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Court : Delhi

Decided On : Sep-15-2016

Judge : The Honourable Ms. Justice Gita Mittal &Amp; R.K. Gauba

Appeal No. : CRL.A. Nos. 250 & 394 of 2000

Appellant : Anil Kumar @ Mithu and Others

Respondent : State

Judgement :

R.K. Gauba, J.

1. The appellants with one another (Satish Chander @ Chandra) were sent up for trial before the court of Sessions on the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on 13.11.1990 upon conclusion of investigation into first information report (FIR) No.222/1990 of police Station Dabri (the police station) for offences punishable under Sections 302/324 read with Section 34 of Indian Penal Code, 1860 (IPC). Upon consideration of the evidence gathered during investigation by the police, as set out in the said police report (charge sheet), the learned additional sessions judge in seisin of the sessions case (No.30/1992) framed charge against all the four said persons for offences under Sections 302 read with Section 34 IPC.

2. Midway the trial, the fourth accused (Satish Chander @ Chandra) jumped bail and inspite of the issuance of duress process against him, his presence could not be secured. He was declared a proclaimed offender by the trial court vide order dated 27.02.1999. The trial continued against the remaining three (appellants before this Court) and culminated in judgment on 2 nd March, 2000 whereby all of them i.e. Anil Kumar @ Mithu (A-1), Sunil Kumar @ Dudha (A-2) and Dinesh Kumar Sharma (A-3) were held guilty and convicted, as charged, for offence under Section 302 read with 34 IPC whilst appellant Anil Kumar @ Mithu (A-1) was also held guilty, again as charged, for offence under Section 324 IPC. By order passed by the trial court on 9th March, 2000, rigorous imprisonment for life with fine of 1,000/- was awarded for the offence of murder under Section 302/34 IPC to each of the three appellants. In addition, Anil Kumar @ Mithu (A-1) was awarded rigorous imprisonment for one year for offence under Section 324 IPC, it having been directed to be run concurrently.

3. By their joint appeal (Crl. Appeal No.250/2000) Anil Kumar @ Mithu (A-1) and Sunil Kumar @ Dudha (A-2) and by his separate appeal (Crl.Appeal No. 394/2000) Dinesh Kumar Sharma (A-3) assailed the judgment and order on sentence.

4. Some facts which are not disputed or beyond the pale of any controversy or doubt may be taken note of at the outset.

5. The charge for the offence of murder arises out of death of Ravi Kant son of Chandra Kant (PW-8), and husband of Santosh (PW-6), then resident of house No. K-643, Gali No. 9, Indira Park, Palam Colony, New Delhi. He was about 35 years old at the relevant point of time (per death certificate Ex. PW-11/C), in government service, he being the eldest among five siblings, his brothers including Uma Kant (PW-3) and Shashi Kant. It appears Uma Kant (PW-3) and Shashi Kant were earning their livelihood from a small shop in the name of Shashi Arts in the same locality. Though in the FIR, registered on the basis of statement (Ex.PW-2/A) of Shakuntala (PW-2), as noted in deposition of the said first informant (PW-2), she is described as wife of the brother of the deceased, the evidence of Uma Kant (PW-3) would clarify that her husband Tej Ram is cousin brother of the

deceased. Tej Ram with his family including his wife Shakuntla (PW-2), first informant, would live separately in their house bearing No. RZ4/C, Gali No.2 in the same locality (Indira Park).

6. Appellant Anil Kumar @ Mithu (A-1) and Sunil Kumar @ Dudha (A- 2) are real brothers (sons of Chattar Singh) and residents of a house separated by just one another from that of the deceased and his family {including brother (PW-3), wife (PW-6) and father (PW-8)} on the same street (Gali No.9). It was not disputed at any stage during the trial, nor has been raised as a bone of contention before us during the hearing on the appeals that the said witnesses being close neighbours, have been acquainted with the said appellants as indeed with appellant Dinesh Kumar Sharma (A- 3) by faces and names from before. In fact, the evidence about past enmity (it having been presented as the root cause of the subject incident) has gone unchallenged and unimpeached, it also being reflective of ability of the witnesses to indentify the appellants.

7. Whilst on the subject, we may note that PW-3, PW-6 and PW-8 testified at length, about the previous incidents of quarrel involving members of the family of the deceased, on one hand, and that of A-1 and A- 2, on the other, primarily showing Indrawati, mother of A-1 and A-2, being the one who would be the cause for trouble for various reasons including blockage of the drainage, throwing of banana peels and brick-bats, calling names etc, at times leading to reports being lodged with the police about such incidents (mark PW-19/A to 19/F) which were brought in during the testimony of Inspector Kapur Singh (PW-19), Investigating Officer (IO) and have been referred to not only by the prosecution as the proof of motive for assault on the part of the appellants but also by the learned counsel representing the appellants as reflective of possibility of false implication. The evidence of PW-3, PW-6 and PW-8 with regard to the past quarrels is corroborated by the unimpeached testimony of R.C. Dogra (PW-7), the president of local resident s welfare association. He spoke particularly of a quarrel that had occurred 4-5 days prior to the subject incident where both the sides had been called to the police station and a compromise had been brokered.

8. That Ravi Kant suffered two deep set stab injuries at or about 7.45 p.m. on 13.08.1990 at an open place, opposite Gali No. 7 of Indira Park, close to the railway lines running parallel to the locality, and died as a consequence thereof on the same night has been established by the prosecution through evidence which is beyond reproach. Sometime around 8.15 p.m. a public person introducing himself as Sant Nath made a telephone call to the police control room (PCR) about an individual having been stabbed in the area of Gali No.8, Indira Park, Palam Colony. This information was conveyed by lady constable Babli of PCR to the police station at 8.15 p.m., whereupon it was logged as DD entry No. 17B (Ex.PW-4/D) by ASI Chander Pal (PW-4) who was then working as the duty officer. The matter was entrusted for inquiry to SI Ajaib Singh (PW-17) who, as per the said DD entry, set out accompanied by Constable Omvir Singh (PW-16) for the place of incident.

9. The victim Ravi Kant, in the meantime, had been taken by his father (PW-8), statedly also accompanied by his brother Shashi Kant (per PW-6), to Deen Dayal Upadhyay Hospital where, in the casualty, his arrival and medical status were recorded at 8.30 p.m. on 13.08.1990 by Dr. Reena Garg (PW-11), in the medico legal certificate (MLC). The MLC (Ex.PW-11/B) proved by the said medical officer indicates that though Ravi Kant who had come with history of stab injuries was fully conscious but his pulse was very feeble and he had been found with two stab wounds, one on the right side back and the other on the left side buttock. Having regard to his then medical condition, he was admitted to emergency ward at 9.00 p.m. by Dr. Lokesh Gupta as per his endorsement on the same document. The arrival of Ravi Kant in the hospital accompanied by his father and he having been examined against MLC was duly conveyed to the police station by the duty constable P.P. Verghese (PW-14) and logged there vide DD entry No. 18A (Ex.PW-4/C) at 8.30 p.m.

10. The records of hospital and police including the death summary (Ex.PW-19/D), death report (Ex.PW-19/E), inquest report (Ex.PW-19/C) and the testimony of PW-11 reveal that Ravi Kant died during treatment in the hospital at 03.30 hours on 14.08.1990. We note here itself that Ravi Kant was never in a position to make any statement to the police before his death. As mentioned earlier, he was brought

to the hospital in a critical state, his vitals showing feeble pulse. When PW-17 had arrived in the hospital, he moved an application (Ex.PW-11/E) before Dr. Neeraj Khanna under whose care the victim was then being treated. The latter confirmed by his endorsement on the said application that Ravi Kant was unfit for statement, mentioning the time as 9.20 p.m. The medical record reveals his condition only deteriorated thereafter till death.

11. The fact that Ravi Kant died as a result of the two stab injuries and that his death was a case of culpable homicide has been proved by the prosecution beyond the pale of any doubt, inter alia, on the basis of post mortem examination report (Ex.PW-9/A) which had been prepared by Dr. L.K. Baruah (PW-9) on the basis of autopsy conducted in the civil hospital, Delhi in the afternoon of 14.08.1990, on the application (Ex.PW-19/B) of the IO. PW-9 affirmed on oath that the autopsy had revealed that the deceased had suffered two incised wounds which he described as under:-

One incised wound was seen on the back side of the abdomen in the lumber area and the size of the injury was 3 cm x 0.5 cm x ? The injury was placed closed to the right side para vertebral region and 14 cm. above the mid gluteal fold. On examination of the injury both the angles of the wound were seen to be acutely cut. There was no signs of any abrasions near the wound. The size and shape of the injury No.1 is given in the encircled portion at point A in (my) report Ex.PW9/A.

One incised wound was seen on the left buttock closed to the perinlalfole placed obliquely and size of the injury was 3 cm x 0.5 cm x ? Both the angles of the wound were seen to be acutely cut .

12. As per the testimony of PW-9, the internal examination of the dead body had revealed that the first injury noted above had entered:-

the abdomen cavity from back of the right side. During its course it had cut the inferior vena gava and then continued to the hilar region of right kidney. The hilar region of the right kidney showed one incised wound of size 1.5 cm and the depth of about 2 cm. The renal blood vessel and other ureteric were also seen to be cut. Right side repro peritoneal area and structures all around the right kidney and

some part of the left kidney near the hilar region showed effusion of blood clot. The total depth of injury No.1 from skin surface to the inner most area of the hilar region of the kidney was about 10 cm .

13. Similarly, on examination of injury No.2, PW-9 deposed:

it was seen to be continuing upwards and backwards and then entered the pelvic cavity of the left side piercing the peritoneal wall and had cut the blood vessels of the left pelvic area and then it continued to the rectal lumen. The total depth of this injury on the skin surface was about 12 cm. The pelvic cavity contained about 500 ml. of liquid and clotted blood .

14. In the opinion of the autopsy doctor, both the above-mentioned injuries, ante mortem in nature, had been caused by sharp cutting weapon and were individually sufficient to cause death in the ordinary course of nature. The death had occurred due to haemorrhagic shock resulting from the said injuries. Though it was suggested to him by the defence during cross-examination that the deceased could have survived in case proper medical aid had been provided at the earliest and further that death had occurred due to excessive loss of blood, the autopsy doctor having denied these suggestions as incorrect, the defence did not press home any other theory.

15. In the face of above material on record, there is no scope for doubt being expressed as to the fact that the two stab wounds had been voluntarily inflicted by the assailant(s) with a sharp edged cutting instrument having a long blade, the two blows meant to cause deep cuts inside the body. The nature of injuries noted by autopsy doctor by itself is sufficient to take us to the conclusion that the injuries were intended and were inflicted with the intention of causing death. That the injuries were sufficient, according to the medical opinion, in the ordinary course of nature to cause death, only reinforces the conclusion that it was a case of culpable homicide within the meaning of the expression defined in Section 299 IPC. We reserve our comment, for later, on the issue as to whether or not this case of culpable homicide amounted to murder since, for such purposes, we need to bear in mind the ocular testimony as well.

16. The FIR (Ex.PW-4/B) was also registered in the police station at 10.30 p.m. on 13.08.1990, initially for investigation into offence under Section 324/34 IPC (since Ravi Kant was still alive at that stage), on the basis of Rukka (Ex. PW-4/A) sent by PW-17 referring to the version (Ex.PW-2/A) attributed to Shakuntla (PW-2) and his own observations of the scene. After getting the FIR registered, PW-17, the first investigation officer (first IO), had prepared a site plan without scale (Ex.PW-17/A) describing the lay out of the locality depicting the various streets (particularly Gali Nos. 7, 8 and 9), the railway line running close by and the place where Ravi Kant and PW-2 were assaulted. We must observe here that though the prosecution also relied upon a site plan drawn to scale (Ex.PW-12/A) prepared during investigation by SI Madan Pal (PW-12), both sides have chosen to refer extensively instead to the first (rough) site plan (PW-17/A) since it is more descriptive and clear.

17. Be that as it may, the first IO in the course of his testimony also proved steps taken in initial investigation by him including by arranging a photographer Bishamber Singh (PW-5) and collection of evidence from the scene of crime including by taking up blood stained soil (vide Ex.PW-8/B). The photographs (Ex.PW-5/A1 to 6) prepared by PW-5 with the help of negatives (Ex.PW-5/B1 to B6) exposed by him at the place in question, the observations in the rough site plan (Ex.PW-17/A) and the oral testimony of the first IO, as indeed of material witnesses including Chander Kant (PW-8), who had accompanied the victim to the hospital, conjointly prove and leave no scope for any dispute, as to the fact that the fatal assault on the person of Ravi Kant was staged at the corner of Gali No.7 close to the railway lines (at point A in the site plan Ex.PW-17/A) in the locality of Indira Park on 13.08.1990. We may mention here itself that though the incident occurred at the fag end of the second week of August when 7.45 p.m. would generally be the time of twilight, from the testimonies of the witnesses of the scene, particularly the first informant (PW-2), and wife of the deceased (PW-6), who have so admitted, we find that it had gone dark by the time the fatal assault took place.

18. Appellant Anil Kumar @ Mithu (A-1) was also charged, and has been convicted, additionally for the offence punishable under Section 324 IPC for having voluntarily caused hurt on the person of Shakuntla (PW-2) with a knife. This injury

was mentioned in the version (Ex.PW-2/A) attributed to Shakuntala (PW-2), it forming part of the contents of the FIR (Ex.PW-4/B), that she (PW-2) had also suffered injuries around the same time on the said date, the same having been inflicted voluntarily by an assailant and affirmed on oath not only by her (PW-2) but also corroborated by her MLC (Ex.PW-11/D) which had been prepared by Dr. Neeraj Khanna, a medical officer on duty in the casualty of Deen Dayal Hospital working alongside Dr. Reena Garg (PW-11). Dr. Khanna had given up the job in the hospital by the time his turn to depose at the trial of the case came. Due to his non-availability, the prosecution called upon Dr. Reena Garg (PW-11) to prove the MLC. PW-11 proved the document (MLC) in the handwriting of Dr. Khanna, she being acquainted with the same, both having worked together. Her evidence in this regard has remained unchallenged. The MLC of Shakuntala (Ex.PW-11/D) shows that she had come to the hospital at 9.30 p.m. on 13.08.1990 brought by the police, one hour after the victim had been examined by MLC (Ex.PW-11/B). The injury suffered by Shakuntala is shown by her MLC as stab wound on left side of the forearm. Though it was suggested to PW-3 during her cross-examination that the injury suffered by her was self-inflicted, she having denied the same, no such questions having been raised with reference to her MLC during the testimony of PW- 11, and there being no other good material supporting such possibility, we must accept the prosecution evidence to the effect that Shakuntala was also wounded with a sharp-edged weapon around the same time as Ravi Kant her injury, however, being simple, rather superficial.

19. The prosecution case about the complicity of the three appellants in the fatal assault on the person of Ravi Kant and for the injuries inflicted on the person of Shakuntala (PW-2) rests on the ocular testimonies of Shakuntala (PW-2), Santosh (PW-6) and Chander Kant (PW-8). As per the prosecution version, the appellants had picked up quarrel with Uma Kant (PW-3), at about 7.30 p.m. on 13.08.1990 giving him beatings in Gali No. 8, Indira Park. PW-3 had somehow escaped and come home. PW-2 is stated to have come to the house where the deceased was living for inquiring about the welfare in the wake of news about the above said incident. When she was returning to her house in Gali No. 2, accompanied by PW-6, at about 7.45 p.m. they are stated to have seen the three appellants, aided and assisted by the proclaimed offender (Satish Chander @ Chandra), holding up Ravi

Kant who was on his way to home, near Gali No.7 and inflicting stab wounds on his person. Per the version of eye-witnesses quoted in the charge-sheet, Anil Kumar @ Mithu (A-1) had caught hold of Ravi Kant from behind and Sunil Kumar @ Dudha (A-2) with Satish Chander @ Chandra proclaimed offender had caught hold of his arms while Sunil Kumar @ Dudha (A-2) had inflicted two knife blows, one on his back and the other on his hip. The prosecution case based on the version in the FIR and on the statements of witnesses under Section 161 Cr.P.C. on the abovementioned lines was that when she Shakuntala (PW-2) had intervened and had tried to come to the rescue of Ravi Kant, Anil Kumar @ Mithu (A-1), also holding a knife, had inflicted bleeding injury on her left forearm (near wrist). PW-8, father of victim Ravi Kant was stated in the prosecution case to be also a witness to this sequence, he being present at the corner of Gali No. 7, the assault occurring very close to his position.

20. PW-2, the first informant, was declared hostile as even in the opening part of her examination-in-chief she denied that any injury had been caused to Ravi Kant in her presence or to her by the persons facing the trial. She was cross-examined by the Additional Public Prosecutor and confronted with her version in the rukka (Ex.PW-2/A) whereupon she affirmed the prosecution story about injuries suffered by Ravi Kant and herself to some extent but, generally, being reluctant to confirm the role and complicity of the appellants. PW-6 and 8, on the other hand, also presented as eye witnesses to the occurrence, deposed affirming the prosecution case to the hilt. The learned trial court accepted their evidence, drawing corroboration from some parts of the testimony of PW-2, and, by the impugned judgment, returned findings of guilty.

21. According to the prosecution evidence in the wake of death of Ravi Kant in the wee hours of 14.08.1990 in the hospital, the case was converted into one for investigation into offence under Section 302 IPC. Thus, the investigation was taken over by Inspector Kapur Singh (PW-19), then posted as station house officer (SHO) in the police station. Per the testimony of PW-19, he had carried out raids at the houses of the accused persons (the appellants and the proclaimed offender) but they, being not available, could not be arrested. It is on 20.08.1990 that appellant Anil Kumar @ Mithu (A- 1) was arrested by him after personal search

(vide Ex.PW-8/C). On the same date, per his testimony, he had arrested appellants Dinesh Kumar Sharma (A-3) and Satish Chander @ Chandra (proclaimed offender) after their personal search (vide Ex.PW-8/D and Ex.PW-8/E respectively). According to the evidence, appellant Sunil Kumar @ Dudha (A-2) remained unavailable till information was received on 1.9.1990 about his arrest in FIR No. 338/1990 under Section 25 of Arms Act of police station Nangloi. Thus, on the request of PW-19, A-2 was produced before the court of magistrate and was formally arrested for purposes of this case on 03.09.1990.

22. As per the evidence of PW-19, the final investigating officer, after his arrest, appellant Anil Kumar @ Mithu (A-1) had made a disclosure statement (Ex.PW-8/F) and had led to recovery of knife (Ex.P-1) from its place of concealment at the southern end of Gali No.7 in Indira Park, the knife having been seized after its sketch (Ex.PW-2/G) had been prepared and it had been properly sealed as per memo (Ex.PW-2/F), in the presence of PW-2, PW-8 and PW-17. The evidence adduced at trial further reveals that the prosecution relied on disclosure (Ex.PW-8/L) statedly made by Sunil Kumar @ Dudha (A-2) after his formal arrest on 03.09.1990, inter alia, about the knife used in the fatal assault on the person of Ravi Kant but the same having not led to any recovery.

23. We may note here that during the testimony of autopsy doctor (PW- 9), the learned Additional Public Prosecutor, showed the knife (Ex.P-1), statedly recovered at the instance of Anil Kumar @ Mithu (A-1), to ascertain if it could have been the weapon of offence, used for assault on the deceased Ravi Kant. The autopsy doctor was not sure if it could be the weapon of offence respecting the second injury noted in the autopsy report but accepted the possibility in this regard concerning the first injury, referring, in this context, to the size of the blade (10 cm) of the cutting instrument shown to him.

24. The learned senior counsel representing A-1 and A-2 and the learned counsel representing A-3 have argued that all the above mentioned witnesses (PW-2, 6 and 8) are wholly un-reliable and their versions are full of contradictions rendering the prosecution case doubtful. It was submitted that the fatal assault on the person of Ravi Kant took place when there was no witness around and that the FIR was

registered belatedly, PW-2 having been planted as an eye-witness, by design, her injury being self-inflicted. The appellants submit through counsel that the version of Sant Nath, the person who had called the PCR resulting in logging of the DD entry No. 17/B (Ex.PW-4/D) reveals the possibility that a passerby had seen the victim (Ravi Kant) lying injured, then not identified. In their submission, neither Sant Nath (the caller to PCR) nor lady constable Babli (the PCR official who had received the call) having been examined, adverse view deserves to be taken against the prosecution case. The defence also submits that there is inconsistency between the ocular evidence and medical/scientific opinion and, therefore, the prosecution case ought not be believed. It was further argued that the theory of past enmity, based on earlier complaints to the police, being double edged the possibility of false implication cannot be ruled out. On these submissions, the appellants urge that they deserve benefit of doubts and to be acquitted.

25. Per contra, the additional public prosecutor submitted that the evidence of PW-6 and PW-8 is wholly consistent and reliable. He argued that PW-2, for certain reasons, opted to be not supportive and that her denial of the prosecution case during her examination-in-chief was not convincing. His submission was that the evidence of PW-2 also lends substantial support to the word of PW-6 and PW-8 with regard to the genesis of the dispute and the sequence of events and, in the facts and circumstances, their ocular testimony bringing out the complicity of the three appellants in the crime has been correctly appreciated and accepted by the trial court. He, thus, urged that the findings returned in the impugned judgment be sustained.

26. The first and the foremost argument of the learned senior counsel representing appellant Anil Kumar @ Mithu (A-1) and appellant Sunil Kumar @ Dudha (A-2) is based on the contents of the DD No.17-B (Ex.PW-4/D). The submission is that the DD entry reflects that no eye witnesses were present at the scene of incident, which is why a stranger named Sant Nath (who was not even located) had to take it upon himself to activate the police machinery by telephonically informing the PCR about the victim of an offence of stabbing. The learned counsel submitted that since the DD entry would not mention the presence of any eye witnesses and since it also is conspicuously silent about identity of the victim, it must be

concluded that the victim (Ravi Kant) was lying in injured state, all alone, unattended. Another argument which is closely connected to this line of submission is that, if anyone, it was the caller to the PCR (Sant Nath) who would have been the first witness on the scene whose evidence would have been most crucial. It is argued that Sant Nath not having been examined, with lady constable Babli (of PCR) also kept away from the witness box, the best evidence has been withheld for which reason adverse inference deserves to be drawn.

27. We are not impressed with the above noted submissions. The role of lady constable at PCR was only that of a post office. Her appearance as a witness would have not added further to the available information. The DD entry (Ex.PW-4/D) reveals that the caller to PCR, having given his name as Sant Nath, had not shared the full particulars. There is no reference even to the number of the telephone from where call was made to PCR. In absence of such information, it was virtually impossible for the investigating police to trace out the caller. The DD entry notes the brief information conveyed. It was too cryptic to be the basis of FIR or of any assistance in tracing out the identity of the assailants. In the given facts and circumstances, the caller to PCR could not conceivably have been a person acquainted with the victim by name or face, he apparently being only a good samaritan who thought it necessary to share the information about the stabbing with the police. Merely because he did not chose to reveal his full identity or convey anything beyond the fact of stabbing cannot lead to the conclusion that Sant Nath (the caller) was either an eye witness to the occurrence or the first (or the sole) person on the scene immediately after the occurrence. There is also nothing in the DD entry from which it can be deduced that the victim was lying unattended at the spot.

28. It was then argued by the learned counsel for the appellants that the eye witness account is contradictory to the documentary evidence. Reference was also made to the initial part of the testimony of PW-2 wherein she had denied that either she or Ravi Kant had been injured by the appellants. Reference was made to her version forming part of the FIR wherein there was no mention of the presence of PW-6 or PW-8 at the time of stabbing. The learned counsel also pointed out that PW-2 had disputed the prosecution case as to the role of

appellant Sunil Kumar @ Dudha (A-2) in the fatal assault on the person of Ravi Kant and she having disowned the statement (Ex.PW-2/A) attributed to her. In their submission the evidence of PW-2 is contradicted by that of PW-6 who, instead, mentioned the presence of one Laxman at the scene of occurrence and though claiming to be an eye witness had conceded, under cross-examination, that her statement was never recorded by the police during investigation. It was also argued that the FIR was deliberately belated and a concocted story had been cooked up, as an afterthought, planting PW-2 as an eye witness, the police having failed to secure the version of the victim who, as per the MLC, was fully conscious when he was brought to the hospital by his father (PW-8) at 8:35 p.m. It was submitted that the presence of PW-6 and PW-8 is not shown even in the site plan (Ex.PW-17/A) which, by itself, is a good reason for doubts to be entertained as to the veracity of their version. In this very context, the learned counsel further submitted that PW-2 had suffered injuries which were possibly self-inflicted, this having been arranged so as to make her version acceptable, which is why the witness was reluctant to support the prosecution case when called upon to depose at the trial.

29. The thrust of the above submissions essentially is that the three witnesses presented as witnesses to the occurrence (PW-2, PW-6 and PW-8) have not testified fully corroborative of each other and that they were in no position to even otherwise see the occurrence or to be able to identify the assailants as they admit that the place was in darkness. Arguing that the evidence supporting the theory of previous enmity is founded on stale documentary material, the learned counsel referring to State of Punjab vs. Sucha Singh, 2003 (3) SCC 153, submitted that the animosity is a double edged sword and if the discrepancies in the ocular and medical evidence render the presence of witnesses at the scene doubtful, the question of motive becomes inconsequential.

30. Reliance is placed on Tulsiram vs. State of M.P., (2008) 17 SCC 13 to submit that the first informant (PW-2) projected as the injured (star) witness but having turned hostile, the genesis of the incident is rendered doubtful of which the accused deserve to be given benefit. Reliance is also placed on Tamilselvan vs. State, (2008) 7 SCC 755 and Karamjit Singh vs. State of Punjab, (2000) 3 SCC

150 to argue that identity of the appellants as the assailants has not been specifically established. Placing reliance on Golbar Hussain vs. State of Assam, (2015) 11 SCC 242 and Shyamal Saha vs. State of West Bengal, (2014) 12 SCC 321, it was argued that the substratum of the prosecution case falls flat as the testimonies of PW-2, PW-6 and PW-8 are not properly supported by the evidence of PW-4 and PW-5 what with independent witnesses (Laxman and Sant Nath) having been kept away.

31. We have already dealt with the submission of the appellants with regard to the non-examination of Sant Nath as a witness for the prosecution. Laxman, whose name figures in the evidence, had been examined during the investigation by the police. He was even cited as a witness in the charge sheet, his evidence expected to provide independent corroboration to the word of PW-2, PW-6 and PW-8. As per his particulars mentioned in the report under section 173 Cr.P.C. Laxman was a local resident. But, the record of the trial court also shows that when attempts were made to secure his presence for gathering his evidence, it came to be revealed that Laxman had moved away from the locality (where he had been living in a premises on rent), to some undisclosed location. The proceedings recorded by the trial court reveal that several attempts were made to trace his whereabouts, but with no success. Eventually, the prosecution was constrained to give up on the said witness, primarily because of his non-availability, also for the added reason that his evidence would have only been repetitive to what had been adduced through the above mentioned three witnesses.

32. Given the efforts that were made to trace out and serve Laxman for securing his evidence, it is not fair to say that the said witness has been wrongfully kept out by the prosecution. In these circumstances, there is no reason why an adverse view should be taken on such account.

33. The submission that the presence of PW-8 at the scene of incident at the time of occurrence is doubtful because his name does not figure in the site plan is against the record. Rough site plan (Ex.PW-17/A) was prepared by the first IO immediately after the registration of the FIR. It mentions the location from where PW-8 claimed to have seen the sequence of events leading to the stabbing of his

son (Ravi Kant).

34. It is true that PW-8 was an ordinary resident of a house in gali no.9 whereas the incident is shown by the evidence to have occurred outside eastern end of gali no.7. But, PW-8 has given sufficient explanation with regard to his presence close to the said corner of gali no.7 at the crucial point of time. One of his sons had been involved in a quarrel with the family of the first two appellants (A-1 and A-2) only a few hours earlier. As noted earlier, his family had been on difficult terms with the family of the appellants for various reasons for quite some time past. There is ample evidence available on record to accept the prosecution case that it was the appellants side who had been the cause for provocation in the previous incidents. Given this background and the episode of possible assault on his other son having been evaded only a few hours earlier, PW-8 was seemingly anxious to ensure that his other son (Ravi Kant) who had gone out on some errand (purchasing kerosene oil) safely returned home. Under these circumstances, we do not have any reasons to doubt the veracity of PW-8 as to his presence very close to the place where Ravi Kant was stabbed.

35. PW-6 has also satisfactorily accounted for her presence at the scene. Her Jethani (PW-2) had come to check on the welfare of the family after the earlier dispute in the evening. By the time she was ready to go back it had gone dark. Thus, PW-6 was escorting her back to her house and happened to be on the scene when the stabbing took place. The omission of the IO to ascertain and specifically note her location in the site plan is a lapse which he only should have been called upon to explain. This police lapse cannot adversely impact the credibility of PW-6.

36. As already observed by us, PW-2 was injured, though suffering superficial wound on her forearm, around the same time as that of stabbing of Ravi Kant. During cross-examination at the hands of the learned additional public prosecutor, she did come out with facts broadly supporting the prosecution case, particularly about the injuries suffered by Ravi Kant and herself in the course of same transaction. She was apparently not being truthful when she started her deposition on the note denying even her ability to identify the appellants. The falsity of her

denial stood exposed by her later deposition wherein she confirmed having heard the names Dudha and Mithu being called out by Ravi Kant in the midst of the attack on him. She lives a few streets away from the houses of the deceased and the first two appellants (A-1 and A-2). She is closely related to the family of the deceased. The word of the earlier assault on the brother of the deceased on the same evening had apparently spread around. This is why PW-2 had felt the need to come over to the house of the deceased to enquire about welfare of the family. It is inconceivable in such scenario that she would not even know as to the identity of the family with whom such quarrels had been taking place at regular intervals. As already observed, there is nothing before us on which we can presume that the injuries of PW-2 were self-inflicted.

37. The MLC of Ravi Kant (the victim) does contain mention about he being fully conscious when brought to the hospital by his father. But, the document has to be read in entirety and along with other medical record. His condition was critical as the pulse was very feeble. So much so that, in less than an hour he had been rendered unfit for making any statement. Thus, by the time the investigating police arrived, there was no possibility of the statement of the victim being recorded.

38. We see no reason why the testimony of PW-6 and PW-8 in particular should be rejected only because they are close relatives of the victim (the deceased). On the contrary, their close relationship (wife and father respectively) with the deceased, in the fact-situation at hand, is an added assurance that they would not falsely implicate an innocent person to screen the real culprit. [See: Dalip Singh vs. State of Punjab, AIR 1953 SC 364; 1953 Crl.LJ 1465; Hari Obula Reddy vs. State of A.P., (1981) 3 SCC 675; 1981 SCC (Cri.) 795; and Jodhan vs. State of Madhya Pradesh, 2015 (11) SCC 52].

39. We are not impressed with the argument concerning darkness. The appellants were well known to the witnesses, particularly PW-6 and PW-8, they being close neighbours with whom they had had innumerable showdowns in the past. The witnesses were at close quarters when the stabbing took place. PW-6 noticeably was walking along side PW-2 escorting her back to her house. The fact that PW-2 had intervened and had also been injured in the process, though only slightly,

reveals that the distance between then and the assailants was virtually non-existent. From the evidence it is clear that even PW-8 was positioned close by. In these circumstances, the darkness by itself would not mean absolute impossibility of identifying the assailants. In the given scenario mere silhouettes would be sufficient to reveal and pin down the identity.

40. It is true that the names of the assailants were not reported to the medical officer at the time of MLC. This is no reason why the prosecution case is to be doubted. Such omission cannot discard the word of the eye witness for the simple reason the examining doctor in the hospital would be least interested in knowing the identity of the assailants, his focus being on the medical condition and the course of treatment required. [See: Pattipati Venkaiah vs. State of Andhra Pradesh, 1985 (4) SCC 80].

41. We reject the argument of it being a case of ante-timing of the FIR. It has to be borne in mind that witnesses are also human beings who are susceptible to trauma and disturbed emotional quotient particularly when they have seen a gory incident taking place involving their own near or dear one right in their presence. It takes some time for a person in state of shock to come out and regain composure. Some delay in reporting, or coherent narration of facts, to the law enforcement agency (the police) is bound to occur in the ordinary course. So long as the delay is not inordinate, it ought not be viewed with suspicion. But, in the present case, as we demonstrate in the following para, there has been no delay at all.

42. The incident had occurred at about 7:45 p.m. on 13.08.1990. The police learnt about the incident at about 8:15 p.m. through the PCR call. The victim (Ravi Kant) was brought to the hospital at 8:30 p.m. An information to this effect was conveyed to the police at 8:35 p.m. When the victim was taken to the hospital, his father (PW-8) and the brother had accompanied him in the three wheeler scooter (TSR). There is sufficient explanation given in the evidence that because the TSR would not accommodate more, PW-2 could not accompany them in the TSR to the hospital at that stage. She was thus taken to the hospital by the police, she having arrived there at 9:30 p.m. By that time the investigating officer was hoping to secure the version of the victim (Ravi Kant). Ravi Kant having been declared to be

unfit for statement at about 9:20 p.m. (Ex.PW-11/C), the IO (PW-17) depended on the word of PW-2, she having been injured in the same incident. Thus, he recorded her statement (Ex.PW-2/A) and dispatched the rukka (Ex.PW-4/A) at 10:10 p.m. and on such basis FIR (Ex.PW-4/B) was recorded at 10:30 p.m. There is no delay in the registration of the FIR, least of all an inordinate or unexplained delay. Rather, the registration of FIR could not have been more prompt than the one at hand.

43. The learned counsel for the appellants have submitted that the prosecution has contradicted itself by securing from the autopsy doctor (PW-9) opinion as to the possible use of knife (Ex.P-1) for causing first of the two fatal injuries suffered by the deceased (Ravi Kant). It was pointed out that the said knife (Ex.P-1), according to the evidence, had been recovered at the instance of appellant Anil Kumar @ Mithu (A-1) who, as per the ocular evidence, had not inflicted any stab injury on the person of the victim, the stabbing having been attributed to appellant Sunil Kumar @ Dudha (A-2). It was also pointed out that no weapon has been recovered from the appellant Sunil Kumar @ Dudha (A-2). Reliance is also placed on Khambam Raja Reddy vs. State of A.P., (2006) 11 SCC 239 to urge that ocular evidence must be rejected as the same does not assist in connecting the injuries to the attendant circumstances.

44. There is no merit in the above noted submissions. The endeavor of the public prosecutor examining the autopsy doctor (PW-9) to seek his opinion as to the possible use of knife (Ex. P1) was unnecessary and meaningless. It appears that in his overzealousness he forgot that the investigation has not brought out any connection between knife (Ex.P1) recovered at the instance of appellant Anil Kumar @ Mithu (A-1) and the injuries suffered by the deceased. It also seems to have escaped his attention that no weapon could be recovered from appellant Sunil Kumar @ Dudha (A-2). In this view, the defence cannot derive any advantage out of the opinion expressed by the autopsy doctor vis- -vis the possibility of knife (Ex.P1) as the weapon of offence directed against the deceased.

45. The documents brought on record showing the complaints having been lodged by the family of the deceased against that of the first and the second appellants may be a few years prior to the date of occurrence. But, it is not correct to say that the evidence respecting past incidents of quarrel is stale. To illustrate, we need mention here only the fact of quarrel that had taken place just a few hours prior to the fatal assault of which account PW-2 had paid a visit to the house of the deceased.

46. It is trite that non recovery of the murder weapon cannot materially affect the prosecution case, particularly if the oral evidence is found to be of unimpeachable character and amply corroborated by medical evidence [Nankaunoo vs. State of Uttar Pradesh, 2016 (3) SCC 317].

47. It is correct that PW-2, the first informant, turned hostile. Her refusal to support the prosecution case, however, cannot be clinching particularly when, mercifully, other witnesses of the scene of incident are available and there is no reason to question their veracity. It is trite that the court looks for quality of evidence and not the number or quantity of witnesses. [Manjit Singh and Anr. vs. State of Punjab and Anr., 2013 (12) SCC 746]. It is also well settled that evidence even of a hostile witness can be used to return finding against the accused to the extent it provides corroboration to the other material on record. [Devraj vs. State of Chatisgarh, 2016 (7) Scale 369].

48. In a judgment of the Supreme Court reported as The State of Punjab vs. Jagir Singh and Ors., (1974) 3 SCC 277, it was observed thus:-

23. A criminal trial is not like a fairy tale wherein one is free to give flight to one s imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the

same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

49. It is well settled that it is not every contradiction that gives rise to doubts as to the truthfulness of the prosecution evidence. For a doubt stemming from a contradiction on account of improvement or omission in the testimony of a witness to be of any import or effect, it must not only be one that can be reasonably drawn but also one that goes to the root of the matter. In a previous judgment in Criminal Appeal No.453/2016, titled Rohit @ Mona vs. Govt. of NCT of Delhi, decided by us on 24th August, 2016, we summarized the law thus:-

34. Small embellishments or variations in the statements of material witnesses, not of any significant import, cannot be allowed to be used to question the credibility of their version which is otherwise consistent and corroborative of each other and carrying a ring of truth. Some exaggerations or embroidery in the description of the sequence of events witnessed by them, particularly when they are called upon to depose in the court at some distance of time from the date of the incident, are quite natural. After all, they depend on human memory which is generally susceptible to become fainter with each passing day and definitely cannot be photographic, nor synchronizable with a universal watch giving the ability to each individual to peg a particular event to a particular stroke of the hour with exactitude.

50. On careful scrutiny of the evidence on record, we do not find any such contradictions or inconsistencies as can reasonably lead to doubts about the complicity of any of the three appellants.

51. In the given fact situation, the half-hearted deposition of PW-2 cannot become the touchstone for testing the veracity of PW-6 and PW-8. The evidence of the said two witnesses has to be examined for their intrinsic worth on the basis of overall facts and circumstances. Their testimonies are substantially corroborative of each other and do not suffer from any such contradictions as can render their account incredible.

52. We, thus, uphold the impugned judgment, accepting the prosecution evidence, particularly the eye witness account of PW-6 and PW-8, and find that Ravi Kant (the victim) had been waylaid by the three appellants with another associate on 13.08.1990 at about 7:45 p.m. outside Gali no.7 of Indira Park, Palam Colony, New Delhi, with atleast two of them viz. the appellant Sunil Kumar @ Dudha (A-2) and appellant Anil Kumar @ Mithu (A-1) armed with knives. All four of them held the victim (Ravi Kant) forcibly, appellant Anil Kumar @ Mithu (A-1) and appellant Dinesh Kumar Sharma (A-3) aiding and assisting, appellant Sunil Kumar @ Dudha (A-2) inflicted two knife blows on his body, the consequent injuries later resulting in his death. In this sequence of events, the intention to cause death is bound to be inferred. We, therefore, affirm the findings that the death of Ravi Kant (the victim) was a case of murder punishable under Section 302 IPC, brought about due to acts of commission on the part of the three appellants and their fourth associate, all acting together and thereby indicating sharing of common intention on their part, thus attracting Section 34 IPC. Similarly, the evidence has also brought home, to our satisfaction, that when PW-2 had tried to intervene and come to the rescue of Ravi Kant (the victim) appellant Anil Kumar @ Mithu (A-1) turned his attention towards her and inflicted a cut on her left forearm causing injury with the knife which he was wielding at that point of time. His guilt for the offence of voluntarily causing hurt by a cutting instrument, punishable under Section 324 IPC, also resultantly has been brought home.

53. For the foregoing reasons, we find no merit in the appeal in so far as the challenge was brought to the findings of guilty and conviction of all the three appellants for offence under Section 302 read with Section 34 IPC and of first appellant Anil Kumar @ Mithu (A-1) for offence under Section 324 IPC. In our opinion, the sentences awarded by the learned trial Judge also call for no interference.

54. In the result, the appeals are found devoid of substance and, therefore, dismissed.

55. The sentences awarded against the three appellants were suspended and they were enlarged on bail pending hearing on these appeals. They are now

directed to surrender to custody within 30 days of this judgment and undergo the punishment awarded in this case. The learned trial court (or the successor court) and the station house officer of the police station Dabri shall take suitable steps to ensure compliance with these directions.

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