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Court : Delhi

Decided On : Nov-30-2015

Judge : Sanjiv Khanna &Amp; R.K. Gauba

Appeal No. : CRL.A. Nos. 198, 279 of 2000

Appellant : Munna Lal and Another

Respondent : State

Judgement :

R.K. Gauba, J.

1. Ram Asre, son of Baijnath (the victim ?), aged about 22 years, resident of jhuggi no. N-116 (also N-23), Indira Vikas Colony, falling within the jurisdiction of police station Mukherjee Nagar (the police station ?) suffered homicidal death, on account of stab injuries, received in an incident that took place at about 09:30 PM on 21.03.1997 in front of jhuggi no.A-105 (N-15) in the same slum settlement. The case registered by the police (FIR No.147/1997) resulted in report of investigation (dated 28.06.1997) under Section 173 Code of Criminal Procedure, 1973 ("Cr.P.C") being submitted. On its basis, the appellants herein were brought to trial in sessions case no.194/1997 on the charge for offence under Section 302 read with Section 34 of Indian Penal Code, 1860 (IPC ?). The appellant Munna Lal (the first accused ?) was also tried on the additional charge, under Section 27 of the Arms Act, on the allegation that he had used a dagger in the commission of

offence of murder.

2. By judgment dated 25.10.1999, the appellants were held guilty as charged, primarily on the basis of testimony of two local residents viz. Ram Karan (PW11) presented as eye witness and Brij Bhushan (PW12), statedly a witness who had come on the scene in the midst of the crucial sequence of events. By order dated 26.10.1999, the appellants were sentenced to undergo imprisonment for life with fine of Rs.2000/-, in default, simple imprisonment for one year, for the offence under Section 302 IPC. The appellant Munna Lal was also sentenced to rigorous imprisonment for three years with fine of Rs.500/-, in default simple imprisonment for fifteen days for the offence under Section 27 of the Arms Act.

3. The appeals, at hand, assail the judgment and order on sentence as above.

4. The sentence awarded against appellant Munna Lal (A-1) was suspended during the pendency of his appeal by order dated 17.02.2003. Similarly, the sentence awarded against Ravinder (A-2) was suspended during the pendency of his appeal by order dated 04.04.2003, modified subsequently by orders dated 02.09.2003 and 19.02.2004. When these appeals came up for hearing both of them would not appear. This resulted in duress processes being issued. The presence of Ravinder (A-2) was eventually secured and, on his request, services of Ms.Inderjeet Siddhu, Advocate as an Amicus Curiae were made available to him by Delhi High Court Legal Services Committee. Munna Lal (A-1), however, remained elusive. Since the non-bailable warrants could not be executed, and notices under Section 446 Cr.P.C. to his sureties also did not bear any fruit, proceedings under Sections 82 and 83 Cr.P.C. were initiated. On directions, Delhi High Court Legal Services Committee appointed Mr. Azhar Qayum as an Amicus Curiae for arguing on his behalf.

5. The learned counsel for the two appellants fairly submitted at the outset that they do not dispute the prosecution case that Ram Asre had suffered a homicidal death, their plea being restricted to the argument that the appellants are innocent and have been falsely implicated. Notwithstanding the said concession, we have gone through the evidence on record and conclude that the finding to the effect that the death of Ram Asre was a case of culpable homicide was rightly returned

by the trial court. We summarize the evidence in this regard herein below.

6. Lady constable Renu (PW13), on duty in the police control room (PCR) had received a telephone call on 09:54 PM on 21.03.1997 about a person having been stabbed in front of Nirankari School, Indira Vikas Colony. She passed on this message to HC Balkar Chand (PW3), the wireless operator in the police station. The evidence of said two witnesses together confirms that this information resulted in Daily Diary no.58-B (Ex.PW3/A) being recorded in the police station. The matter was entrusted to SI Dinesh Chand (PW24) who, accompanied by Constable Mohd. Qasim (PW9), set out from the police station for enquiry. By the time PW24 and PW9 reached the place of occurence, the victim (Ram Asre) had already been transported to Hindu Rao Hospital (the hospital ?). The Medico Legal Report (Ex.PW21/A), proved by Dr. Hemant Sharma (PW21), in absence of its author (Dr. N. R. Tuli) having proceeded on long extraordinary study leave, shows that the victim was brought in the casualty of the hospital at 10:30 PM with history of stabbing. The external examination at that stage had revealed that he had suffered two incised wounds. He was unconscious and not responding to any stimuli. His pupils were fixed and dilated. The blood pressure was not recordable and breath sounds could not be heard. The death report (Ex.PW25/B), prepared later by Inspector Virender Singh Chauhan (PW25), the additional SHO of the police station, who would take over the investigation in the wake of registration of FIR, and the post-mortem report (Ex.PW15/A) issued by Dr. C. B. Dabas (PW15) on 25.03.1997, show that Ram Asre passed away at 10:50 PM on 21.03.1997 in the casualty of the hospital.

7. The autopsy doctor (PW15) has proved his report (Ex.PW15/A) and on that basis testified that the examination of the dead body had revealed the following external injuries to have been suffered by Ram Asre:-

1. One stab wound 2.5 x 1.0 cm x (depth) situated on left side front of chest, 1.5 cm other to midline and 8 cm below left nipple and 121 cm above left heel overlying fifth inter costal space. The wound is placed transversely. Outer angle was rounded and inner angle was acute. Margins were clean cut and inverted.

2. One stab wound, 5.5 cm x 3 cm x (depth) situated on left side back of chest, 8 cm outer to midline and 7 cm below tip of left scapula and 123 cm above left heel. Both angles are acute and margins clean cut and inverted.

3. One bruise in area of 6.5 x 2 cm over back of chest in scapuler region left side back of chest, just above injury no. 2.

4. Superficial incised wound 1 cm x 0.5 cm outer and above injury no. 2 on left side back of chest.

5. One rounded shaped bruise in area 3 x 2.5 cm with central part of the bruise was normal skin located on right side back of chest below scapula.

6. Abrasion 2 x 1 cm over right side back of abdomen in lumbar region,. 3 cm outer to midline.

7. Multiple small abrasions 3.5 x 1.5 cm on back of right elbow.

8. Abrasion 0.5 x 0.5 cm on back of left little finger.

9. Abrasion 1 x 1 cm on middle front of left leg.

10. Abrasion 1 x 0.5 cm on middle front of right leg.

11. Abrasion 2 x 2 cm on out part of right elbow. ?

8. The autopsy doctor further testified that on deeper dissection and further exploration of the chest, it was observed that the first injury noted above had entered the chest cavity cutting through left 5th intercostals muscle and edge of sternum, and cut through pleura and mediastinal tissues and upper lobe of right lung, upto a depth of 5 cm, in left to right, downward and backward direction, with both pleural cavities full of blood. ?

9. Similarly, the second injury had entered the chest cavity after cutting through 4th intercostals space on back of chest left side and after cutting through pleura, made cuts measuring 5 x 2 cm on back (post surface) of lower lobe of left lung and passing through and through the lung parenchyma on its anterior surface making a

cut of 4 x 0.8 cm, and then penetrated through left ventricle on post surface, interventricular septum, then cut through a cut measuring 3.5 x 0.4 cm., the total depth of injury being 10.5 cm in back to front with slightly downward direction. ?

10. In the views of the autopsy doctor, the death had occurred due to shock and haemorrhage consequent to the stab injuries. The injury nos. 1,2 and 4 had been caused by sharp edged weapon while others had been inflicted by blunt surface/object. He opined that the first two injuries were collectively sufficient, in the ordinary course of nature, to cause death.

11. In absence of material indicating the possibility of any other theory and it having been fairly conceded by the appellants, the unchallenged evidence to above effect leaves no room for doubt that the injuries which proved fatal had been caused intentionally on the person of Ram Asre. Having regard to the nature and extent of the first two injuries, we have no hesitation in upholding the conclusion reached by the trial court that Ram Asre suffered a homicidal death.

12. The moot question, thus, is as to who is responsible for the homicidal death of Ram Asre. In this context, the prosecution relied on the ocular evidence of Ram Karan (PW11) and Brij Bhushan (PW12). It is also stated that, during the investigation, the investigating officer (PW25) had seized blood-stained dagger (Ex.P-1), which had been used by the first appellant Munna Lal (A-1), for inflicting the fatal wounds on the person of the victim, with the aid and assistance of the second appellant Ravinder (A-2), the recovery having been effected pursuant to, and at instance of, Munna Lal (A-1). It is further claimed that Munna Lal (A-1) had also got recovered his shirt (Ex.P-4), which was worn by him at the time of the incident, it being found at the time of recovery to be bearing tell-tale blood-stains.

13. The prosecution claimed that Ram Asre was stabbed by Munna Lal (A-1) and Ravinder (A-2), both sharing common intention on account of past enmity. In this context, reliance was placed on the testimonies of Ram Karan (PW11) and Brij Bhushan (PW12). Amongst them, the former (PW11) is the first informant. On the basis of his statement (Ex.PW11/A), the FIR (Ex.PW2/A) had been registered immediately after the police had been activated. We may take note of the contents of the FIR and, thereafter, subject to scrutiny the deposition of the said two

witnesses in the court.

14. The endorsement (Ex.PW24/A) made by SI Dinesh Chand (PW24) reveals that he had sent the rukka at 11:55 PM on 21.03.1997, after recording the statement (Ex.PW11/A) of Ram Karan (PW11), upon return to the scene of incident. The FIR (Ex.PW2/A) proved by HC Bhagwat Sarup (PW2), the then duty officer in the police station, confirms to have been recorded with all promptitude. What is pointed out by the defence, however, is the fact that, per the testimony of PW24, he had not come across any eye witness, at the time of his first visit to the scene of the incident or in the hospital. PW11 met him only at the stage of second visit to the scene of crime.

15. Be that as it may, in the first input to the police station, Ram Karan (PW11) told PW25 vide (Ex.PW11/A) that he alongwith certain others including Ram Asre (the victim) were living in one of four jhuggis of Brij Bhushan thekedar (PW12) in the locality in question. PW11 and the victim were engaged as beldars (labourers) by PW12. Other dwellers in the slum settlement included the two appellants, a boy named Bal Kishan and a petty shopkeeper Laxmi, all living in separate jhuggis. PW11 stated in the FIR that some days ago, the victim and PW12 had been involved in a quarrel with Ravinder (A-2), as a result of which tension was prevailing. He stated that, on 21.03.1997, while he with victim were returning to the jhuggi (N-23) at about 07:00 PM, the local shopkeeper Laxmi had come to PW12 to lodge complaint against Bal Kishan. In the wake of this, PW12 and the victim had physically assaulted Bal Kishan near the water-tap (public tap). Bal Kishan, after being thus assaulted, had gone to lie down in his jhuggi, where he was visited by the two appellants, his close associates. PW11 reported in the FIR that, at about 09:30 PM, when he with the victim moving in the gali, the two appellants had caught hold of the victim. He testified that upon Ravinder (A-2) told Munna Lal (A-1) that said person was to be finished (aaj iska kaam kar dete hain ?). Ravinder (A-2) had then taken out a chhura and stabbed Ram Asre causing him injuries. He added that, after the stabbing, the two appellants had fled away. Ram Asre had got up in injured condition and tried to move towards his jhuggi but fell down unconscious after walking some distance. The first informant (PW11) reported that upon he raising alarm other persons from the locality, including

PW12, had come and Ram Asre was shifted to the hospital.

16. The death of Ram Asre occurred within 20 minutes of his arrival in the hospital, much before the police could get activated. Taking note of the facts narrated by PW11, in his statement (Ex.PW11/A) and the observations in the MLC (Ex.PW21/A), PW24 had got the FIR registered for investigation into offence under Section 302/34 IPC. The investigation was, therefore, taken over by the additional SHO (PW25). The material on record shows that immediately after taking over the investigation, PW25 (the investigating officer) interrogated the first informant (PW11) further and on that basis recorded his supplementary statement (Ex.PW11/DA). Since the witness was confronted with the supplementary statement (Ex.PW11/DA) and since it is at variance from what was reported in the FIR, it is essential to take note of its effect and import before proceeding further.

17. In the supplementary statement (Ex.PW11/DA) the first informant (PW11), inter-alia, stated that, at the time of the assault, both the appellants were holding knives in their respective hands and that before the assault on the victim, Ravinder (A-2) had threatened him with knife and, therefore, he had retraced some steps but, within his sight, both the appellants had caught hold of Ram Asre and even while the victim was trying to get free from their clutches, Munna Lal (A-1) had given him a stab injury on his back (kamar) with the dagger. He also stated that Munna Lal (A-1) had taken out the blood-stained dagger before running away from the scene with his accomplice.

18. PW11 testified at the trial along the line of his version in his supplementary statement (Ex.PW11/DA). He explained that since he had been put in fear by the appellants, at the point of knife, he had run away to inform Bal Kishan (PW12). He had returned to the spot with him, by which time the assailants had run away. He stated that he had given the first statement (appearing in the FIR) at a stage when he was very much frightened and, thus, had given a fresh statement after he had regained his composure to some extent.

19. On the question of previous enmity, PW11 confirmed what he had stated in the FIR. He testified that the shopkeeper Laxmi had lodged a complaint with PW12 against Bal Kishan, in which context PW12 had gone with the victim to him (Bal

Kishan) but the latter responded in rude manner whereupon the victim had beaten him up. We note that in his court testimony PW11 would not speak about PW12 joining the victim in physical assault on the person of Bal Kishan. We also note further variation in the court testimony of PW11 wherein he would speak about Bal Kishan going to the jhuggi of Munna Lal (A-1) to tell him about the matter (physical assault suffered by him) as against what was stated in the FIR. He further stated that when Munna Lal (A-1) had spoken to the victim, the latter had become abusive in response to which Munna Lal (A-1) had given him threats. This, again, is a version over and above what was mentioned by PW11 in the FIR.

20. PW12 came out with background facts not wholly in sync with the version of PW11. It appears that this witness (PW12) was a little confused about the exact date of the incident. He mentioned 22.03.1997 as the date on which there had been a quarrel involving the shopkeeper named Laxmi followed by other events. Clearly, the incident(s) in the background would have occurred prior to or about 21.03.1997 on the night of which Ram Asre was killed. Given the social and educational background of the witnesses, we do not read much into the error about the date.

21. According to PW12, the dispute had started 10-12 days prior to the incident. He testified that the accused had thrown water on some lady and shopkeeper Laxmi had made complaint to the victim who, in turn, had gone ahead and confronted the appellants, which resulted in exchange of hot words and threats being extended by them (the appellants). He stated that one Ram Lakhan had put gulal on the wife of shopkeeper Laxmi, on which account hot words were exchanged between Laxmi and Ram Lakhan. Laxmi had brought this incident to the notice of the witness (PW12). He stated that when he, in the presence of PW11 and the victim, had questioned Ram Lakhan, the latter had become rude and consequently the victim had given 2-3 slaps to Ram Lakhan, in the presence of local residents. According to him, both the appellants had taken the side of Ram Lakhan in the said dispute. The mater was, however, pacified and everyone went to their respective houses.

22. The background story narrated by PW11 and PW12 does not match. It is the argument of the learned counsel for the appellants that variance in the two versions should suffice to junk the theory of past enmity or motive. We have considered this submission but do not agree.

23. It has to be borne in mind that we are dealing with evidence offered by rustic and illiterate persons coming from the poorest of the poor strata of the society, who were living in slums where, for various reasons, including of thick population and limited amenities or infrastructural resources, frequent disputes, fights and squabbles, at times even over petty issues are frequent rather than an exception. From the evidence, it is clear that Brij Bhushan (PW12) was the thekedar (contractor), who not only owned a number of jhuggis for accommodating the workforce but would also supervise the labour employed by him. Thus, invariably complaints against co-workers or local residents under his control would get lodged with him. He, thus, is likely to be privy to more information than what could be available to PW11, one of the members of the work force, depending on PW12 for gainful engagement on the day-to-day basis.

24. The incident which is the subject matter of the case at hand had occurred on 21.03.1997. PW11 and PW12 were examined in court in February, 1999, after almost two years had elapsed. The normal wear and tear of human memory would naturally have played some role. The variations in the two versions about the root of past enmity apart, what stands out as common factor in the testimony of these witnesses is the fact that Ram Asre had some cause to be pitted against the two appellants on account of their conduct vis-a-vis others. It is true that the other characters mentioned in the respective version of these witnesses (namely, viz. Shopkeeper Laxmi, boy named Bal Kishan and another local resident named Ram Lakhan) have not been examined but this omission cannot detract from the facts that PW11 and PW12 are consistent in bringing out that there had been a dispute between the two appellants, on one hand, and Ram Asre, on the other, some time prior to homicidal death of the latter.

25. It was argued on behalf of the appellants that there is no clear evidence as to the motive and, therefore, the evidence of Ram Karan (PW-11) and Brij Bhushan

(PW-12) should not be believed.

26. We are not inclined to read anything into, or give any weight to, the variation in the version of PW11 and PW12 about the cause for past enmity for the added reason that the case for the prosecution respecting the charge of culpable homicide is founded, not on circumstantial evidence but on direct eye-witness account.

27. It is trite that if the testimony of eye witness is found to be credible, inspiring confidence, the question of motive pales into insignificance.

The ocular testimony of the witnesses who are otherwise found worthy of reliance cannot be displaced or discarded only because clarity about the genesis or existence of motive for the assault is not forthcoming. [Shivji Genu Mohite vs. State of Maharashtra, AIR 1973 SC 55; Satpal and Ors. vs. State of Punjab (1995) 4 SCC 1; Hari Shankar vs. State of UP (1996) 9 SCC 40; State of U.P. vs. Nahar Singh (Dead) and Ors. (1998) 3 SCC 561; Bikan Pandey and Ors. vs. State of Bihar (2003) 12 SCC 616; State of U.P. vs. Kishanpal and Ors. (2008) 16 SCC 73; Abu Thakir and Ors. vs. State of Tamil Nadu (2010) 5 SCC 91; Bipin Kumar Mondal vs. State of West Bengal (2010) 12 SCC 91; Subal Ghorai and Ors. vs.State of West Bengal (2013) 4 SCC 607; Ashok Rai vs. State of U.P. and Ors. (2014) 5 SCC 713]

28. PW11 deposed that on 21.03.1997, at about 09:30 PM, when he with Ram Asre (the victim) were in the gali, having reached the tap outside the jhuggi of Munna Lal (A-1), Ram Asre (the victim) was caught hold of by Ravinder (A-2). He testifed that Ravinder (A-2) had made Ram Asre (the victim) bend downwards whilst Munna Lal (A-1) had inflicted knife blow on his back. He stated that he had been threatened at the point of knife by the appellants and, feeling frightened, he had run away to inform the thekedar (PW12). By the time he returned with others, including PW12, the assailants had fled away. Ram Asre was lying in injured condition. He was moved to the hospital in a three wheeler scooter (TSR).

29. The defence questioned the credibility of PW11 as a truthful witness by confronting him with his supplementary statement (Ex.PW11/DA) in an attempt to

show that the theory of he having felt threatened at the time of the first statement (Ex.PW11/A) forming the basis of the FIR, had been manufactured. It also referred to his assertion under cross-examination that only one knife blow had been given to Ram Asre, which was aimed at the back side of his body. This, learned counsel for appellants argued, is contradictory to the medical evidence (post-mortem report). It is further submitted on behalf of the appellants that given the difference in the two versions - one in the FIR based on statement (Ex.PW11/A) and the other in the supplementary statement (Ex.PW11/DA) - about the identity of the author of the stab wound(s), the word of PW11 alone should not be sufficient to return the finding of guilty.

30. We do not agree with the criticism that PW11 had not spoken earlier about the fear prevailing on his mind in the wake of the stabbing incident that had occurred in his presence. While recording his deposition, it seems to have escaped the notice of the learned trial court that in the supplementary statement (Ex.PW11/DA) this witness had mentioned about the threats extended to him and the consequent fear felt by him making him retrace his steps.

31. The discrepancy in the original version (FIR) as to the identity of the author of fatal injuries has impelled us to examine the veracity of PW11 to acute and closer scrutiny. We find that the error occurred because this young person (then all of 18 years old) was under a state of extreme and deep shock. He had seen a gory incident in which the co-dweller of his jhuggi had been brutally injured and inflicted knife wounds in front of his eyes. By giving his revised version in the form of supplementary statement (Ex.PW11/DA), he had made suitable correction in the narration within a few hours of the FIR being registered. His court testimony is based on the said corrected account. In the course of his cross-examination, he was not even confronted with his original version (Ex.PW11/A). It was not even suggested to him that he was not present at the scene when Ram Asre was stabbed.

32. There could not conceivably have been any object or purpose behind recording the modified version of the eye-witness (PW11) on the close heels of registration of the FIR except to set the record straight. If the investigating officer

or the witness had colluded with each other to set up a false case, there was no plausible reason for the revised version to be recorded in the form of supplementary statement. Even the first version forming the basis of FIR would be sufficient. Nothing was to be gained over and above what had already come on record by adding to it the supplementary statement. Instead of viewing it with suspicion, credit will have to be given to the investigating officer (PW25) that he had persisted with testing the correctness of the version in the FIR by questioning the eye witness (PW11) further and, on that basis, recording his supplementary statement. In the quest for truth, which indubitably every police investigation is expected to be, it was a proper approach.

33. We find that PW11 has given sufficient explanation as to why he had initially erred in describing the respective roles of the assailants in the FIR. Since the error was owned up and rectified soon thereafter, it should not affect his veracity. It is well settled that FIR is just the starting point of police investigation into a crime. It is neither expected to be a compendium of all the facts nor can always or invariably be the final word, for every statement can have an explanation. It would be too technical or naive an approach to treat the FIR as the gospel truth or the truth in entirety against the informant regardless and without ascertaining the facts and explanation given. It is wrong to test the veracity of the witnesses solely on its muster.

34. The eye witness account of PW11 does indicate that he saw only one stab wound being given on the back of the victim. As noted earlier, autopsy report brought out that the victim had suffered another stab wound on the left side front of the chest, this in addition to one superficial incised wound on the back of the chest, two bruises and some abrasions. We noted earlier that PW11 has described in detail as to how the victim had fallen down after the stabbing, gotten up to move towards his jhuggi but only to again fall down, now in unconscious state, with profuse bleeding. Thus, the superficial incised wound, bruises and abrasions have been duly explained.

35. On first blush, there appears to be some difference in the eye-witness account given by PW11 and the medical evidence (i.e. post-mortem report) about the

number of stab injuries. In our opinion, however, this is a misimpression and cannot result in the testimony of PW11 being rendered suspect. Ordinarily, the medical opinion is only corroborative to the ocular evidence. The deposition of PW11 about the stab injury inflicted on the backside of the victim is supported by the medical evidence. It is only that PW11 is silent about the stab wound on the chest. But, pertinently PW11 is clear in his testimony that he had not remained static at the scene throughout the course of the assault. Ram Asre (the victim) had been accosted by the appellants in his presence. The appellants had extended threats to the witness at the point of knives they were carrying. He, thus, had to retrace his steps out of fear. One stab wound was inflicted in his presence and PW11 immediately started raising alarm and ran away to call for help. Thus, the assault was still happening, when PW11 was rushing away raising alarm. He consequently would not have been in a position to witness the second stab injury being inflicted. The appellants fled away from the scene in due course leaving the victim with more than one stab injury. Viewed from this perspective, there is no discrepancy in the ocular and medical evidence in this case.

36. Both the appellants were named as the assailants in the FIR. It is undisputed case that they were persons well known to PW11, the eye witness. Munna Lal (A-1) was arrested on 05.04.1997 by PW25. According to the evidence of Brij Bhushan (PW12), Tej Pal (PW5), HC Sajjan Pal (PW16), Constable Sher Singh (PW23) and Constable Bhupender (PW10) supporting the word of Inspector Virender Singh Chauhan (PW25), the arrest was effected from ISBT Kashmiri Gate, Delhi, after personal search memo (Ex.PW5/A). In his statement under Section 313 Cr.P.C, Munna Lal (A-1) disputed the case of prosecution in this regard only respecting the place of arrest. He claimed that his brother was in police and he had come to the court with him on 05.04.1997 whereupon he was arrested. In our view, this dispute is of no consequence. The fact remains that Munna Lal (A-1) was arrested on 05.04.1997, a fact duly admitted by him.

37. The aforementioned five witnesses also stand testimony to the interrogation of Munna Lal (A-1) by the investigation officer (PW25). All of them deposed about certain disclosures made by Munna Lal (A-1), which were reduced into writing (Ex.PW5/B). The said disclosure statement obviously cannot be read in evidence,

it being hit by the provision contained in Section 25 of Indian Evidence Act, except to the extent it can be proved to have led to discovery of a fact within the meaning of the clause in Section 27 of Indian Evidence Act. It is the evidence of these witnesses that in the wake of said disclosure, Munna Lal (A-1) led to recovery of dagger (Ex.P-1) and his shirt (Ex.P-4) on 05.04.1997 and on 06.04.1997 respectively, both the said articles being connected to the crime and, thus, material and relevant evidence.

38. The seizure of dagger (Ex.P-1) was effected through memo (Ex.P-4/A) prepared by the Investigating Officer (PW-25) on 05.04.1997 and attested by PW-4, PW-5, PW-10, PW-16 and PW-23. These witnesses have also proved the sketch (Ex.PW-4/B) which was prepared at the same point of time. The dagger (Ex.P-1) was also identified in the course of their respective testimony. The dagger was found kept concealed in a polythene bag (Ex.P-2) tied with a small plastic rope (Ex.P-3) and buried under the earth in an open plot (8/8 Indira Vikas Colony) located opposite the house of PW-4. Thus, PW-4 was the independent public witness joined in the proceedings from the locality. Munna Lal (A-1) had led the IO and others to the place in the wake of his disclosure (Ex.PW-5/B). It is in the evidence of these witnesses, as also noted in the seizure memo (Ex.PW-4/B), that the cutting instrument was found at the time of recovery to be bearing blood-stains. The dagger (Ex.P-1) had a blade which was 31.5 cm long and 3 cm wide connected to a handle with length of 11 cms.

39. We have gone through the testimony of above-mentioned witnesses and find no discrepancies or contradictions. Given the corroboration provided by two independent public witnesses (viz. PW-4 and PW-5), we see no reason to disbelieve the evidence about seizure of the dagger (Ex.P-1) pursuant to disclosure made by, and at the instance of, Munna Lal (A-1). The fact that the dagger was kept concealed beneath the earth in the manner stated above, its recovery could not have been made but for the disclosure by Munna Lal (A-1). Special knowledge about the place where the weapon had been buried has to be attributed to Munna Lal (A-1) and given the FSL report in its regard, to which we shall advert a little later, this recovery is of substance.

40. The disclosure about the blood-stained shirt had also come on 05.04.1997 as per the document Ex. PW-5/B. The proceedings leading to recovery of the said shirt (Ex.P-4), however, were followed up on 06.04.1997. The seizure memo (Ex.PW-5/C) respecting the recovery of the blood-stained shirt (Ex.P-4) has been proved by the IO (PW-25) and confirmed by its attesting witnesses PW-4, PW-5, PW-10, PW-16 and PW-23. We find no contradictions or discrepancies in the evidence of these witnesses and, thus, see no reason why this recovery should be disbelieved. The prosecution has, therefore, proved that shirt (Ex.P-4) was got recovered by Munna Lal (A-1) from its place of concealment beneath the thatch roof (Chhappar) of Jhuggi No. 32 in a slum settlement close to public drain in Sector-17, Noida (U.P). The evidence shows that at the time of recovery shirt (Ex.P-4) bore blood-stains.

41. The prosecution has further brought cogent evidence on record to show that various exhibits including dagger (Ex.P-1) and shirt (Ex.P-4) were sent to Forensic Sciences Laboratory (FSL), New Delhi and subjected to examination. The FSL reports (Ex.PX and Ex.PY) tendered during trial show that both these pieces of evidence were found bearing blood stains of human origin. Though the blood group could not be detected as the serological tests would evince no reaction, the very fact that these two exhibits had blood stains of human origin is significant.

42. In Khujji vs. State of M.P. (1991) 3 SCC 627, more or less a similar situation was prevailing. The contention that mere presence of human blood on the weapon and an article of wearing apparel recovered at the instance of the convict was inconsequential was rejected by a bench of three Hon'ble Judges through observations (in para 10) which need to be quoted in extenso, as under:

10. Mr. Lalit, however, argued that since the report of the serologist does not determine the blood group of the stains on the weapon and the pant of the appellant, the mere find of human blood on these two articles is of no consequence, whatsoever. In support of this contention he placed strong reliance on the decisions of this Court in Kansa Behera v. State of Orissa 1987 Cri.L.J.1857 and Surinder Singh v. State of Punjab 1989 (1) SCALE 903 . In the first mentioned case the conviction was sought to be sustained on three

circumstances, namely, (i) the appellant and the deceased were last seen together; (ii) a dhoti and a shirt recovered from the possession of the appellant were found to be stained with human blood; and (iii) the appellant had made an extra-judicial confession to two witnesses when arrested. There was no dispute in regard to the first circumstance and the third circumstance was held not satisfactorily proved. In this backdrop the question for consideration was whether the first and the second circumstances were sufficient to convict the appellant. This Court, therefore, observed that a few small bloodstains could be of the appellant himself and in the absence of evidence regarding blood group it cannot conclusively connect the bloodstains with the blood of the deceased. In these circumstances this Court refused to draw any inference of guilt on the basis of the said circumstance since it was not 'conclusive' evidence. This Court, however, did not go so far as to say that such a circumstance does not even provide a link in the chain of circumstances on which the prosecution can place reliance. In the second case also this Court did not consider the evidence regarding the find of human blood on the knife sufficient to convict the appellant in the absence of determination of blood group since the evidence of PW 2 was found to be uninspiring and there was no other circumstance to connect him with the crime. In this case we have the direct testimony of PW 1 Komal Chand, besides the testimony of PWs 3 and 4 which we have considered earlier. The find of human blood on the weapon and the pant of the appellant lends corroboration to the testimony of PW 1 Komal Chand when he states that he had seen the appellant inflicting a knife blow on the deceased. The appellant has not explained the presence of human blood on these two articles. We are, therefore, of the opinion that the aforesaid two decisions turned on the peculiar facts of each case and they do not lay down a general proposition that in the absence of determination of blood group the find of human blood on the weapon or garment of the accused is of no consequence. We, therefore, see no substance in this contention urged by Mr. Lalit. (emphasis supplied)

43. As in the case of Khujji (supra), the case at hand rests, not on circumstances but, on direct evidence. The presence of blood of human origin on the dagger (Ex. P-1) and shirt (Ex.P-4), both recovered at the instance of Munna Lal (A-1) from two different places of their respective concealment, adds to the strength of the

prosecution charge, and the testimony of the eye-witness, as to his complicity. As a natural corollary, it also lends further assurance to the trustworthiness of PW-11 and PW-12.

44. We, therefore, have no hesitation in accepting the word of PW-11 and PW-12 as to the involvement of Munna Lal (A-1) in the fatal assault on the person of the deceased. Having regard to the manner in which Ravinder (A-2) provided aid and assistance to Munna Lal (A-1) in the stabbing of the deceased, we also conclude that the former (A-2) was sharing the criminal intent with which the latter (A-1) had used the cutting instrument.

45. For the forgoing reasons, we find no substance in the appeals. We are satisfied that the learned trial court has appreciated the evidence correctly and reached appropriate conclusions. There is no error or illegality in the impugned judgment or order on sentence.

46. In the result, the appeals are dismissed. Both the convicted appellants are directed to surrender to custody within fifteen days of this judgment to serve the sentences awarded against them. We direct the learned Additional District and Sessions Judge presiding over the trial court (the Successor Court) and Station House Officer (SHO) of Police Station Mukherjee Nagar to take necessary steps to ensure compliance with above directions in accordance with law.

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