Dinesh Vs. State

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SooperKanoon Citation : sooperkanoon.com/1170790

Court : Delhi

Decided On : May-19-2014

Judge : Sanjiv Khanna

Appellant : Dinesh

Respondent : State

Advocate for Def. : Ms. Rajdipa Behura

Advocate for Pet/Ap. : Mr. Vinod Pant

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL No.310/1999 Reserved on:

20. h February, 2014 Date of Decision:

19. h May, 2014 % DINESH Through: ..... Appellant Mr. Vinod Pant, Advocate. Versus STATE Through: State. ..... Respondent Ms. Rajdipa Behura, APP for the CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL SANJIV KHANNA, J: Appellant-Dinesh and one Arjun Kumar (Arjun, for short) by the impugned judgment dated 1st May, 1999 were convicted for murder of Arjuns father, namely, Devi Ram. Arjun had also preferred an appeal against conviction, but he expired on 31st March, 2008 and the appeal filed by him has abated. Hence, we are only concerned with the conviction of Dinesh under

Section 302 read with Section 34 of Indian Penal Code, 1860 (IPC, for short). By order on the point of sentence dated 3rd May, 1999, Dinesh has been sentenced to undergo imprisonment for life and pay fine of Rs.500/-.

2. The factum that Devi Ram, father of Arjun died a homicidal death and his body with multiple injuries was found on 9 th January, 1993 at about 1.15 p.m. is not under challenge. On the said date and time Head Constable Sukhbir Singh, PW-4 received information from a wireless operator that a dead body was lying in the fields at Mundka, Hiren Poothana Road, Laghu Udyog Nagar. Information was recorded in DD No.11, Ex.PW4/A and handed over to SI Siri Ram, PW-29 for investigation. PW-29 reached the location along with Constable Raj Pal Singh and found dead body of a male aged about 60 years lying in the fields of Sukhbir Singh. The body had multiple injuries on nose, chin, throat and left arm which were probably caused by a sharp edged weapon. Residents of village Mundka, namely, Prithi Singh and Liak Ram, PW-1 and PW-2, respectively identified the dead body to be that of Devi Ram. Thereupon, DD Entry No.11A was recorded and rukka was sent for registration of the case and FIR No.13/1993, Ex.PW4/B under Section 302 IPC was registered at police station Nangloi. Rough site plan, Ex.PW29/A of the place was prepared by SI Siri Ram, PW-29 and photographs were taken by Rajbir Singh, PW-30. Evidence and material lying on the spot in the form of blood stained earth, sample earth, cap, blood stained cotton khes having cut marks, chappal, Kurta, Lungi, bunch of keys, etc. were seized vide seizure memos Ex.PW1/B to PW1/F.

3. Inquest proceedings concluded and on 10th January, 1993 post mortem on the dead body of Devi Ram was conducted by Dr. L.T. Ramani, PW-24. As per the testimony of PW-24 and the post mortem report (Ex.PW24/A), the deceased had multiple deep cuts/chopping wounds on the face, incised/chopping wound on the left side of forehead, four incised wounds over chin and submendibular areas involving mandible (lower jaw) and lower teeth which was broken, incised wound on the middle part of the neck, incised wound scalp deep on the right occipital region, chopping wound on the right elbow and inner aspect of fore arm with chipping fracture of lower end of right humorous bone and incised chopping wound on the left wrist. Internal examination showed gapping fracture of left frontal and

parietal bone extending to the left lamboid suture, beneath external injury No.2. All the injuries were ante mortem and opined as caused by some heavy cutting weapon. Injuries over the skull and neck were sufficient in the ordinary course of nature to cause death. Death was due to hemorrhage and shock associated with cranio cerebral injury. Time since death as opined was 36 hours. We shall be referring to the testimony of PW-24 regarding the weapon of offence subsequently.

4. The core and primary issue raised in the present appeal relates to involvement of the appellant Dinesh; whether he is the perpetrator, who had committed the crime along with Arjun. Against Arjun, son of the deceased Devi Ram, the prosecution had relied upon testimony of Chiranji Lal (PW-17), uncle (Tau) of Arjun i.e. elder brother of the deceased Devi Ram, who had raised Arjun and treated him like his son. PW-17 deposed that he informed the police [SHO Insp. Dharam Pal (PW30)]. on 11th January, 1993, that on 10th January, 1993 at about 8.30 P.M. Arjun had come to the house of his in-laws at Pitampura to meet him and had wept bitterly. Arjun had then confessed before PW17 that he had murdered his father Devi Ram. He accepted his mistake and wanted PW-17 to save him. Arjun had stayed the night with him at Pitam Pura and the next morning he was taken to the village. In the extra judicial confession, Arjun had also named the present appellantDinesh as an equal participant in the actual crime and that he and the appellant-Dinesh had earlier purchased two Pharsas from the shop of Veer Bhan, situated at Nangloi Chowk and bamboo stick with nuts and bolts from the shop of Ram Prakash Punjabi in village Mundaka. The said bamboo stick, nuts and bolts were fixed on the Pharsas which were used to inflict injuries. It is on the basis of this statement of PW17 that SI Shri Ram (PW29) and SHO Dharam Pal (PW30) swung into action and arrested Arjun, who was present in the house of Chiranji Lal (PW-17). Appellant-Dinesh was arrested from his own house.

5. At the outset, we record that the extra judicial confession became the primary and principal evidence relied upon by the prosecution against Arjun, but no extra judicial confession is attributed to the appellant-Dinesh. The legal issue whether extra the judicial confession made by late-Arjun, can be relied upon and made the basis for conviction of Dinesh was answered in Kashmira Singh Vs. State of Madhya Pradesh, AIR 1952 SC159 In the said case, reference was made to the

decision of the Privy Council in Bhuboni Sahu Vs. The King [1949]. 76 I.A. 147 to the effect that extra judicial confession of a co-accused did not come within the definition of evidence under Section 3 of the Evidence Act as it was not required to be given on oath, in the presence of the accused and could not be tested by crossexamination. It was categorised as a weak type of evidence which cannot be made the foundation for conviction of co-accused and could only be used in support of other evidence. Reference was made to the opinion of Sir Lawrence Jenkins in Emperor Vs. Lalit Mohan Chuckerbutty, I.L.R. [1931]. Madras 75, wherein, it was succinctly put that extra judicial confession could be used only to lend assurance to other evidence against a co-accused and as observed by Reilly J.

in re Periyaswami Moopan [1911]. I.L.R. 38 Cal. 559, that Section 30 of the Evidence Act went no further than stating that evidence against the coaccused was sufficient, if believed, to support his conviction, confession made by co-accused in view of said Section could be an additional reason in the scale for believing the (primary) evidence. It was accordingly held as under:

11. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.

6. The aforesaid view finds resonance and approval in the decision of the Constitution Bench in Haricharan Kurmi Vs. State of Bihar AIR 1964 SC1184wherein reference was made to Sections 3 and 30 of the Evidence Act. The question whether confession of an accused could be used against the co-

accused, who had been implicated or it could be only used against the maker, was again answered elucidating that confession was strictly not an evidence against co-accused under Section 3 of the Evidence Act, but in a non-technical way, Section 30 enabled the Court to take the confession into account, inspite of it not being obligatory and though it was not to be treated as substantive evidence against the co-accused. The proper way was to exclude the extra judicial confession against co-accused and examine other evidence. If the said evidence appeared to be satisfactory and the Court was inclined to hold that the said evidence sustained the charge framed against co-accused, then the Court could turn to the confession with a view to reassure the conclusion. The Court cannot start with the confession of a co-accused and must begin with other evidence adduced by the prosecution and after formation of opinion with regard to the quality and effect of the said evidence, it was permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind was about to reach on the other evidence. (Refer also to State of M.P. Vs. Paltan Mallah AIR 2005 SC733and Pancho Vs. State of Haryana AIR 2012 SC523.

7. When we come to the other evidence against appellant Dinesh, it would consist of the recoveries made purportedly from the residence of Dinesh on 11th January, 1993 after recording his disclosure statement Ex.PW17/B. These are in the form of T-shirt, pant and blanket, which were marked Ex. P5, P-6 and P-9, respectively. As per the CFSL report Ex.PW31/A to C, blood was detected on the said exhibits and was ascertained to be of group B, which as per the serelogical report Ex.PW31/B was the blood group of the deceased Devi Ram. The second circumstance is the recovery of Pharsa again on the basis of the disclosure statement as well as the fact that Arjun and appellantDinesh had purchased the Pharsa as deposed to by Veer Bhan (PW14) and purchased bamboo, two sticks, nuts and bolts as deposed to by Ram Prakash (PW-10). One Pharsa (Ex. P-7) attributed to Arjun was recovered from a well on 12th January, 1993 and the second Pharsa (Ex. P-8) attributed to the appellant Dinesh was recovered from the same well on 15th January, 1993. Reliance on recovery of Pharsa was placed upon the testimonies of Babu Lal (PW-13) and Mahipal (PW-20). Prosecution further, relied upon the testimony of Geeta (PW-25), wife of deceaseds brother, who it was claimed had seen the appellant Dinesh with Arjun on 9th January, 1993

at about 8.30 a.m. i.e. soon after commission of the offence.

8. The Trial Court has disbelieved and not placed credence on the testimony of Geeta (PW-25) and in our opinion rightly on the ground that she was planted and her testimony was not trustworthy. PW-25 was the wife of the brother of deceased-Devi Ram. She claimed that she had seen Dinesh and Arjun on 9th January, 1993 at about 8.30 a.m. coming from the side of Bakkarwala village and going on road towards their village. Arjun had a khes, while Dinesh had a blanket wrapped on his body. In the examination-in-chief, she accepted that she did not speak to them and at about 2-2.30 p.m. came to know about the murder of Devi Ram in the fields. In the cross-examination, PW-25 accepted that her statement under Section 161 Cr.P.C. was recorded after nearly 3 months i.e. on 26th March, 1993, though she was aware and had knowledge about the arrest of the appellant-Dinesh and Arjun on 11th January, 1993. She accepted that the police had visited the house of Devi Ram regularly, where she was also present, but she did not state or reveal to the police that she had seen the appellant and Arjun together in the morning at about 8.30 a.m. on 9 th January, 1993. This aspect becomes important because other family members of late Devi Ram, namely, his widow Rameshwari Dass (PW-7) and brother of Arjun, Krishan Kumar (PW-16) had specifically deposed that on 9th January, 1993 at about 8.30 p.m. Arjun had come back to the house with a wet Khes and was nervous/perplexed. Arjun thereafter went to Chaubara to sleep, but soon left the house. PW-7 has deposed that Arjun had left the house on 9th January, 1993 at about 4/5 a.m. and the deceased Devi Ram had left at about 7 a.m. Relevance and importance of PW-25s testimony about seeing Arjun and appellant-Dinesh together at 8.30 a.m. was apparent and perceptible, yet there is no explanation why Geeta (PW-25) did not state and inform the police and other family members immediately. Her statement was recorded by the police after about 3 months of the occurrence. Geeta (PW-25) was thus an unreliable witness and, therefore, we have to discard her testimony altogether.

9. On the question of recovery of clothes i.e. T-shirt, pant and blanket (Ex. P-5, P-6 and P-9 respectively) from the house of appellant Dinesh, the prosecution had partly relied upon testimonies of eye witnesses to the recovery, namely, Jitender (PW-6) and Nathu Ram (PW-12). However, the trial court noticed several

contradictions and unexplained divergence in the statements of Jitender (PW-6) and Nathu Ram (PW-12) on the recovery which read as under:

Although, it was claimed by the prosecution that the said clothes of deceased and blanket were seized in the presence of PW6 Jitender but the manner in which PW6 Jitender and PW12 Nathu Ram, who were the neighbours of accused Dinesh, have given evidence clearly suggests that either the clothes and blanket were not got recovered by the police at the instance of accused Dinesh in their presence or they were not inclined to support the prosecution case on one ground or the other. Now, it was claimed by PW6 Jitender Kumar that the accused Dinesh had got recovered his T-shirt bearing the label of O.K. Tailor and the pant from the Chopal. However, it was admitted by him in his cross-examination that there was no chopal in the house of accused Dinesh and the Chopal was in the village. Although, in his cross-examination, he corrected his mistake bydeposing that accused Dinesh got recovered the blood stained clothes from the Chobra of his house and the said shirt and pant were found hanging on the khooti but at the same time, it was also disclosed by him that either accused Arjun or accused Dinesh had disclosed to the police that these clothes belonged to him. Although it was the case of the prosecution that the police after effecting the recovery of shirt and pant had stopped at ground floor, where the accused Dinesh had got recovered his blanket, but it was stated by this witness that the police had not stopped on the ground floor after coming down from the Chobara. As such, the testimony of this witness does not inspire confidence so far as regards the recovery of blood stained clothes and blanket at the instance of accused Dinesh was concerned. Although, PW12 Nathu Ram was examined by the prosecution to support their case regarding the recovery of blood stained clothes at the instance of accused Dinesh but this witness also did not support the prosecution case from the core of his heart. Accordingly to him, about 3 /3 years back police had brought both the accused person in their village at about 6.30 AM and Thanedar had summoned him and informed him that the clothes have been recovered from the house of accused and at his instance, he had affixed his thumb impression and at that time he was he was standing at the Chaukhat of the place from where the clothes were recovered. According to him, the said clothes were pant and bushirt and were stained with some blood drops. He also deposed that he did not know as

to whom, the said clothes belonged. He also showed his ignorance as to whether any other thing was also got recovered from the house of accused Dinesh or not. This witness refused to identify the shirt and pant Ex.P5 and Ex.P6 stated to have been recovered at the instance of accused Dinesh. Surprisingly, when this witness was crossexamined by ld. A.P.P. it was admitted by him that at that time, PW Chiranji Lal was also present and accused Dinesh had led the police party to his Chobara situated on the first floor but he was unable to say that accused Dinesh had brought the pant and shirt which were found hanging on the khooti in the chobara. It was also reiterated by him that he had gone upstairs at the time of recovery of clothes and had kept on standing at the Chaukhat of the house of accused. It was strongly refuted by him that accused hd pointed out towards the clothes and police had seized the bushirt Ex.P5 and pant Ex.P6 in his presence. It was further denied by him that the accused Dinesh had pointed out the cot lying on the ground floor and had pointed out the blanket lying there and the said blood stained blanket was taken into possession by police vide seizure memo Ex.PW12/A after sealing the same with the seal of S.R. So, in view of the said deposition made by PW Nathu Ram, it cannot be held with certainty that the blood stained clothes Ex.P5 and Ex.P6 and blanket Ex.P9 were got recovered by police in the presence of this witness. Consequently, his testimony on the vital factum of the recovery of clothes and blanket cannot be given any consideration.

10. We are substantially in agreement with the aforesaid reasoning given by the trial court pointing out sufficient discrepancies on the question of recovery of T-shirt, pant and blanket. However, the trial court relying upon the testimony of Chiranji Lal (PW-17) and the police officers SI Shri Ram (PW-29) and SI Daler Singh (PW-30) still accepted the said recoveries at the behest and on the disclosure statement (Ex. PW17/B) of the appellant Dinesh. We have reservations on the said finding of the trial court, after having recorded the fact that the depositions of witness to the recovery memos, Nathu Ram (PW-12) and Krishan Kumar (PW-16) had contradicted each other. That apart, there was no reason and cause for Dinesh to keep blood stained T-shirt and pant with him after the occurrence in the early morning hours of 9 th January, 1993 till the date of recovery i.e. 11th January, 1993. Same logic and reasoning would apply to the blanket as the clothes and blanket could have been destroyed or thrown away.

Keeping the said blood stained clothes and blanket would have invited problem and negative inference as a proof of involvement of the appellant Dinesh. Natural and normal instinct would have been not to keep and destroy any such evidence, when you had both opportunity and sufficient time. Ex. P-5 has been described as a T-shirt. In villages some time bushirts are also known as T-shirts. However, while recording evidence of Chiranji Lal (PW17), on examination of Ex. P-5, the court observed that the said exhibit was a full sleeve shirt and not a T-shirt. An objection was raised on behalf of the appellant Dinesh, but it was kept open.

11. In view of the aforesaid discussion, we have some reservations on the recovery of the blood stained T-shirt, pant and blanket. Consequently, the said reservations and doubt dilute the effect of CFSL report Ex.PW31/A to C and the opinion that human blood of group B was found on the pant, bushirt or T-shirt and the blanket.

12. The recovery of the two Pharsas is again debatable as no Pharsa was recovered on 11th January, 1993 inspite of search, though it can be explained as no one had dived into the well to locate the Pharsa. The first Pharsa Ex.P-7 was recovered on 12th January, 1993 as deposed to by Babu Lal (PW-13) and Mahipal (PW-20). However, this Pharsa is not attributed, as per the prosecution version, to the appellant Dinesh, but was allegedly used and thrown by Arjun. The second Pharsa marked Ex.P8 was seized vide memo Ex.PW13/C on 15th January, 2013, three days after the first Pharsa was recovered from the well. Babu Lal (PW-13) had stated that on 15th January, 1993, appellant Dinesh and the other accused Arjun were not present, though they were present on 12th January, 1993. This has been reiterated twice in the examination-in-chief by PW-13 and repeated in crossexamination by the Addl. Public Prosecutor. He, however, accepted that Pharsa (Ex. P-8) was identified by the appellant Dinesh. PW-13 categorically deposed that the Pharsa which was recovered from the well did not have any handle. Babu Lal (PW13) was cross-examined by the Additional Public Prosecutor on the said aspect and his attention was also drawn to the sketch of Pharsa recovered from the well on 15th January, 1993 (Ex. PW13/C) had a handle. PW-13 had stuck to his stand that Pharsa recovered from the well on 15th January, 1993 did not have any handle. He denied the suggestion that Pharsa marked

Ex.P8 was with a handle and the sketch was accordingly prepared at the spot. The Pharsa produced in the court as per the sketch Ex. PW13/C had a handle.

13. Mahipal (PW-20), on the other hand, with regard to Pharsa recovered on 15th January, 1993 has deposed that the two accused were taken to the tube-well and water was pumped out with the help of water pumping machine and the police had put a magnet tied with a rope in order to take out the second Pharsa. However, they were not successful and thereupon Babu Lal (PW-13) went inside the tube-well and brought out the Pharsa and the same had a bamboo stick attached to it. The said Pharsa was seized vide seizure memo Ex.PW20/A. PW-20 could not identify the second Pharsa as he claimed that he was standing at some distance when the same was taken out from the tube-well. The said witness was allowed to be cross-examined by learned Additional Public Prosecutor. What is rather intruding is the CFSL report marked Ex.PW31/A to C in respect of Pharsas. It records that human blood was found on the two Pharsas, though too small for serological analysis. The second Pharsa had remained in water of well as per the prosecution case for almost 6 days, which is a long period. It is difficult to appreciate and accept that blood would have remained on the Pharsa even after the Pharsa had remained in water for six days. On the said aspect, we have testimony of Dr. L.T. Ramani (PW-24) to whom the two Pharsas were shown and he had given his report Ex.PW24/C that the injuries on the body of the deceased Devi Ram were possible with the Pharsas. He has deposed that the two Pharsas had bamboo handle attached to them, but stated that the two Pharsas did not show obvious blood stains. PW-24 had also referred to the bamboo on the second Pharsa and he had signed on the bamboo of the two Pharsas. Therefore, on the question of recovery of second Pharsa which was allegedly used by the appellant Dinesh, there is doubt and ambiguity on the recovery, the blood stains being present thereon etc. As is apparent, there was delay in recovery of the second Pharsa (Ex. P-8), which as per the prosecution was recovered on 15th January, 1993.

14. Faced with the aforesaid situation, it was submitted on behalf of the State that Devi Ram had suffered a large number of injuries and one person could not have caused the said injuries. Reference was also made to the testimonies of Ram

Prakash (PW-10) and Veer Bhan (PW14). The purchases made from them are not covered by Section 27 of the Evidence Act as it did not lead to recovery of any physical object. At the same time, it would be appropriate to record and notice the testimony of Chiranji Lal (PW-17) to the effect that Arjun had informed him about purchase of Pharsas, bamboo, nuts and bolts and had also given details of the shops. The said extra judicial confession, as per PW-17, was made on 10th January, 1993 at about 8.30 p.m. which was before the disclosure statement (Ex. PW13/C) of the appellant Dinesh recorded on 11th January, 1993 at about 10-11 a.m. Thus, as per the prosecution case, Chiranji Lal (PW-17) had before the disclosure statement (Ex.PW13C) of the appellant Dinesh, informed the police about purchase of Pharsas etc. There is evidence to show that Arjun was the first to make disclosure statement, which was followed by the disclosure made by the appellant Dinesh. SI Siri Ram (PW29) has testified that disclosure statement of Arjun Ex.PW13/A was confronted to the appellant Dinesh. Even if we accept that this is a case of joint disclosure, it would be important to notice the observations of the Supreme Court in State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru (2005) 11 SCC600 wherein under the heading joint

14. Joint disclosures Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the Ken of Section 27, whereas it is the contention of Mr. Gopal Subramanium that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not

inadmissible under Section 27. 'A person accused' need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the stand point of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these preparatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

(emphasis supplied) 15. In the aforesaid paragraph, the Supreme Court, while accepting that joint disclosures can fall under the purview of Section 27 of the Evidence Act, has observed that the information should be given without any break and almost simultaneously to avoid criticism from the stand point of credibility and nexus with recovery. Admissibility and credibility are two different

aspects and, therefore, credibility of the discovery of the two Pharsas from the well, in this situation, which was a fact stated by Arjun to Chiranji Lal (PW-17) on 10th January, 1993 and in his disclosure statement recorded earlier on 11th January, 1993, to some extent affects the credibility of the disclosure made by the appellant Dinesh. However, the testimonies of PWs-10 and 14 can be relied upon as relevant evidence under Section 8 of the Evidence Act.

16. Nature and extent of the injuries suffered by the deceased Devi Ram do indicate involvement of more than one person, who had caused the said injuries. But by no stretch it can be argued that presence of second culprit has been established beyond doubt. Multiple injuries were possible by a single person also. It is also apparent that it was a pre-meditated, well planned and deliberately executed attack. Injuries were not caused with an intention to rob or steal, but to do away with and kill Devi Ram. We can conceive, the agony, hurt and pain when the family members of Arjun implicated and accepted that Arjun had killed his father. It could not have been easy for the family members of Devi Ram i.e. Chiranji Lal (PW-17), uncle (Tau), who had brought up Arjun and Rameshwari Dass (PW-7) mother of Arjun and wife of the deceased Devi Ram and other family members like Krishan Kumar (PW-16) to come out openly and name Arjun. However, what is also noticeable is that Rameshwari Dass (PW-7), Krishan Kumar (PW-16) and Chiranji Lal (PW-17) have deposed that Arjun use to keep bad company and because of this he used to commit theft, consume liquor and indulge in narcotics. Dinesh, it was stated, was a friend of Arjun and was responsible as he had induced and pushed Arjun on to the wrong path and was responsible for his deviant behaviour. The appellant Dinesh was the real culprit. In some way, therefore, while accepting that Arjun was the culprit, the said witnesses wanted to blame Dinesh for what Arjun had done and stated that appellant Dinesh was responsible for Arjuns blameworthy behaviour and actions. In other words, Dinesh was responsible and liable for what has happened.

17. Thus, the depositions of PWs-7, 16 and 17 have to be read with certain discount, keeping in view rancor and loathing they had for the appellant Dinesh. This does not mean that we completely disregard or reject the statements made by the said witnesses, but we have to be cautious and rule out possibility of

exaggeration and implication of appellant Dinesh by PWs-7, 16 and 17 for reasons other than purely objective and unbiased rendition of the facts as they transpired.

18. Thus, what we have before us is highly debatable evidence in the form of recovery of T-shirt, pant and blanket with blood stains matching the blood group of the deceased, testimonies of PWs-13 and 14 on purchase of Pharsas, bamboo etc. by Arjun and appellant Dinesh, the Pharsa (Ex. P-8) recovered from a well after about 6 days, still having traces of human blood and statements of the relatives i.e. PWs7, 16 and 17 that Arjun and appellant were good friends and the appellant was responsible for the bad habits and deviant behaviour of Arjun. We do not think that the aforesaid circumstantial evidence even when taken cumulatively and considered along with respective ambiguities noticed above is sufficient to complete the chain and hold that the appellant Dinesh along with Arjun was the second person involved, who had committed the offence in question and there was no possibility that Arjun alone was responsible. always existed. The said possibility Interestingly, Chiranji Lal (PW-17) in his court deposition had talked about an application, which was filed by him against Arjun and his cousins Liak Ram and Saman at police station Nangloi about the threats being extended by them to PW-17 about two years prior to the incident. Police had then called Arjun and others and got the matter compromised.

19. In view of the aforesaid discussion and applying the legal ratio as expounded by the Supreme Court in Kashmira Singh (supra) and Panchu (supra), we do not think that it will safe and correct to hold that prosecution has been able to prove and make out a case beyond reasonable doubt against the appellant Dinesh. Dinesh is entitled to benefit of doubt as it cannot be held that Dinesh could have been the perpetrator along with Arjun and had committed the offence in question. Once we exclude the extra judicial confession made by Arjun, the prosecution evidence, as led, is not sufficient but rather weak and does not complete the chain to indict and hold that the appellant Dinesh was the second perpetrator with Arjun. The gaps in the prosecution version are apparent and, therefore, we should give benefit of doubt to the appellant Dinesh. He is accordingly acquitted and the appeal of Dinesh is allowed. The appeal is disposed of. (SANJIV KHANNA) JUDGE (G.P. MITTAL) JUDGE MAY19h, 2014 NA