness. The prosecution cannot be stopped from seeking clarification from the witness in respect of any relevant fact, answer of which can be expected out of the witness. Hence, the objection is over ruled.)

The house number B-174 is just on the back side of B-175 and both plots are adjacent to each other from their back side. There are two galis on the either side of these two plots. The work shop of Ibrahim was in the property no. B-105.

The incident of this case had happened at B-105.

I can identify my clothes, which were worn at that time by me, the wrist watch belonging to deceased and the shoes worn by the deceased at that time. (description of cloth of witness is already recorded in his previous testimony)

The wrist watch of the deceased Ibrahim was having black



leather strap and it was Rolex watch. Deceased was wearing white shoes of Columbus brand. Police had lifted only single piece of shoe and other piece was not found.

At this stage, HC Rajeev Kumar MHC(M) has produced one parcel no.11, sealed with the seal of FSL Delhi, bearing the particulars of the case and FSL number i.e. FSL-2013/5098 B/O no.679/13. Same is opened and one T-shirt of white colour with green colour broad strips and one lower (Pajama) having blue colour with blue strips on the side, are taken out. Pajama has two cuts on the left front side. Left leg of the pajama have also blood stains more than some brown stains on the front side of right leg. There are some blood stains on the back side of the left leg and some minor blood spots are there on the back side of the right leg. The seat of pajama is torn. One sticker of FSL is affixed on the right leg on front side having particulars FSL-2013/5098 B/O no.679/13. The T-shirt has three cuts on its front part. There is sticker of FSL affixed on the front part on the T-shirt. There is a light small brown stain on the front side. A piece of corner of the T-shirt from the back side is cut out and there are no brown or other blood stains on the back side except one ink spot. Same is shown to the witness, who correctly identified the same as his clothes, which were worn by him and same are exhibited as Ex.PW-1/Article-1 (T-shirt) and Ex.PW-1/Article-2 (Pajama). The parcel be re-sealed with seal of this Court i.e. 'PP'.

Further examination-in-chief is deferred due to lunch time.

RO & AC

22.01.2015

PW-1: Sh. Yogender Kasana, aged about 32 years, S/o. Sh. Rajinder Kasana, R/o. H.No. 1/3354, Ram Nagar, Shahdara, Delhi. Qualification: 12th passed. Occupation: Running Milk Dairy. (Recalled for further examination-in-chief in post lunch session in continuation of his testimony recorded today)

On S.A.

At this stage, HC Rajeev Kumar MHC (M) has produced another parcel no.4, sealed with the seal of FSL Delhi, bearing the particulars of the case and FSL number i.e. FSL-2013/5098 B/O no. 679/13. Same is opened and one white sport shoe with navy blue stripes having brown stains at many places on the right side of the shoe (shoe pertains to left foot) is taken out. Same is shown to the



witness, who correctly identified the same as the one which was recovered by the police from the spot. Same is exhibited as Ex.PW-1/Article-3. The parcel be resealed with seal of this Court i.e. 'PP'.

HC Rajeev Kumar MHC(M) has produced another parcel no. 5, sealed with the seal of FSL Delhi, bearing the particulars of the case and FSL number i.e. FSL-2013/5098 B/O no.679/13. Same is opened and one Rolex wrist watch having black leather strap and having some brown stains on its strap, is taken out. Strap is broken/de-attached from one side. Same is shown to the witness, who correctly identified the same, which was recovered by the police from the spot. Same is exhibited as Ex.PW-1/Article-4. The parcel be re-sealed with seal of this Court i.e. 'PP'.

After two months of this incident i.e. on 22.06.2013, I was sitting at the workshop of Ibrahim during noon time and two persons came on a black motorcycle. The pillion rider took out a revolver and pointed out to me. He fired 2-3 shorts towards me, but I had fallen backwards while sitting on a chair and therefore, I was saved. Those persons led away from the spot and I assumed that this attack on me was due to myself being the witness in this case. I had lodged an FIR bearing no. 176/13 in PS Mansarovar Park in this respect.”

36. The initial part of the testimony of PW-1 with regard to the arrival of the appellants at the shop of deceased, weapons of offence carried by them respectively, initial abusing and beating being given to the deceased is corroborated by the testimonies of the brother of the deceased, Tahir-PW-6 and uncle/*chacha* of the deceased, Noman Umar-PW-7, who were present before fleeing away from the spot. Even firing upon PW-7 by Appellant-Arif is also corroborated from the fact that one empty cartridge has been recovered outside the shop. It is pertinent to note that the learned Trial Court while appreciating the evidence on this aspect has in fact taken into consideration, the suggestion put to PW-1 that when PW-7 raised hue and cry, Appellant-Arif had fired at him immediately. This suggestion has been taken by the learned Trial Court as an admission of the aforesaid incident. Learned counsel



for the Appellants had submitted that a mistake on the part of the counsel of the accused at the time of cross-examination cannot be used to draw adverse inference. However, even otherwise, the version of firing has been corroborated by PW-8 (Babar) and PW-10 (Zara Ibrahim) by deposing that they heard sound of firing from the shop of the deceased. It is pertinent to note that PW-1 also in DD Entry No. 6A had mentioned that bullets had been fired. Three live cartridges and three empty cartridges were also recovered from inside the shop of the deceased.

37. Tahir Hasan (PW-6), brother of the deceased, and Noman Umar (PW-7), uncle/*chacha* of the deceased, are not witness to the actual incident of assault on the deceased causing his death. However, they corroborate the testimony of PW-1, as pointed out hereinbefore, with respect to the initial part of the incident. PW-6 had deposed that he visited the shop of the deceased at about 11:30 PM on 21.04.2013 where PW-7 was already present and PW-1 arrived at about 11:45 PM. He further deposed about noise coming out from the side of the *gali* after about 15-20 minutes. PW-6 further deposed that PW-7 looked from the corner of the shop to check with regard to the noise coming and thereafter, arrival of the Appellants at the shop and the respective weapons of offence carried out by them. He further deposed that the Appellants started abusing and beating the deceased and on an alarm being raised by PW-7, he was fired upon by Appellant-Arif, while he was running away. PW-6 has further deposed that he tried to resist the Appellants from beating the deceased, and thereafter, he was beaten by Appellants-Tarif and Gufran on his head, right hand, and other parts of his body, and thereafter, he also ran away from the shop.



38. This version of Tahir/PW-6 of fleeing away is also corroborated by the testimonies of Babar (PW-8: who is the brother of PW-6 and the deceased) and Zara Ibrahim (PW-10: wife of the deceased). This witness-PW-6, in his cross-examination, has duly explained the circumstances in which he fled away from the spot and the reason that why he did not approach any other person during that time to call the police.

39. Similarly, Noman Umar (PW-7: uncle/*chacha* of the deceased) has deposed that on the said date of the incident (21.04.2013), he was at the shop of the deceased, at about 11:00 -11:15 PM, when Tahir/PW-6 arrived at his shop and after 15-20 minutes, PW-1 also arrived there. He further deposes at about 11:45 PM, he heard noises from the side of *gali* and after 15-20 minutes when he looked from the corner of the shop, he saw the Appellants coming towards the shop of the deceased. He also deposed about the Appellants entering the shop with respective weapons of offence carried out by them and deposes on similar lines as PW-1 and PW-6. He further deposed that when he raised the alarm, Appellant-Arif turned towards him and started loading his pistol and on account of the same, he took few steps back out of fear and fell down from the stairs to the ground (It has come on record that the shop of the deceased was 5 feet above the ground). He further stated that the moment he fell down, Appellant-Arif fired at him but the bullet did not hit him and he ran towards *gali* no.11. He further deposed that after leaving the shop of the deceased, he went to the house of his niece, *Rukaiya* and after around 10-12 minutes, they came to the corner of *gali* no. 11 and reached the shop of the deceased where PCR van was already standing outside. He had further stated



that PCR van officials and PW-1-Yogender Kasana, brought the deceased out from his shop in unconscious and bleeding condition and the deceased was then put in the PCR van in which he also sat and went to GTB Hospital.

40. Babar (PW-8: Brother of PW-6), in his deposition, has stated that he is a resident of house which is situated at House No. B-75, *Gali* No. 9, New Modern Shahdara, and deposed that at about 12-12:15 AM, when he was studying in his room on 2nd floor of his house, he heard loud noise of knocking of door coming from the side of *gali* no. 10. He further deposed about the presence of the Appellants in front of workshop of the deceased along with weapons carried by them respectively. He has further deposed about the hearing of loud noise of persons coming from the shop of the deceased, falling of Noman Umar/PW-7 on road from the said shop and after 2 minutes, heard a sound of bullet fire and immediately thereafter, running of PW-7 towards *gali* no. 11, then, running of Tahir/PW-6 towards *gali* no. 11 and after 3-4 minutes hearing of sound of firing emanating from the shop of the deceased.

41. Learned counsel for the Appellants had argued that Babar/PW-8 is a planted witness as his statement was recorded by the Investigating officer after two and a half months of registration of FIR and no explanation has been given with respect to such delay. It is pertinent to note that DD entry No. 5A (Ex. PW-4/B) had been recorded in pursuance of the call made from mobile No. 9136555040, which was made by PW-8 from the mobile belonging to his friend, Shahzad. Although, the said mobile was in the name of one Shahzad but as per PW-8, he was using the said mobile phone at the time when he



made a call at 100. As per this DD entry (Ex.PW-4/B), it is stated that some boys are banging at the gate of H. No. B-106 and they have gun. As per the DPCR form (Ex.PW-17/A), the said call was made at about 12:21:47 AM. The said DPCR form also contained reporting at 12:37:00 AM on 22.04.2013 that caller (PW-8: Babar) has informed that his brother, Ibrahim, had been fired upon by his neighbors (Abid, Arif, Javed, Tarif). The reporting on the form starts from 12:32 AM (00:32AM) to 1:46:20 AM. Reporting also mention finding of firing two live rounds. Furthermore, CDRs of the aforesaid number, Ex.PW-37/L, also reflects that on 22.04.2013 at about 12:21:40 AM and 12:25:40 AM, two calls were made to 100 number and the location is stated to be at New Modern Shahdara, *i.e.*, area of the spot of the incident.

42. Zara Ibrahim (PW-10: wife of the deceased) also deposed about hearing of the noise at after about 12:00 AM and seeing the Appellants from the balcony of her house along with weapons carried by them. She has also deposed with regard to the entry of the Appellants in the shop of her husband, falling of Noman Umar/PW-7 on the road, hearing of sound of bullet fired and immediately thereafter, running of Tahir/PW-6 and subsequent hearing of sound of 2-3 bullets fired. She further deposed with regard making a call at 100 number from her mobile No. 9654968814. It is also come on record that DD entry No. 4A (Ex. PW-4/A) was recorded on the basis of call made by PW-10, that some people are beating her husband by ambushing inside house. PW-10 had also deposed that she was using mobile No. 9654968814 and CDRs (Ex.PW-37/G) with respect to the same reflect that on 22.04.2013 at about 12:21:43 AM and 12:25:26 AM, two calls were made to 100 number from the aforesaid mobile and as per location chart (Ex.PW-37/O), location of



the said mobile number was stated to be at New Modern Shahdara, *i.e.*, area of the spot of the incident. She has further corroborated the testimony of Noman Umar/PW-7 that when he came back to the spot with his niece *Rukaiya*, PW-10 also came downstairs and saw *Rukaiya*, PW-7, PW-1 and PCR officials present there. She has further corroborated the testimony of PW-1 and PW-7 to the effect that PCR officials and PW-1 took her husband from his shop in unconscious and bleeding condition and PW-7 had accompanied the said officials in the said PCR van. With regard to her testimony being recorded after long gap of 2 ½ months of registration of FIR, it has come on record that she (PW-10) was observing *iddat* period and owing to this reason she did not give her statement earlier.

43. At this stage, it will be relevant to note the timeline of the calls made by PW-1, PW-8 and PW-10.

- a) DD entry No. 4A (Ex.PW-4/A), registered in pursuance of call made by PW-10 at 12:25 AM, records that neighbours have entered my husband's house and are beating him;
- b) DD entry No. 5A (Ex.PW-4/B), registered in pursuance of call made by PW-8 at 12:30 AM, records that some boys are banging at the gate of H. No. B-106 and they have gun;
- c) DD entry No. 6A (Ex.PW-4/C), registered in pursuance of call made by PW-10 at 12:31 AM, records that near M.S. Park DDA Flat *Masjid*, 10-12 bullets have been fired and injured there;

The aforesaid sequence of calls shows different calls made by the



aforesaid witnesses who reported what they witnessed from different locations. It is pertinent to note that the first two DD entries by PW-10 and PW-8 respectively, do not mention firing as the same took place later, which is reported by PW-1 in DD entry No.6A.

44. The post mortem report, Ex. PW-13/A, of the deceased mentions the following injuries: -



शव परीक्षण रिपोर्ट नं.
POSTMORTEM REPORT N°

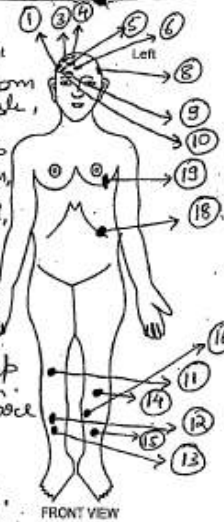
* Injuries map * *Page 1*

(ख) गहरा घोटों का निरक्षण

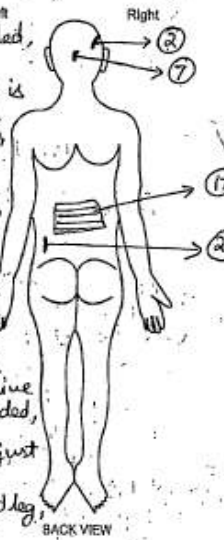
(B) Details of External Injuries

External Antemortem Injuries:

- ① Lacerated wound measuring $2.5 \times 0.2 \text{ cm}$ x Bone deep is present obliquely over right temporal region, 6 cm. from right ear and 3.5 cm from midline. Margins are reddish, abraded, contused and irregular.
- ② Avulsed lacerated wound of size $8 \times 2 \text{ cm}$ x Bone deep is present obliquely over right temporo-occipital region, 8 cm. from right ear and 7.5 cm from midline with a flap of 7.5 cm length. Margins are reddish, abraded, contused and irregular.
- ③ Lacerated wound measuring $4 \times 0.2 \text{ cm}$ x Bone deep is present obliquely over right parietal region, 11 cm. from right ear and 4 cm from midline. Margins are reddish, abraded, contused and irregular.
- ④ Lacerated wound measuring $4 \times 0.2 \text{ cm}$ x Bone deep is present obliquely over right parietal region, 13 cm. from right ear and 1 cm from midline. Margins are reddish, abraded, contused and irregular.
- ⑤ Lacerated wound of size $4 \times 0.2 \text{ cm}$ x Bone deep is present obliquely over right fronto-parietal region, 11 cm above right eyebrow and 1 cm from midline. Margins are reddish, abraded, contused and irregular.
- ⑥ Lacerated wound measuring $4 \times 0.2 \text{ cm}$ x Bone deep is present over midline frontal region obliquely and is 8.5 cm above root of nose. Margins are reddish, abraded, contused and irregular.
- ⑦ Lacerated wound measuring $3.5 \times 0.1 \text{ cm}$ x Bone deep is present in midline occipital region obliquely and is 2 cm above occipital protuberance. Margins are reddish, abraded, contused and irregular.
- ⑧ Lacerated wound measuring $2 \times 0.1 \text{ cm}$ x Bone deep is present obliquely over left temporal region, 15 cm. from midline and 4 cm from left ear. Margins are reddish, abraded, contused and irregular.
- ⑨ Lacerated wound measuring $2.4 \times 0.1 \text{ cm}$ x Bone deep is present over right forehead, 1.5 cm from midline and just above right eyebrow. Wound is obliquely placed and margins are reddish, abraded, contused and irregular.
- ⑩ Lacerated wound measuring $2.5 \times 0.1 \text{ cm}$ x Bone deep is present obliquely over right forehead, 3.5 cm from midline and 4.5 cm above right eyebrow. Margins are reddish, abraded, contused and irregular.
- ⑪ Reddish abrasion of size $0.6 \times 0.2 \text{ cm}$ is present anteriorly, just above right knee joint.
- ⑫ Reddish abrasion of size $2 \times 1 \text{ cm}$ is present anteriorly over right leg, 15 cm. below right knee joint.



FRONT VIEW



BACK VIEW



834

UCMS and GTB Hospital:

Continuation of External Antemortem Injuries!

PM No. → 503/13

Date → 22/4/13

P.S. → M.S. Park

- (3/5)
- (13) Reddish abrasion measuring 1×0.5 cm is present 16 cm below Right knee joint.
 - (14) Reddish abrasion of size 1.5×0.5 cm is present over left knee joint.
 - (15) Reddish abrasion of size 3×2 cm is present anteriorly over left leg, 9.5 cm above ankle joint.
 - (16) Reddish abrasion of size 5×4.5 cm is present over anteromedial aspect of left leg, 12.5 cm above ankle joint.
 - (17) Multiple linear reddish scratch abrasions are present over back, in an area of 30×18 cm. Abrasions are Nine in number with the upper end being 32 cm below occipital protuberance and lower end being 5 cm above natal cleft with size varying from 15 cm in length to 29 cm in length.
 - (18) Reddish abrasion measuring 4.5×1 cm is present over left abdomen, 6 cm from midline and 6 cm above umbilicus.
 - (19) Incised stab wound measuring $7 \text{ cm} \times 0.2 \text{ cm} \times 12 \text{ cm}$, with clean cut margins is present vertically over left chest. Upper end is 3.5 cm below left nipple and 13 cm from midline and is blunt. Lower end is acute. The wound is directed upwards, backwards and medially. The track of the wound goes cutting the skin, subcutaneous tissues and muscles, costal cartilage of 4th and 5th rib in midclavicular line, pericardium and cutting the Anterior wall of Right ventricle, passing through Right ventricle and cutting the posterior wall of Right ventricle near apex. Extravasation is present throughout the track. Chest cavity and pericardial cavity contains about 2 litres of blood and blood clots.
 - (20) Incised stab wound measuring $2.5 \text{ cm} \times 0.2 \text{ cm} \times 3.5 \text{ cm}$, with clean cut margins is present vertically over left lower back. Upper end is 17 cm from midline, 4 cm above posterior superior iliac spine and is blunt. Lower end is acute. The wound is directed upwards, forwards and medially. The track of the wound goes cutting the skin, subcutaneous tissues and muscles. No major blood vessel is cut. Extravasat is present throughout the track.

(X)
V.S. Singh
22/4/13
DR. VISHWATEET SINGH

2/25

525



45. A typed version of contents of post mortem report at injury Nos. 19 and 20 read thus: -

“19. Incised stab wound measuring 7 cm x 0.2 cm x 12 cm with clean cut margins is present vertically over left chest. Upper end is 3.5 cm below left nipple and 13 cm from mid line and is blunt. Lower end is acute. The wound is directed about, backwards and medially. The track of the wound goes cutting the skin, subterraneous tissues and muscles, coastal cartilage of 4th and 5th rib in midclavicular line, pericardium and cutting the Anterior wall of Right ventricle, passing through Right ventricle and cutting the Posterior wall of Right ventricle near apex. Extravasation is present throughout the track. Chest cavity and pericardial cavity contains about 2 litres of blood and blood clots.

20. Incised stab wound measuring 2.5 cm x 0.2 cm x 3.5 cm, with clean cut margins is present vertically over left lower back. Upper end is 17cm from midline, 4cm above posterior superior iliac spine and is blunt. Lower end is acute. The wound is directed Upwards, forwards and medially. The track of wound is goes cutting the skin, subterraneous tissues and muscles. No major blood vessel is cut. Extravasation is present throughout the track.”

46. In the post mortem report, the cause of death has been given by the Doctor, PW-13, which reads as under: -

“After examination, I opined that time since death was about half a day and cause of death as - Haemorrhagic shock as a result of antemortem injury to heart as mentioned in injury no. 19 and was produced by single edged sharp cutting weapon and was individually sufficient to cause death in ordinary course of nature. All injuries were antemortem in nature. Injury no. 1 - 10 were also collectively sufficient to cause death in ordinary course of nature. Injury no. 19 and 20 were produced by single edged sharp cutting/stabbing weapon. Injury no. 1 to 16 were produced by blunt force impact. Injury no. 17 was produced by pointed weapon.”



47. At this stage, it is pertinent to note that PW-1, in his testimony recorded before the learned Trial Court, has clearly stated that Appellant-Javed had hit the deceased with knife on his back and Appellant-Abid had hit the deceased with a knife on the left side of the chest. PW-1 has further stated that since the deceased was a left-handed person, he had raised his left hand to save himself, when Appellant-Abid hit him with knife on his left side of chest. In these circumstances, injury-19 mentioned in the post-mortem report corresponds with aforesaid allegation of Appellant-Abid hitting the deceased on the left side of his chest and injury-20 corresponds with the allegation that Appellant-Javed had hit the deceased on his back.

48. Learned counsel for the Appellants also relied upon testimony of PW-9 to show the inconsistencies in the narration/version of the alleged incident. PW-9, in his testimony, has stated that he had visited the house of Appellant-Israil Pehalwan on 21.04.2013 in order to attend the function of engagement of his son, Abid (Co-convict: Appellant herein) and the said function was over by 11:30 PM. He has deposed that at around 11:45 PM, he informed Israil Pehalwan that he was also leaving, but he was stopped on a request of Israil Pehalwan that PW-9 should give his car so that some guest may be sent to their house in his car. For the sake of completeness, the testimony of PW-9 recorded before the learned Trial Court reads thus:

“30.07.2015

**PW-9 : Mohd. Yunus, aged about 53 years, S/o. Sh. Kareem Khan,
R/o. H.No. D-70, New Ashok Nagar, Delhi-96. Education : Illiterate.
Occupation : Self maker.**

On S.A.

On 21.04.2013, I was residing at my aforesaid address. On that day, at



around 08:00 PM, I had visited house of Israil Pehalwan at B-105, Gali No.10, New Modern Shahdara, Delhi, in order to attend the function of engagement of his son namely Abid. I had come in my car bearing no. UP-16AD-1877. This function was over by 11:30 PM and maximum guest had left his house. I remained there up to around 11:45 PM and at that time I told Israil Pehalwan that I was also leaving, but he stopped me stating that I should give my car to him so that some guest may be sent to their house in my car. My car was parked between gali no. 11 and 12 and I reached there in order to bring my car to the house of Israil Pehalwan. When I started taking my car to the house of Israil Pehalwan, I found that the right front tyre of my car was puncture. By that time, I had already reached the corner of gali no.11. The guest of Israil Pehalwan were also standing at a distance of around 60 feet from me at the corner of gali no. 10 (witness has been asked to measure his steps from the place he is standing to the door of the court room and thereafter to give his estimation of his distance from the guest of Israil Pehalwan. After counting his steps he has given his estimation of 30 steps to be his distance from the guest of Israil Pehalwan.). I reached corner of gali no. 10 as well with my car. Abid was also standing along with those guest and I handed over key of my car to him. I asked him to change the tyre and he changed the tyre in my presence. By this time, it was already around 12 o'clock mid night. Thereafter, Abid took daughter of Israil Pehalwan namely Nazneen. sister of Israil Pehalwan namely Asgari, son-in-law of Israil Pehalwan namely Gufran and his two children in my car. Israil Pehalwan was also present there, who asked me to come to his house in order to take dinner and we left for his house. They took meal on the third floor of his house. I did not take food, because I had already taken food. Javed, Israil Pehalwan, Arif, Tarif, Sahid and one more relative of Israil Pehalwan were taking food at that time. After taking food, Israil Pehalwan went to balcony of the room, wherein we were sitting. From balcony he looked into the gali and told us that mob had assembled in the gali. Israil Pehalwan went down stairs and I also followed him. We both reached gali no. 10 and started going towards the mob. One boy along with a policeman was coming towards us and policeman was asking that boy that who had fired bullet. By this time, policeman had come in front of Israil Pehalwan and that boy pointed out to Israil Pehalwan stating that he had fired bullet. Thereafter, that policeman apprehended Israil Pehalwan at that spot itself. I told that policeman that we all were sitting in the house of Israil Pehalwan, still policeman took him towards main road, I also followed them. On the main road, I saw that towards left side four persons including two police



officials were putting an injured person in police Gypsy. Policeman took away Ibrahim and I went to factory of Israil Pehalwan situated near railway track after crossing DDA Flats, but I did not know the name of that locality. It took me 10 minutes to that factory. In the factory 4-5 workers of Israil Pehalwan. One of them was Aasu, another was Jishan and some local boys were sitting over there. My car was parked there and I asked about whereabouts of Abid and those boys pointed out to the key kept on the table stating that Abid was not there. Thereafter, I took my car from that place and went to my house.

Court question : Did you go to police later on ?

Ans. I did not go to police. However, after around one and half months policemen came to my factory situated at A-93, New Ashok Nagar at about 10 AM. They asked me to tell about three guns of Israil Pehalwan and I told him that I was not aware about such guns. Thereafter, they lifted me and kept me in a police station situated in DDA flats in Man Sarovar Park for six days.

Next day, policemen took me to some unknown place in their vehicle and they reached Bada Hindu Rao, where in-laws of Javed were residing. They lifted father-in-law and brother-in-law of Javed from that place. Thereafter, we were brought to same PS M.S. Park. Those persons were detained for 5 days and I was detained for 6 days. After 6 days, one policeman namely Amar Singh took me to the place where I had parked my car in the night of 21.04.2013. Thereafter, he brought me to PS. Thereafter, he obtained my signature on some blank papers and then he released me. Thereafter, that policeman asked me to call some family member from my house, but I declined to do so. Thereafter, one policeman namely Ramjane left me at my factory at New Ashok Nagar on his motorcycle. I was asked to hand over documents of my car and my driving license to that policeman and I handed over the same to him at my factory.

After 15 days. I was given back my documents of my car.

Court question : Did you make any complaint to any authority after your release?

Ans. No.

Court question : Did you come to know about any step taken by your family members to trace you, during those six days? Ans. No, they were not aware about my location. They did not lodge any complaint in any police station. At this stage, Sh. Kamal Akhtar, Id. Addl. PP for the State seeks permission to cross-examine the witness as he has resiled from his previous statement. Heard and perused. Allowed.

XXXXXXX Sh. Kamal Akhtar, kd. Addl. PP for the State.



I have friendship with Israil Pehalwan for last 30-35 years. I had been attending functions in the family of Israil Pehalwan and had been on visiting terms.

It is wrong to suggest that I had stated to the police and it so happened that on 21.04.2013, I had changed punctured tyre of my car, which took some time and due to which I was late to go back to my house and this fact came within knowledge of family members of Israil Pehalwan and for such reason an altercation had taken place and I had returned back to my house. Confronted with portion from point A to A-1 of statement under Section 161 Cr.P.C, wherein it is so recorded. Same is exhibited as Ex,PW-9/P-1.

It is wrong to suggest that I have concocted a false story regarding giving my car to Abid and regarding going away of accused Gufran along with other family members in my car. It is further wrong to suggest that I have concocted a false story that I went back to the house of Israil Pehalwan, where they had dinner. It is wrong to suggest that I have deposed falsely about all subsequent events after concocting such story in connivance with family members of accused persons in order to save the accused persons because I am their friend.

XXXXXXX by accused persons.

Nil. Opportunity given.”

49. The aforesaid testimony of PW-9 is contradictory to the own stand taken by the Appellants in their defence. PW-9 has stated that Israil Pehalwan was apprehended at the spot and was taken away at the time when the body of deceased was being taken to GTB hospital from the spot by the police officials. It is the case of the prosecution that PW-19/PCR Official had reached the spot first and had taken away the deceased to the hospital. The police officials from the concerned police station came later. Moreover, the learned counsel for the Appellants have relied upon the statement made by the said police officials to contend that there was no eye witness present at the spot and, on this basis, the testimony of PW-1 has been assailed. Thus, the aforesaid testimony of PW-9 regarding Israil Pehalwan's apprehension on pointing out by a boy cannot be accepted. He also deposed that he went to



factory of Appellant-Israil Pehalwan situated near railway track and it took him ten minutes to reach the factory and there 4-5 workers of the said Appellant were present. He further stated that the car was parked and when he asked about whereabouts of Abid and at this point, the boys (workers) pointed out that the keys kept on the table stating that Appellant-Abid was not there. However, PW-9 does not depose in what circumstances and on whose instructions he went to factory of Israil Pehalwan-Appellant to get his car. Thus, the testimony of PW-9 regarding giving his car to Appellant-Abid and going away of Appellant-Gufran along with other family members in his car, and thereafter, going back to the house of Appellant-Israil Pehalwan alongwith other relatives and having food in his presence is disjointed and not trustworthy.

50. PW-7, Noman Umar, deposed that he can identify the *laathi* used by the Israil Pehalwan which was around four feet long and lathi/bamboo stick and had cap of red/brown colour. On the same being produced during the deposition of PW-7, he identified the said bamboo stick/long *laathi* which on measurement was found to be 3 feet 11 inch long and had red colour cap on one end and was exhibited as Ex. PW-7/Article-1. FSL report (Ex.PW-29/A) proves that the blood of the deceased was detected on the *laathi* (exhibit '12') and on its biological and DNA examination, same has matched with the DNA profile generated from the blood of the deceased (which was taken from guaze (exhibit '14') seized from the spot).

51. The tone and tenor of cross-examination of all the prosecution witnesses conducted on behalf of the appellants was on the lines that the



deceased had married PW-10, Zara Ibrahim, against the wishes of the family members as she was a Hindu. Similarly, it had been put to the witnesses that the deceased was in habit of picking the fights with people, and thus, an attempt was made to put up a case that the deceased was assaulted by some unknown persons who had previous enmity without specific incidents being put to the prosecution witnesses during their cross-examinations. Another suggestion put to PW-7, on behalf of Appellant-Javed, was that he was crying embarrassing the deceased throughout the way to GTB hospital, while they were sitting in the PCR van which again does not in any manner indicate the line of defence adopted by the Appellants.

MOTIVE

52. Learned counsels for the Appellants, in defence of the latter, have argued that the prosecution in the present case has failed to attribute any motive to the Appellants for committing the alleged offences. The prosecution, in this regard, has examined PW-16/Ashu Chaudhary, who had deposed that Appellant-Javed had given him Rs.1,20,000/- against mortgage of his vehicle and the said dealing was done by the deceased. PW-16 further deposed that when he wanted his vehicle back, the deceased had informed him that Appellant-Javed was not returning his vehicle. He further deposed that the said vehicle was returned to him with the intervention of police officials and at that time, he had paid Rs.1,10,000/- to Israil Pehalwan (father of Javed). This transaction, as per the said witness (PW-16), had taken place in the year 2012. PW-1, on the other hand, had deposed that there was a dispute between the Appellant-Israil Pehalwan and the deceased, on the issue



of one Wagnor car deal due to which, the deceased had suffered a loss of Rs.80,000/-. Similarly, PW-8, in his cross-examination, also stated that at around 1.5-2 years back deceased and someone from the family of Appellant-Israil Pehalwan had verbal altercation over an issue in respect of transaction relating to some vehicle.

53. Apart from the above, nothing has been brought on record by way of substantial evidence as to what triggered the incident on the said date and time.

54. Learned APP for the State assisted by the learned counsel for the family of the deceased have sought to demonstrate that on the date of incident, there was indeed a function of engagement of Appellant-Abid for which arrangements had been made at the residence of Appellant-Israil Pehalwan. It has also come by way of testimony of PW-9 that his car was found punctured. It is, thus, sought to be argued that on the said date and time, there was some dispute between the deceased and the family of Appellant-Israil Pehalwan which led to the incident. Thus, there is no admissible evidence as to what triggered the present incident. Be that as it may, it is a well settled principle of law that mere absence of immediate motive cannot be a ground to disbelieve the prosecution story, if otherwise, the same is being proved by cogent and satisfactory evidence on record.

55. The Hon'ble Supreme Court in **Thaman Kumar v. State of Union**



Territory of Chandigarh⁶⁴, in a case where the Appellant/convict was charged for the offences punishable under Sections 302/34 of the IPC noted that absence of evidence on the point of motive would not be fatal to the prosecution case when other reliable evidence is available on record which unerringly established the guilt of the accused and has observed and held as under: -

“18. Shri Sushil Kumar has drawn our attention to certain findings recorded by the learned Sessions Judge and has urged that he had rightly given benefit of doubt to the appellants and the High Court committed manifest error of law in reversing the aforesaid findings and convicting and sentencing the appellants while hearing an appeal against acquittal. The learned counsel has urged that the prosecution has failed to prove any motive on the part of the appellants to commit the crime. It is true that the only witness examined on the point of motive, namely, PW 7 Sardara Singh, who is the brother of the deceased, turned hostile and did not support the prosecution case. In his statement under Section 161 CrPC he had said that the deceased used to get commission for bringing customers to the guest house and he owed about Rs 42,000 in that account and some dispute had taken place with the owner when he had demanded his money. However, in his statement in Court he denied to have given any such statement. **There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved.** In *State of H.P. v. Jeet Singh* [(1999) 4 SCC 370 : 1999 SCC (Cri) 539] it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it, as it is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended. In *Nathuni Yadav v. State of Bihar* [(1998) 9 SCC 238 : 1998 SCC (Cri) 992] it was held that motive for doing a

⁶⁴ (2003) 6 SCC 380



criminal act is generally a difficult area for prosecution as one cannot normally see into the mind of another. **Motive is the emotion which impels a man to do a particular act and such impelling cause need not necessarily be proportionately grave to do grave crimes. It was further held that many a murder have been committed without any known or prominent motive and it is quite possible that the aforesaid impelling factor would remain undiscoverable. In our opinion, in the facts and circumstances of the case, the absence of any evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which unerringly establishes the guilt of the accused.**

(emphasis supplied)

56. The Hon'ble Supreme Court in **Jafel Biswas & Ors. v. State of West Bengal⁶⁵**, has noted that absence of motive, when there is definite evidence proving an incident and eyewitness account proving the role of the Appellant/accused, does not affect prosecution's case and held as under: -

“38. The learned counsel for the appellant has also contended that prosecution failed to prove any motive of committing the murder. The trial court has elaborately dealt with this submission. Relying on the judgment of this Court reported in *State of Haryana v. Sher Singh* [*State of Haryana v. Sher Singh*, (1981) 2 SCC 300 : 1981 SCC (Cri) 421], it was held that absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. **When there are definite evidence proving an incident and eyewitness account prove the role of accused, absence in proving of the motive by the prosecution does not affect the prosecution case.** In para 10 of *State of Haryana* [*State of Haryana v. Sher Singh*, (1981) 2 SCC 300 : 1981 SCC (Cri) 421] following was laid down : (SCC p. 303)

⁶⁵ (2019) 12 SCC 560



“10. The prosecution is not bound to prove motive of any offence in a criminal case, inasmuch as motive is known only to the perpetrator of the crime and may not be known to others. If the motive is proved by prosecution, the court has to consider it and see whether it is adequate. In the instant case the motive proved was apparently inadequate, although it might be possible.”

39. The trial court has marshalled the eyewitnesses evidence and has rightly convicted the appellant-accused.”

(emphasis supplied)

57. Recently, the Hon’ble Supreme Court in **Chunni Bai v. State Chhattisgarh**⁶⁶, has observed and held as under: -

“47. Motive is usually the basis for causing the “intention” to commit any crime, but it is highly elusive and difficult to prove as it remains hidden in the deep recesses of the mind and is not comprehensible to others, unless disclosed by the perpetrator. **Though under the law, it is absolutely not necessary that to prove an offence, motive is also required to be established if the intention or the mens rea can be safely inferred from the surrounding facts.** But where the motive which can provide the basis for the intention appears to be totally missing, the court has to be very circumspect in drawing the inference of the proof of the presence of intention.

48. For committing a serious crime like homicide, there could be various motivating factors. One may commit the crime of homicide propelled by anger or motivated by insult, humiliation or jealousy. Other motivating factors may be to exact revenge or by way of retribution or to hide certain crimes already committed. One may also commit homicide to gain undue pecuniary benefit or otherwise. One may commit such a crime out of sheer frustration and dejection with life channelising through violent acts. One may commit such crime because of superstitious beliefs.

There could be numerous factors, and it may not be possible to contemplate and mention all such situations that motivates a person to

⁶⁶ 2025 SCC OnLine SC 955



commit violent crime like homicide. **While proof of motive of the crime may strengthen the prosecution's case in proving the guilt of the offender, failure to prove motive is not fatal if the offence is otherwise proved through direct and incontrovertible evidence.** At the same time, absence of any motive may benefit the accused under certain circumstances, for the ingredient of intention which constitutes the mens rea has also to be proved.”

(emphasis supplied)

Thus, ocular evidence duly corroborated by medical evidence is sufficient for a conviction, even if the motive is not fully established. Further, if there is sufficient evidence in the form of eye witness/es or otherwise to establish the guilt of the accused, then not proving of motive would not be fatal to the case of the Prosecution.

SCENE OF CRIME

58. Learned counsel for the Appellants had pointed out certain contradictions with respect to place of occurrence occurring in the testimonies of prosecution witnesses as well as documents exhibited by them which are as follows: -

- a) It is submitted that PW-1, in his examination-in-chief, has stated that the deceased was having his workshop at B-174 or 175, Gali No.10, Near Masjid, New Modern Shahdara, Delhi.
- b) It is further submitted that PW-14, Draughtsman, who prepared the scaled site plan, had mentioned the place of occurrence as B-150 and the same was also reflected in site plan, Ex.PW-14/A, prepared by him.



- c) In DD entry No. 4A (Ex.PW-4/A), it has been stated that the place of occurrence is near House No. D.75 near Masjid.
- d) In DD entry No. 5A (Ex.PW-4/B), it has been stated that some boys are banging at the door of House No. B-106.

59. Learned Trial Court while dealing with the aforesaid contradictions has held as under: -

“238. First of all, PW-1 in his examination-in-chief itself, has clarified that the workshop of deceased was in the property no. B-105 and further, the incident had happened at B-105. During his cross-examination conducted on 23.01.2015, he admitted the suggestion that plot number wherein workshop was situated is B-105. Further, PW-6 and PW-7, who have witnessed the incident partly, have also stated that place of occurrence was the workshop of deceased situated at B-105, Gali no. 10. Further, callers of DD no. 5-A i.e. PW-8 and of DD no. 4-A i.e. PW-10, have also stated that the incident had occurred in the shop of Ibrahim. Furthermore, PW-14 has clarified that in scaled site plan, he had mentioned B-150, but it was B-105. No question was put to him (PW-14) during his cross-examination conducted on behalf of the accused persons to controvert his abovesaid version. During his cross-examination, IO/PW-32 admitted the suggestion that house no. of incident had been mentioned as B-150 in the site plan Ex.PW-14/A. He voluntarily stated that the same had been mentioned wrongly in the site plan and the correct number was B-105, the said error is typographical error.

239. Further, PW-1 has deposed that there was a mosque beside the workshop and there was one gali between workshop and mosque. Further, during cross-examination of PW-6, it had been suggested to him that there is mosque beside his house having entrance on the main road. PW-8 has explained that there is a Masjid situated in front of workshop of the deceased. When a call is made to the police at 100 number, the informant usually provides a landmark (i.e. Masjid in present case) to guide the police to reach the place of occurrence. That is why, the place of occurrence had been mentioned in DD no. 4-A as near D-75 Masjid.

240. So far as testimony of police witnesses is concerned on this



aspect. PW-35 has also deposed that on receipt of DD no. 6-A, he went to House no. B-105, which was just nearby. During his cross-examination, PW-35 admitted the suggestion that on reaching House No. B-106, they came to know that incident took place in House No. B-105. He further deposed that House No. D-75 and B-105 were situated in front of each other. This itself leads to infer that the place of incident i.e. B-105 was just nearby to D-75 (as reflected in DD no. 4-A).

241. Further, during his cross-examination, PW-30 admitted the suggestion that the place of incident was situated at the corner of gali no. 10, New Modern Shahdara, M.S. Park, Delhi.

242. PW-32/IO deposed that he alongwith PW-33 and PW-30 reached Shop no. B- 105, Gali No. 10, New Modern Shahdara, which was the place of occurrence. During his cross-examination, PW-32 deposed that since they came to know that the present incident had occurred at B-105, hence, there was no occasion to visit house no. B-106, as mentioned in Ex.PW-4/B. He further stated that he reached at the place of incident after receipt of DD No. 6-A, Ex.PW-4/C and found the place of incident as house no. B-105.

243. Hence, all the prosecution witnesses and evidence led by them prove that place of occurrence was B-105, Gali no. 10. The Court does not find any contradiction in the case of prosecution on this aspect.”

60. This Court does not find any infirmity with the aforesaid findings of learned Trial Court. Even otherwise, the crime team report, Ex.PW-36/A, which was prepared between 01:15 AM to 02:15 AM on 22.04.2013, shows that the following exhibits were collected from the spot, *i.e.*, House No. B-105, *Gali* No.10, New Modern Shahdara: -

- (1) Four empty cartridges and three live cartridges marked KF 7.65;
- (2) Wrist watch with Rolex name having blood stains on broken strip;
- (3) Two blood-stained cricket stumps (broken);
- (4) One blood stained lathi about 4 feet long;



- (5) Blood-stained sport shoe make '*columbus*';
- (6) Blood samples; and
- (7) Earth control.

61. Staging of crime scene in the aforesaid manner is an impossibility. It is pertinent to note that the police officials had arrived at the scene by 12:30 AM on the said day. In these circumstances, there cannot be any doubt with regard to the place of occurrence and the status of the same including the recovery of articles from the crime scene.

DOCK IDENTIFICATION

62. Learned counsels for the Appellant-Gufran has vehemently argued that there was no proper dock identification of the Appellant before the learned Trial Court and has relied upon judgments of learned Division Bench of Hon'ble Kerala High Court in **Vayalali Girishan & Ors. v. State of Kerala**⁶⁷, and **Thadiyantevida Nazeer and Another v. State of Kerala**⁶⁸.

63. In **Vayalali Girishan (supra)**, the learned Division Bench of Hon'ble Kerala High Court has observed as under: -

“43. Recalling the discussion with regard to the presence, participation and fixation of identity of the accused, we hold that the evidence of PW1 to 4 are convincing as regards the incident and there is no reason to doubt their version as regards the involvement of accused Nos. 1, 2, 12 and 15. But we are distressed to note that in the case of the other

⁶⁷ 2016 SCC OnLine Ker 3776

⁶⁸ 2022 SCC OnLine Ker 357



accused, the learned Sessions Judge has adopted a very callous approach. Undoubtedly, substantive evidence is the identification of the accused by the witness before the Court. **But in the instant case, the deposition of the witnesses only reveals that the learned Sessions Judge has merely recorded the rank number of the accused in the charge and no effort is seen undertaken to certify in the deposition, with exactitude and certainty, that the person referred by witness as one of the members of the unlawful assembly which perpetrated the horrendous act is the person who was standing in the dock. We are unable to discern for certain as to whether the witness was referring to the particular accused whose name finds a place in the charge or to some other person. Obviously the witness will not be aware of the rank number of the person standing in the dock in the array of the accused. There is absolutely no clue available from the deposition either, as the Court has not recorded this aspect in the evidence as to the manner in which the particular accused was identified.** The Apex Court as well as this court, time and again, have reminded the trial Courts, the importance of recording in the deposition the most cardinal fact that the witness has specifically identified the accused as the person who was involved in the crime, so that the complicity and presence of the accused at the scene of crime could be fixed with exactitude. **This is all the more important in a case of this nature where most of the accused are attempted to be roped in on the reason that they were members of the unlawful assembly and they had shared the common object. Unfortunately, there is no specific endorsement in the deposition of the eye witnesses that the accused numbering 25 standing in the dock were identified by the witness in any acceptable manner known to law and the court was satisfied by the identification.** In other words, it does not appear from the evidence that the accused was specifically pointed out by their name or specific feature and an endeavor was made by the Court to individually fix each of the accused as being present at the scene of crime so that their complicity as members of an unlawful assembly in prosecution of the common object could be fixed. We have to mention that the identification of the accused in Court, which was conducted in an omnibus and perfunctory manner, cannot be held to be reliable to establish the complicity of accused Nos. 3 to 11, 13, 14 & 16 to 25 and to hold them vicariously liable for the offence u/s 302 r/w 149 of the IPC.

44. We are afraid that it would result in travesty of justice if we were to hold the accused guilty against whom no specific overt acts are alleged



and in respect of whom the identification of court is extremely sketchy in view of the deficiencies noted above. We note that there are only general allegations against them and we hesitate to convict all of them on such vague evidence. In spite of a meticulous search we are unable to find any reasonable circumstances to lend assurance to hold those accused guilty. From that point of view we are of the view that it will only be safe to convict the accused No 2 - Vayalali Girisan (appellant No. 1), accused No 12 - K.V. Radhakrishnan (appellant No. 11) and Accused No 15 - K.V. Mahendran (appellant No. 14) whose presence is not only consistently mentioned from the stage of F.I.R. but also against whom overt-acts are attributed. So far as the other appellants are concerned, for the above stated reasons we set aside the convictions and sentences passed against them and direct that they shall be set at liberty forthwith if not required in any other case.”

(emphasis supplied)

In the aforesaid case, there were 25 accused who were identified by PW-1 through the rank number of the said accused in the charge and not individually.

64. In Thadiyantevida Nazeer (*supra*), the learned Division Bench of Hon’ble Kerala High Court has observed as under: -

“XIV. The Identification of the Accused by PW1:

77. PW1 as stated by the defence has not identified any of the accused in the dock, but for narrating their roles in the alleged incident leading to the two explosions. On behalf of the NIA it was argued that PW1 is not a chance witness and has mentioned the name of A1 many times during chief examination, after initially admitting his acquaintance with all the persons in the dock. It is the argument that the entire evidence of PW1 clearly brings out the identification and the defence also put suggestions regarding the transaction between A1 and PW1. The identity of the accused were not challenged in cross examination and hence it is admitted by the defence, is the contention. We are unable to countenance the said contention especially in the context of the



declaration of another Division Bench in *Vylali Gireesan* (supra). The Division Bench in Paragraph 43 held that:

“43... Undoubtedly, substantive evidence is the identification of the accused by the witness before the Court. But in the instant case, the deposition of the witnesses only reveals that the learned Sessions Judge has merely recorded the rank number of the accused in the charge and no effort is seen undertaken to certify in the deposition, with exactitude and certainty, that the person referred by witness as one of the members of the unlawful assembly which perpetrated the horrendous act is the person who was standing in the dock. We are unable to discern for certain as to whether the witness was referring to the particular accused whose name finds a place in the charge or to some other person. Obviously the witness will not be aware of the rank number of the person standing in the dock in the array of the accused. There is absolutely no clue available from the deposition either, as the Court has not recorded this aspect in the evidence as to the manner in which the particular accused was identified. The Apex Court as well as this court, time and again, have reminded the trial Courts, the importance of recording in the deposition the most cardinal fact that the witness has specifically identified the accused as the person who was involved in the crime, so that the complicity and presence of the accused at the scene of crime could be fixed with exactitude.”

78. Admittedly four persons were in the dock and a credible identification would be, by pointing out the specific person/accused from among those standing in the dock; either by their position, their dress or any other peculiar features. True the Court also should have been more vigilant in prompting the witness to make a proper identification. But it is more incumbent on the prosecution, to ensure that a credible identification is made, which has the duty of establishing the guilt of the accused beyond any reasonable doubt. When such an identification has not been attempted by the prosecution or the Court, there is no reason why the defence should point out the default of the prosecution and thus precipitate an identification which the prosecution failed to carry out. We cannot countenance the argument of the learned Senior Counsel that there was no challenge made by the defence in cross examination of PW1, regarding the identification of A1. **Other than the reference to the various accused in the narration of facts leading to the bomb explosion, the approver (PW1) only stated that he had acquaintance with A2, A6, A8 and A1. According to him when he reached the**



Markaz Masjid on the summons of A1, out of the six, he was familiar only with A1 and A9 and the others were introduced to him for the first time. Nowhere in the chief examination was an attempt made by the prosecution to call upon PW1 to identify each of the accused standing in the dock; which, as argued by the defence cuts at the root of the prosecution case. The identification made at the time of disclosure statements and point out memos are relevant only if such disclosures, led to a discovery, linking that accused to the crime; which is totally absent in the above case.”

(emphasis supplied)

The facts in the aforesaid judgment are clearly distinguishable. In the aforesaid judgment, the witness (PW-1 therein) had stated that he was familiar with only two of six accused and others were introduced to him for the first time. However, in the present case, PW-1, Yogendra Kasana, in his examination-in-chief, has clearly stated that “I knew all of them”. Even otherwise, the Appellants have been identified by PWs-6, 7, 8 & 10, who were neighbours.

SEIZURE OF CLOTHES

65. Appellant-Israil Pehalwan’s blood-stained clothes (*Kurta & Pyjama of cream colour*) were sized *vide* seizure memo, Ex.PW-30/L. FSL Report, Ex. PW-29/A, regarding the said clothes shows that the DNA profile generated from the clothes of Appellant-Israil Pehalwan is similar to the DNA profile generated from the blood clots of the deceased recovered from “blood on gauze of deceased”.

66. PW-35, SI Jagdish Narayan, in his deposition has stated that on



21.04.2013, he was on emergency duty and, on receipt of DD No. 4A (Ex.PW-4/A), in which the caller had informed him that neighbours were beating her husband after ambushing inside his house, he along with Ct. Shamim (PW-11) reached the spot, *i.e.*, D-75 Gali no. 10, New Modern Shahdara. On reaching there, he came to know that the injured had already been taken to the hospital by PCR. At that stage, PW-35 received another information on phone *vide* DD No. 5A (Ex. PW-4/B) on phone that some boys were banging the gate of House No. B-106, Gali No. 10, New Modern Shahdara, Delhi. PW-35 has further deposed that while still at the house at D-75, another call *vide* DD No. 6A, (Ex.PW-4/C) was received through phone whereby, it was informed that 3-4 persons had shot a person after entering into the house. On receipt of this information, PW-35 went to House No. B-105, which was just nearby and Insp. Amar Singh PW-32/IO, SI Rajiv-PW-30 and SHO/Insp. Surender Rana-PW-33, also reached there. PW-35 has further stated that, after leaving SI Rajiv/PW-30 and Ct. Shamim/PW-11 at the spot, he along with PW-32 and PW-33 went to the GTB Hospital and after obtaining the MLC of the injured, deceased, as he was declared brought dead and no eye witness met them there and they returned to the spot, where they met PW-1/Yogender Kasana. PW-35 further stated that the statement of PW-1 was recorded by Insp. Amar Singh, IO/PW-32, on which a *tehrir* was prepared and it was sent for registration of FIR to the police station through Ct. Samim. He has further deposed that during this time, crime team also reached the spot for inspection of crime scene and after completing the necessary formalities, the Investigating Officer/PW-32 also took blood stain clothes of PW-1 which he was wearing at that time. PW-35 further stated that at that time, Appellant-Israil Pehalwan was brought to the spot by ASI



Gajender in the SRV vehicle. Thus, Appellant-Israil Pehalwan was apprehended after the statement/complaint given by PW-1.

67. As per SI Rajiv-PW-30, Israil Pehalwan was arrested on 22.04.2013 at about 06:00 PM. It is pertinent to note that PW-30 has also stated that prior to the formal arrest of Israil Pehalwan, IO/PW-32 had gone to the hospital for the purpose of postmortem of the deceased and Israil Pehalwan who was brought on spot by ASI Gajender was sent to the police station in the custody of PW-35. PW-32 has further deposed that after he received the post mortem, he along with his staff came to the police station and on reaching there, he interrogated Israil Pehalwan and arrested him formally and took in possession his wearing clothes *vide* arrest memo, Ex.PW-30/I, and seizure memo, Ex.PW-30/L, respectively.

68. The suggestion put to these witnesses was that the said Appellant was illegally lifted from his house and kept for more than 15 hours and thereafter, he was falsely implicated in the present case. It is pertinent to note that it has not been put to the prosecution witnesses, PWs-30, 32, 35, during their depositions, that the clothes of the Appellant-Israil Pehalwan seized *vide* Ex.PW-30/L and produced before the learned Trial Court and exhibited as Ex.PW-30/Article-5 were not of Appellant-Israil Pehalwan.

ALLEGED RECOVERY OF KNIVES AT THE INSTANCE OF THE APPELLANTS-JAVED AND ABID

69. Learned counsel appearing on behalf of the Appellant-Javed had argued



that the prosecution could not prove the alleged recovery of the knife from the latter vide seizure memo Ex.PW-30/Z: Ex.PW-30/Art-1 beyond reasonable doubt. It was argued that as per the FSL report (Ex.-PW-26/A) blood was detected on the knife recovered at Appellant-Javed's instance however, as per the FSL report (Ex.-PW-29/A) no DNA profile could not be generated from it. Further discrepancy is pointed out in the aforesaid FSL report with regard to the description of the knife which is stated to be "one iron knife with broken plastic handle (bent from center)" which does not correspond with the description mentioned in seizure memo Ex.PW-30/Z. It is further submitted that the said knife was not produced before the Doctor for obtaining subsequent opinion as to whether the injuries caused to the deceased could have been caused by the said knife.

70. Similarly, learned counsel appearing on behalf of the Appellant-Abid had argued that the alleged knife recovered at the instance of the latter did not have any blood stains on it. It is also argued that the FSL report described the knife as (doubled edged sharp knife) and in any case, the said knife had not been sent for obtaining subsequent opinion with respect to the injuries caused to the deceased from the alleged knife. It was the case of both these Appellants that the alleged recovery had been made after 2½ months of the incident and that too, from an open place, and therefore, these recoveries are doubtful. Reliance was also placed on the judgment of Hon'ble Supreme Court in **Manjunath (supra)** by learned counsel for the Appellant-Abid.

71. Reference can be made to the judgment of Hon'ble Supreme Court in



Rakesh and Another v. State of Uttar Pradesh and Another⁶⁹, wherein it has been observed and held as under: -

“12. Now so far as the submission on behalf of the accused that as per the ballistic report the bullet found does not match with the firearm/gun recovered and therefore the use of gun as alleged is doubtful and therefore benefit of doubt must be given to the accused is concerned, the aforesaid cannot be accepted. At the most, it can be said that the gun recovered by the police from the accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non. PW 1 and PW 2, as observed hereinabove, are reliable and trustworthy eyewitnesses to the incident and they have specifically stated that A-1 Rakesh fired from the gun and the deceased sustained injury. The injury by the gun has been established and proved from the medical evidence and the deposition of Dr Santosh Kumar, PW 5. Injury 1 is by gunshot. Therefore, it is not possible to reject the credible ocular evidence of PW 1 and PW 2 — eyewitnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW 1 and PW 2 that A-1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW 2 and PW 5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW 1 and PW 2.”

(emphasis supplied)

72. Thus, in view of the aforesaid law laid down by the Hon’ble Supreme Court, this Court is of the considered opinion that, even if, the prosecution was not able to establish that the alleged knives recovered at the instance of the aforesaid Appellants were used for assaulting the deceased, the same cannot be considered fatal to the case of prosecution in view of the testimony

⁶⁹ (2021) 7 SCC 188



of PW-1, which has already been discussed hereinbefore in detail. It is the settled legal position that recovery of alleged weapon of offence is not considered as *sine qua non* for convicting an accused.

DEFENCE

73. The defence of the Appellants is not that they were not present at the spot except for Appellants-Abid and Gufran, whose case is that they had left the place of occurrence in the car of PW-9.

74. No specific defence has been taken by the Appellants to the allegations made against them as noted hereinbefore. Various suggestions put to the prosecution witnesses with regard to the deceased having previous enmity with other persons including on account of the fact that his second wife, PW-10, was a Hindu and he had married her against the wishes of his family have been denied by the witnesses. It is noted that Appellant-Arif had stated, in his statement to the Court recorded under Section 313 of the CrPC that deceased had several enemies as his wife (PW-10) was Hindu and it was an inter-faith marriage. It is noted, by way of evidence which has come on record, that the Appellants do not dispute their presence in the area on the said date and time of incident on account of the fact that it is their own case, that there was a function of engagement of Appellant-Israil Pehalwan's son, Abid, who is also a co-convict in the present case. It is further noted that one of the suggestions put to PW-6 was that since they could not find the actual assailants, therefore, they falsely implicated the present Appellants in connivance with PW-1 and other family members.



75. It has been further argued on behalf of the Appellant-Gufran that he was the son-in-law of Appellant-Israil Pehalwan and had come to attend the function of the engagement of Abid, and therefore, there is no possible reason for the Appellant-Gufran to join the other co-convicts/Appellants and forming a common intention to commit the alleged offences. It has come on record, as pointed hereinbefore, that the Appellant-Gufran was named by PW-1 in the statement (Ex.PW-1/A colly) on the basis of which the present FIR was registered. The said statement made by PW-1 is in proximity to the date and time of the present incident. The mere fact that the name of Appellant-Gufran was not mentioned in DD entries No. 4A, 5A, 6A (Ex.PW-4/A; Ex.PW-4/B; Ex.PW-4/C) reduced in pursuance of the PCR calls made by PWs-10, 8, 1 (wife of the deceased, brother of the deceased and PW-1) respectively, would not create a doubt on the presence of the said Appellant at the spot. PW-1 despite his cross-examination has stood firm with respect to the presence of Appellant-Gufran along with the other Appellants on the said date and time of the incident. It has also come on record by way of testimony of PW-1 that Appellant-Gufran was also armed with stump and had assaulted deceased with the same.

CONCLUSION

76. In view of the aforesaid findings, this Court is of the considered opinion that the prosecution has been able to establish the case beyond reasonable doubt that the present Appellants on the intervening night of 21/22.04.2013 had entered into the shop of the deceased and had assaulted



him thereby causing his death.

77. The Appellants in the present case have been convicted for the offences punishable under Sections 302/149/34 of the IPC.

78. Unlawful assembly has been defined under Section 141 of the IPC which reads as under: -

“141. Unlawful assembly.—An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, 11[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. ”

79. Section 149 of the IPC provides for punishment to every person of unlawful assembly for an offence committed by any member of such an unlawful assembly in prosecution of the common object of the assembly or



such as the members of that assembly knew to be likely to be committed in prosecution of that object. Section 149 of the IPC reads as under: -

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. ”

80. In the present case, the Appellants/Convicts, who were six in number, had arrived at the shop of the deceased while armed with *laathi*, pistol, knives, and cricket stumps. They entered the shop of the deceased with a common object of assaulting the deceased and the knowledge that same would result in the death of the deceased. In the present case, it has come on record that the Appellants after entering the shop of the deceased started abusing and beating him. The Appellants were carrying the aforesaid weapons used in the commission of offences, with them. The same was clearly visible to all of them. Thereafter, the Appellants started abusing and beating the deceased. Appellant-Arif was carrying a pistol with which he tried to fire upon PW-7 which did not hit the latter and PW-7 managed to flee away from the spot. Similarly, PW-6 also, after being assaulted by Appellants-Tarif and Gufran, ran away from the spot. As per PW-1, the deceased fled inside the workshop and the Appellant-Arif fired upon him 5-6 times with the said pistol. The Appellants followed the deceased inside the workshop near the place where *offset printing machine* was installed, where the deceased had taken shelter. The deceased was assaulted by the Appellants, during which, he



was stabbed by Appellants-Abid and Javed and Appellants-Gufran and Tarif were hitting him with cricket stumps while Appellant-Israil Pehalwan hit him with *laathi*. It is also the case of the prosecution that the Appellant-Israil Pehalwan was exhorting the other Appellants to kill the deceased and to ensure that he would not remain alive. It has also come on record that while leaving the spot the Appellants had smashed the Honda City car of the deceased which was parked on the road outside his shop. Thus, from the time the Appellants entered the shop of the deceased and till they left the spot after assaulting him, the continued participation of each of the Appellants in the aforesaid assault clearly establishes their common object.

81. The eye-witness/PW-1 as well as other witnesses, including PWs-6, 7, 8 and 10, have been attributed possession of the aforesaid weapons of offence to the Appellants respectively. As per the post-mortem report (Ex.PW-13/A), there were 20 injuries found upon the body of the deceased, including vital parts of the body, *i.e.*, 10 injuries on the head region and 7 cm x 0.2 cm x 12 cm stab injuries on his chest.

82. At this stage, it is apposite to refer to the judgment of Hon'ble Supreme Court in **Rachapalli Abbulu and Ors. v. State of A.P.**⁷⁰, wherein it was observed and held as under: -

“6. The evidence of the eyewitnesses is fully corroborated by the medical evidence that the two deceased persons sustained extensive injuries. The evidence of PW 15 Dr (Mrs) Swarnalatha, who conducted the post-mortem examination on the body of Thota Nagaraju, shows that D-2 had sustained as many as 21 injuries on his body. Most of these injuries were

⁷⁰ (2002) 4 SCC 208



incised wounds and both bones of the left hand of the deceased were completely cut off at the wrist joints. PW 15 also examined injured PW 2 Thota Appayamma, who had sustained two contusions, one on the right elbow joint and the other on the right back of the chest in the infrascapular region.

9. There is overwhelming evidence on the prosecution side to show that the appellants came to the place of incident in a group and caused various injuries to deceased Thota Nagaraju and Thota Abbayi. These witnesses were extensively cross-examined, but nothing could be brought out in their evidence to show that they were either not present or that they had not seen the incident. Their evidence also would show that most of the accused were armed with various deadly weapons and that they had come to the scene of occurrence with the purpose to cause the death of the two deceased persons and to cause injuries to others. It is proved beyond doubt that the appellants formed themselves into an unlawful assembly and their common object was clearly discernible from the way in which they caused the death of the two deceased persons.”

83. The Hon’ble Supreme Court in **Vinubhai Rachhodbhai Patel v. Rajivbhai Dudabhai Patel and Ors.**⁷¹, has observed and held as under: -

“33. The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly, in our opinion is impermissible. For example, if more than five people gather together and attack another person with deadly weapons eventually resulting in the death of the victim, it is wrong to conclude that one or some of the members of such assembly did not share the common object with those who had inflicted the fatal injuries (as proved

⁷¹ (2018) 7 SCC 743



by medical evidence); merely on the ground that the injuries inflicted by such members are relatively less serious and non-fatal.

34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence *by the members of the assembly* is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean that they did not have the knowledge of the fact that the offence of murder is likely to be committed.

35. The identification of the common object essentially requires an assessment of the state of mind of the members of the unlawful assembly. Proof of such mental condition is normally established by inferential logic. If a large number of people gather at a public place at the dead of night armed with deadly weapons like axes and firearms and attack another person or group of persons, any member of the attacking group would have to be a moron in intelligence if he did not know murder would be a likely consequence.”

84. It was argued on behalf of the Appellant-Gufran that the present case may fall under Section 304 Part-II of the IPC as there was dispute at the spot leading to the death of the deceased.

85. In the facts of the present case, the defence of the Appellants have been simple denial of the case of the prosecution. It is not their case that there was actually a confrontation with the deceased, due to which, the things got escalated and there was a fight between two groups. Nothing has been placed on record to suggest the same. No suggestions to this effect have been put to



any of the Prosecution witnesses. As already pointed out, the circumstances in which the attack was made and the injuries inflicted on the body of the deceased leaves no manner of doubt that the Appellants in pursuance of the common object conducted attacked the deceased without any provocation on his part. The nature of weapons being carried as pointed out hereinabove also leaves no manner of doubt that the assault was pre-meditated and not at the spur of the moment. Thus, in view of the above, the conviction of the Appellants for the offences punishable under Section 302 read with Sections 34/149 of the IPC is modified to Section 302 read with Section 149 of the IPC.

86. In view of the above, the offences punishable under Section 148 of the IPC read with Section 149 of the IPC and Section 449 read with Section 149 of the IPC stands proved against the Appellants. Regarding charge for the offences punishable under Section 427 read with Section 149 of the IPC, it has been proved that the Appellants have damaged the car of the deceased bearing registration No. DL 5 CB 6484 which was parked outside the shop of the deceased.

87. Appellant-Arif has been convicted for offences punishable under Sections 307 of the IPC and Section 27 of the Arms Act. It has come on record that the aforesaid Appellant at the time of incident was carrying a pistol and had fired a shot on PW-7. Though the bullet did not hit PW-7; however, an empty cartridge was recovered from outside the shop of the deceased, the alleged place of incident. In these circumstances, the offence



punishable under Section 307 of the IPC and Section 27 of the Arms Act has been proved against the Appellant-Arif.

88. Appellants-Gufran and Tarif have been convicted for offences punishable under Section 323 of the IPC read with Section 34 of the IPC for beating PW-6 with cricket stumps on several parts of their body. It is pertinent to note that no MLC of PW-6 has been placed on record. In these circumstances, offences punishable under Section 323 read with Section 34 of the IPC *qua* the Appellants-Gufran and Tarif cannot be held to be proved.

89. Appellant-Israil Pehalwan has also been convicted for offences punishable under Section 323 of the IPC for causing injuries to PW-1. The MLC of PW-1, Ex. PW-3/A, has been placed on record and in view of his testimony, as noted hereinabove, the Appellant-Israil Pehalwan's conviction for the offence punishable under Section 323 of the IPC is upheld. Similarly, offence punishable under Section 506 (Part-II) of the IPC against the Appellant-Israil Pehalwan also stands proved and same is upheld.

90. During the hearing on the point of sentence, learned Trial Court had called for Victim Impact Report from DLSA and after dealing with the said report, learned Trial Court had recommended that dependents of the deceased are entitled to a compensation of Rs.10 Lakhs payable by the Appellants/Convicts. It is also noted in the order of sentence that descriptions of the assets and liabilities were neither mentioned in the affidavits filed by the Appellants/Convicts nor such information was shared by the IO or the SDM concerned, however, learned Trial Court proceeded to conclude that on



the basis of limited information that Convicts/Appellants possess sufficient means to compensate the victim. Accordingly, as per the learned Trial Court while considering the totality of their social, personal and financial conditions, it imposed varying fine amounts upon all the convicts. It further observed that the fine amount realized from Appellants/Convicts *qua* offences under Section 148 of the IPC read with Section 149 of the IPC and Section 427 of the IPC would be payable to State against the expenses incurred in litigating the present litigation and rest of the fine amount realized from convicts *qua* all other offences be disbursed to the dependents of the deceased-Ibrahim (mother, wife and son) as monetary compensation.

91. Accordingly, the following fines were imposed on the Appellants: -

“A. Israil Pehalwan:

(i) **U/s 302 IPC read with Section 149/34 IPC:** Fine of Rs.2,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of six months.

(ii) **U/s 148 IPC read with Section 149 IPC:** Fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** Fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

(v) **U/s 506 Part II IPC:-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(vi) **U/s 323 IPC:-** Fine of Rs. 1,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

B. Javed and Abid:-

i) **U/s 302 IPC read with Section 149/34 IPC:-** Fine of Rs.1,00,000. In



default of payment of fine amount, convict to undergo simple imprisonment of three months.

(ii) **U/s 148 IPC read with Section 149 IPC:** Fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** Fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

C. Arif:-

(i) **U/s 302 IPC read with Section 149/34 IPC:-** Fine of Rs.1,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of three months.

(ii) **U/s 148 IPC read with Section 149 IPC:** Fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC:-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** Fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

v) **U/s 307 IPC:-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(vi) **U/s 27 Arms Act:-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

D. Tarif:-

(i) **U/s 302 IPC read with Section 149/34 IPC:-** Fine of Rs.1,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of three months.

(ii) **U/s 148 IPC read with Section 149 IPC: -** Fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC: -** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC:-** Fine of Rs. 2,000. In default of payment of fine



amount, convict to undergo simple imprisonment for 15 days.

(v) **U/s 323 IPC:-** Fine of Rs. 1,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days..

E. Gufran :-

(i) **U/s 302 IPC read with Section 149/34 IPC:** Fine of Rs.2,00,000. In default of payment of fine amount, convict to undergo simple imprisonment of six months.

(ii) **U/s 148 IPC read with Section 149 IPC:** Fine of Rs.1,000. In default of payment of fine amount, convict to undergo simple imprisonment of 15 days.

(iii) **U/s 449 IPC read with Section 149 IPC and Section 34 IPC :-** Fine of Rs. 10,000. In default of payment of fine amount, convict to undergo simple imprisonment for one month.

(iv) **U/s 427 IPC :-** Fine of Rs. 2,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.

(v) **U/s 323 IPC :-** Fine of Rs. 1,000. In default of payment of fine amount, convict to undergo simple imprisonment for 15 days.”

92. It is also noted that learned Trial Court had recommended DLSA to award further compensation to the dependents of the deceased under Section 357A of the CrPC with the direction that as and when the fine amount is realized the same would be deposited in the bank account maintained by DLSA/DSLISA for disbursement of compensation to the dependents of the deceased/victim.

93. It has come on record in the impugned order on sentence that learned ASJ did not have sufficient information/material based on which the financial ability of the Appellants to pay the amount of fine, as noted hereinabove, to compensate the family of the victim/deceased could be shown. In **Adamji**



Umar Dalal v. State of Bombay⁷², the Hon'ble Supreme had observed and held as under: -

“8....In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases....”

94. Further, the Hon'ble Supreme Court in **Deepak Kumar Ganesh Rai Manto v. State of Goa**⁷³, while taking note of the financial condition of the Appellant therein, observed and held as under:

“8.Undoubtedly, he stands convicted of offences which cannot but be termed heinous. At the same time the Court also is to be conscious of the financial condition he is placed in. Taking in cue a judgment in *Shahejad Khan* (supra), the Court hereby modifies the fine amount (imposed in respect of the conviction under Section 376 IPC) from Rs. 2,00,000/- to Rs. 50,000/-. Likewise, the default sentence is reduced from three years to one year's simple imprisonment....”

95. Therefore, in view of the above discussion, the order on sentence dated 19.11.2022 is modified and the Appellants are sentenced as follows: -

A. Israil Pehalwan

(i) For offence punishable under **Section 302 of the IPC read with Section 149 of the IPC**: - Imprisonment for life along with fine of Rs.25,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of three

⁷² 1951 SCC 1106

⁷³ 2023 SCC OnLine SC 1310



months;

(ii) For offence punishable under **Section 148 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for two years along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of 15 days;

(iii) For offence punishable under **Section 449 of the IPC read with Section 149 of the IPC**: - Rigorous imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;

(iv) For offence punishable under **Section 427 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for 6 months along with fine of Rs. 2,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

(v) For offence punishable under **Section 506 Part-II of the IPC**: - Simple imprisonment for 03 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;



(vi) For offence punishable under **Section 323 of the IPC**: - Simple imprisonment for 06 months along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

B. Javed

(i) For offence punishable under **Section 302 of the IPC read with Section 149 of the IPC**: - Imprisonment for life along with fine of Rs.25,000/- and in default of payment of fine amount, Appellants/Convicts shall undergo simple imprisonment of three months;

(ii) For offence punishable under **Section 148 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for two years along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of 15 days;

(iii) For offence punishable under **Section 449 of the IPC read with Section 149 of the IPC**: - Rigorous imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;

(iv) For offence punishable under **Section 427 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for 6 months



along with fine of Rs. 2,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

C. Abid

(i) For offence punishable under **Section 302 of the IPC read with Section 149 of the IPC**: - Imprisonment for life along with fine of Rs.25,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of three months;

(ii) For offence punishable under **Section 148 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for two years along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of 15 days;

(iii) For offence punishable under **Section 449 of the IPC read with Section 149 of the IPC**: - Rigorous imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;

(iv) For offence punishable under **Section 427 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for 6 months along with fine of Rs. 2,000/- and in default of payment of fine



amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

D. Arif

(i) For offence punishable under **Section 302 of the IPC read with Section 149 of the IPC**: - Imprisonment for life along with fine of Rs.25,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of three months;

(ii) For offence punishable under **Section 148 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for two years along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of 15 days;

(iii) For offence punishable under **Section 307 of the IPC**: - Rigorous Imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;

(iv) For offence punishable under **Section 449 of the IPC read with Section 149 of the IPC**: - Rigorous imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;



(v) For offence punishable under **Section 427 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for 6 months along with fine of Rs. 2,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

(vi) For offence punishable under **Section 27 Arms Act:-** Rigorous imprisonment for 7 years along with fine of Rs. 10,000. In default of payment of fine amount, Appellant/Convict to undergo simple imprisonment for one month.

E. Tarif

(i) For offence punishable under **Section 302 of the IPC read with Section 149 of the IPC**: - Imprisonment for life along with fine of Rs.25,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of three months;

(ii) For offence punishable under **Section 148 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for two years along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of 15 days;



(iii) For offence punishable under **Section 449 of the IPC read with Section 149 of the IPC**: - Rigorous imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;

(iv) For offence punishable under **Section 427 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for 6 months along with fine of Rs. 2,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

F. Gufran

(i) For offence punishable under **Section 302 of the IPC read with Section 149 of the IPC**: - Imprisonment for life along with fine of Rs.25,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of three months;

(ii) For offence punishable under **Section 148 of the IPC read with Section 149 of the IPC**: - Simple imprisonment for two years along with fine of Rs.1,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment of 15 days;

(iii) For offence punishable under **Section 449 of the IPC read**



with Section 149 of the IPC: - Rigorous imprisonment for 10 years along with fine of Rs.10,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for one month;

(iv) For offence punishable under **Section 427 of the IPC read with Section 149 of the IPC:** - Simple imprisonment for 6 months along with fine of Rs. 2,000/- and in default of payment of fine amount, Appellant/Convict shall undergo simple imprisonment for 15 days;

96. All these sentences are directed to run concurrently. Benefit of Section 428 of the CrPC be provided to the Appellants.

97. In view thereof, the impugned judgment of conviction dated 20.09.2022 and impugned order on sentence dated 19.11.2022 passed by learned Special Judge stand modified in the aforesaid terms. Insofar as the directions regarding the recommendation for awarding compensation under Section 357A of the CrPC by DLSA to the family of the deceased and the deposit as well as the realisation of the fine amount imposed on the Appellants/Convicts, the same are upheld.

98. The present appeals are disposed of accordingly.

99. Pending application(s), if any, also stand disposed of accordingly.



100. Copy of the judgment be also sent to the Secretary, Delhi High Court Legal Services Committee, who shall apprise the Appellants regarding the legal remedy and assistance of legal aid counsel available to them in respect of the present judgment.

101. Copy of this judgment be sent to concerned Jail Superintendent as well as Secretary, Delhi State Legal Service Authority, Rouse Avenue Courts, New Delhi, for necessary information and compliance.

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

**AMIT SHARMA
(JUDGE)**

**PRATHIBA M. SINGH
(JUDGE)**

NOVEMBER 03, 2025/bsr/sn/kr/ns