Jite vs.state

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Court : Delhi

Decided On : Jun-01-2017

Appellant : Jite

Respondent : State

Judgement :

$~1 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgment:

01. t June, 2017 CRL. A. 329/2012 JITE STATE CORAM: Through : Ms.Saahila Lamba, Advocate ..... Appellant versus Through : Ms.Aashaa Tiwari, APP for State along with Ins.Vijay Kumar, P.S. Vivek Vihar ..... Respondent HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE VINOD GOEL G.S.SISTANI, J.

(ORAL) 1. The present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the judgment of the Trial Court dated 30.01.2012 and order on sentence dated 03.02.2012 by which the appellant has been convicted under Sections 3
of the Indian Penal Code, 1860 (IPC) and sentenced to undergo imprisonment for life and also fine of Rs.10,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year.

2. Prior to recording the case of the prosecution, we may note that the incident involved three accused, namely Sumeet, Jite/appellant and Kale. Kale was declared to be a juvenile and Sumeet has been found to be a juvenile during the

pendency of his appeal (Crl.A. 421/2012) and hence, his case was referred to the Juvenile Justice Board vide order dated 30.04.2013. Only the appeal of Jite/appellant remains pending before this Court. Crl. A. 329/2012 Page 1 of 25 3. In a nutshell, the case of the prosecution is that on 31.08.2010 at about 9:25 PM, an information was received at Vivek Vihar Police Station from Hedgewar Hospital that Ravi (deceased) was brought to the hospital by his father with stab injuries cause by a knife. On this information, DD No.24-A was recorded at the police station. On receipt of DD No.24-A, HC Mahender and Constable Devender went at Hedgewar Hospital where Ravi was found admitted in the hospital in an injured condition. As he was declared unfit for statement by the doctor, the statement of his father Amar Singh (PW-7) was recorded wherein he stated that on 31.08.2010 at about 7:30 PM, his son Ravi/deceased had gone with his friend Kittu to purchase goods from a shop where their neighbour Sumeet [declared juvenile (JCL)]. met them with his cousins Kale (JCL) and Jite/appellant. They beat his son. On hearing the commotion, the families of both the sides intervened and pacified them. The deceased then returned back to his house and at about 7:45 PM, while he was standing in front of the house, the appellant and Kale (JCL) caught him and Sumeet (JCL) brought a knife and exhorted Aaj isko sabak sikhate hain (lets teach him a lesson today) and gave a knife blow on the abdomen of Ravi. Thereafter, all three of them ran away from the spot.

4. FIR was registered under Section 307 IPC. As Ravi succumbed to his injuries, Section 307 was replaced by Section 302 IPC. Investigation was taken up by Inspector Yogesh Malhotra. He prepared the site plan and lifted the exhibits from the spot. Crime team was called and the photographs of the spot of crime were taken. Statements of witnesses were recorded. Inquest proceedings on the body of Ravi was done. After postmortem, body was handed over to the kin of the deceased. On the basis of secret information, all three accused were Crl. A. 329/2012 Page 2 of 25 apprehended from the jungle near the railway line behind ITI. Disclosure statements of Sumeet (JCL) and appellant Jite were recorded. Appellant Jite and Sumeet (JCL) disclosed that while fleeing from the spot, Sumeet (JCL) had thrown the dagger in the MCD Park in B Block, Jhilmil Colony. Sumeet (JCL) then got recovered the dagger used in the crime. Site plan of the place of recovery was prepared. The opinion of autopsy surgeon with regard to the

recovered weapon of offence was obtained. Statements of witnesses Kittu and Ajender Singh were recorded and they confirmed the quarrel between the deceased and the accused prior to his murder. Exhibits were sent to FSL, Rohini for expert opinion.

5. On completion of investigation, charge sheet was filed against the appellant Jite and Sumeet (JCL) before the Trial Court while charge sheet against Kale (JCL) was to be submitted separately before the Juvenile Justice Board. Charges under Section 3
IPC were framed against the appellant and Sumeet (JCL) along with a separate charge under Section 27 of the Arms Act against Sumeet (JCL). Both the accused pleaded not guilty and claimed trial.

6. The prosecution examined as many as 15 witnesses to establish the guilt of the accused. Statements of Sumeet (JCL) and appellant were recorded under Section 313 Cr.P.C. and neither led any defence evidence. The appellant denied all the evidence against him and stated in his statement under Section 313 Cr.P.C. that the complainant (PW-

7) has an enmity with him and hence, he has been falsely implicated in the case.

7. Ms.Lamba, learned counsel for the appellant, submits that the impugned judgment and the order on sentence are contrary to law and the facts established at trial and hence, have resulted in gross Crl. A. 329/2012 Page 3 of 25 miscarriage of justice. The Trial Court has proceeded based on conjectures and surmises. Learned counsel submitted that the case of the prosecution revolves around two alleged incidents and is based upon the testimonies of Dhruv Vats (PW-1), close friend of the deceased, Ajender Singh (PW-3), family friend of the deceased and Amar Singh (PW-7), father of the deceased). The testimonies of these witnesses have several vital contradictions and thus, no reliance could be placed on their testimonies.

8. It is next submitted by learned counsel that as per the case of the prosecution, the first quarrel allegedly took place in a crowded market and it has come in evidence that numerous persons had gathered there, however, none of these

public persons have been examined by the police or arrayed as a witness and only interested witnesses, i.e. PW-1, PW-3 and PW-7, have been examined. As these persons were interested witnesses, their testimonies could not have been relied upon to convict the appellant. As regards the second incident of stabbing, PW-1 and PW-7 have contradicted each other and hence, the Trial Court has erred in relying upon their depositions. Neither of the two witnesses are eyewitnesses to the incident as PW-1 has admitted that he did not see the stabbing and PW-7 has claimed to be climbing the stairs of his house when he heard the cry of his son/deceased. Ms.Lamba also contended that the recovery of the knife at the instance of the Sumeet (JCL) is doubtful as it was recovered from a MCD Park which is a public place. Further no independent person had been arrayed for the recovery. She also submits that the FSL Report (Ex.PX-1) does not support the case of the prosecution as the report is inclusive and thus, the benefit of doubt should be extended to the appellant. Crl. A. 329/2012 Page 4 of 25 9. As an alternate argument, Ms.Lamba submitted that even if this Court were to uphold the conviction, the offence under Section 302 would not be made out. She submits that the offence took place in the spur of the moment pursuant to a sudden fight, there was no pre- meditation, a solitary blow was inflicted in the heat of passion and there was no cooling off period. Learned counsel contends that the two incidents stated by the prosecution were in continuation of each other. Reliance is placed on the judgments of this Court in Moti Chander Mandal v. The State, 2009 (5) RCR (Criminal) 902 (paragraphs 21 - 25); Shiv Kumar @ Nigro v. State of Delhi, 2015 (2) JCC806(paragraph 31 - 34); and Darshan Singh v. State, MANU/DE/4665/2013 (paragraph 21).

10. Per contra, Ms.Tiwari submitted that there is no infirmity in the judgment of the Trial Court which has convicted the appellant after carefully examining the evidence before it. She submits that the testimonies of the PW-1, PW-3 and PW-7 conclusively establish the factum of the two quarrels having taken place on 31.08.2010. It is contended that the failure on the part of the prosecution to examine the public persons gathered at the time of the first quarrel is not fatal to the case of the prosecution as it is a settled proposition that the quality of the evidence is relevant and not quantity. If the testimony of even a single witness is reliable, it can even be made the sole basis of conviction. She submits that the

testimonies of PW-1, PW-3 and PW- 7 with regard to the first incident of quarrel are straight forward and cogent and have withstood the test of cross-examination.

11. Learned counsel for State further submitted that the second incident of stabbing has been proved by the depositions of Amar Singh (PW-7) and Dhruv Vats (PW-1). PW-7 remains an eyewitness to the incident Crl. A. 329/2012 Page 5 of 25 and PW-1 had also seen the accused running away from the site of the incident and the deceased lying on the road with blood oozing from his abdomen. The weapon of the offence was recovered at the instance of Sumeet (JCL) based upon his disclosure statement and the disclosure statement of the appellant herein. Blood was found on the knife which was further identified by PW-7 before the Trial Court. The case of the prosecution is further corroborated by the medical and forensic evidence on record.

12. In response to the submission that the offence of murder under Section 302 is not made out, Ms.Tiwari has relied upon paragraph 20 of the judgment of the Trial Court to contend that the second incident took place after sometime and the fact that the accused, including the appellant, had returned armed with a knife would show their intention to kill the deceased. Thus, the intention of the appellant being writ large, the Trial Court was correct in convicting the appellant under Section 302 IPC.

13. We have heard learned counsel for the parties, considered their rival submissions, examined the testimonies of the witnesses and the Trial Court record.

14. Since the case of the prosecution is premised on the testimonies of Dhruv Vats (PW-1), Ajender Singh (PW-3) and Amar Singh (PW-7), we deem it appropriate to examine their testimonies.

15. Dhruv Vats (PW-1) deposed before the Trial Court that he was a friend of the deceased and on 31.08.2010 at about 7:30 PM was going on his scooter to the market to buy mehandi/henna, when he met the deceased on the way. The deceased sat on the pillion and both of them reached the market at Pratap Khand, Jhilmil. The deceased got down from the scooter on the piao/water tank kept on

the side of the Crl. A. 329/2012 Page 6 of 25 road to drink water. PW-1 went to the shop and was waiting for his turn, when he heard the noise of commotion and saw three neighbours of the deceased quarrelling with him. The crowd gathered at the spot separated the persons. Parents of the deceased and Sumeet (JCL) also reached at the spot. After the incident, the deceased once again sat on the pillion of PW-1 and he dropped him to his house. PW-1 further testified that he had just dropped him in front of his house and crossed a distance of only 2-3 houses, when he heard the noise of commotion. He stopped his scooter, took a U-turn and saw the deceased lying on the road with blood oozing from his abdomen. The father and uncle of the deceased along with other persons were lifting him, while the appellant, Sumeet (JCL) and Kale (JCL) were running away from the spot.

16. As PW-1 was resiling from his previous statement, he was cross- examined by the Addl. PP for the State wherein PW-1 stated that when he had left Pratap Khand, both the accused and Kale (JCL) hurriedly left the spot towards Balmiki Basti talking with each other. The parents of the deceased also followed them and reached their house. He denied the suggestion that he had seen a big knife in the left hand of Sumeet (JCL) when he was running away from the spot when he was confronted with his statement under Section 161 Cr.P.C. (Ex.PW-1/A) wherein it was so recorded.

17. Dhruv (PW-1) was next cross-examined by the defence counsel when he stated that the distance between the place where the deceased met him and the place infront of the water tank/piao is about 25-30 steps. He stated that there is a Gurudwara in front of the house of Ravi and the distance between the Gurudwara and the piao is about 100-150 steps. The distance between the piao and the shop where PW-1 was Crl. A. 329/2012 Page 7 of 25 standing is 20 steps. He further stated that the first quarrel took place 5-7 steps away from the piao and by the moment PW-1 had reached there the parties had been separated. The parents of the deceased and Sumeet (JCL) reached the moment the parties were pacified. He stated that when the deceased had sat on the pillion of his scooter, the parents of the deceased had left the spot and went on to voluntarily depose that he kept on standing at the spot talking with the deceased. PW-1 further stated that the deceased had met him by-chance near his house.

18. The next witness is Ajender Singh (PW-3), who deposed that he is a property dealer and running an Atta/flour chakki. On 31.08.2010 at about 7:30 PM, he was standing inside his shop when he heard the noise of commotion and came outside. There is a piao in front of the shop of PW-3 across the road. He saw the appellant, Sumeet (JCL) and Kale (JCL) beating the deceased and the deceased was defending himself. PW-3 testified that he knew all the boys as they are residing in Balmiki Basti infront of Gurudwara. The parents of the appellant and Sumeet (JCL) reached there and along with public persons intervened and pacified them. Thereafter, the deceased left the spot on the scooter Eterno of a boy named Kittu (PW-1). The juveniles and the appellant hurriedly went towards their houses. The parents of the deceased also left the spot. He also stated that the distance between the jhuggies of Balmiki Basti and the spot where the boys were quarrelling is around 150 metres. In his cross-examination, PW-3 stated that the distance between the piao and the Gurudwara is about 150 metres. He stated that the parents of the deceased and Sumeet (JCL) intervened to control their sons. The parents had reached there within 2-3 minutes. After the deceased left the spot, his parents also Crl. A. 329/2012 Page 8 of 25 left the spot. He stated that the walkable distance between the house of the deceased and the piao can be covered in 3-4 minutes. When PW-3 reached the spot, Dhruv (PW-1) was not there and was coming towards the spot.

19. The father of the deceased Amar Singh (PW-7) deposed that on 31.08.2010 at about 7:30 PM, the deceased was standing in the street outside his house, when his friend Kittu (PW-1) came there on a scooter and they went to a general store behind the Gurudwara. While PW-7 was present in his house, he heard the noise of commotion and someone saying Ravi ke larai ho gai, uske papa ko bulao (Ravi is in a fight, call his father). PW-7 and his wife rushed to the spot and found that Kale (JCL), Sumeet (JCL), appellant and the deceased were present having been pacified by the parents of Sumeet (JCL) and other public persons. The appellant, Sumeet (JCL) and Kale (JCL) left the spot and rushed towards Balmiki Basti saying aaj isko sabak sikha de ge (Well teach him a lesson today). The deceased had informed PW-7 that he was standing there, Kale (JCL) had slapped him; he also slapped Kale (JCL) and then all three started beating the deceased. The deceased left the spot on the scooter of his friend Kittu (PW-1). The deceased

returned to the house and PW-7 also returned following him. Kittu (PW-1) left the spot asking the witness to take the deceased inside his house. The deceased asked PW-7 to go inside and that he will come with his mother and two brothers. PW-7 deposed that he was just entering his house, when the appellant, Kale (JCL) and Sumeet (JCL) came there. The appellant and Kale (JCL) caught hold of the deceased and Sumeet (JCL) stabbed him. The deceased raised an alarm saying Papa mujhe bachao (Father, save me). At this point, PW-7 turned and saw Sumeet (PW-7) taking a knife away Crl. A. 329/2012 Page 9 of 25 from the stomach of the deceased. PW-7 rushed towards the deceased and the appellant, Kale (JCL) and Sumeet (JCL) ran away from there. He deposed that his son Ajay chased the perpetrators and even threw a brick at Sumeet (JCL); Sumeet (JCL) showed a knife to Ajay and even rushed towards him when the father of Sumeet (JCL) caught hold of Ajay. He deposed that the deceased died at about 10:30 PM the same day. PW-7 also deposed regarding the taking of the deceased to the Hospital, the arrest of the accused, and the recovery of the weapon, i.e. knife, at the instance of Sumeet (JCL). He stated that on the next day, Sumeet (JCL) led the police party to the Park B-Block and got recovered a knife of 14 inches from the heap of construction material of Dispensary, which was under construction. The sketch of the knife (Ex.PW-7/I) and the Memorandum regarding recovery (Ex.PW-7/J) were signed by the witness.

20. PW-7 was thoroughly cross-examined by the defence counsel when he stated that he did not know the name of the children saying Ravi ke larai ho gai (Ravi is involved in a fight). He stated that the distance between his house and piao is around 100-150 feet and the distance between his house and house of Sumeet (JCL) is 10-15 feet. Kittu (PW-1) and the deceased left the spot along with him. The deceased and Kittu (PW-1) went on scooter and PW-7 followed them on foot and reached his house within 2-4 minutes by walking briskly. Kittu (PW-1) left on scooter after leaving the deceased in front of his house. He further stated that he had heard the alarm raised by the deceased after about 1 minute when Kittu (PW-1) left the spot. Kale (JCL) had caught hold of the deceased by his left hand by twisting it on his back. He stated that his brother, who had died in 2005, was a friend of Ajender Singh since childhood. He further stated that he did not state Crl. A. 329/2012 Page 10 of 25 to the police that the perpetrators had said aaj isko

sabak sikha de ge (Well teach him a lesson today) or the fact that the deceased and Kale (JCL) had exchanged slaps and later Kale (JCL), Sumeet (JCL) and appellant had beaten the deceased. He stated that the deceased reached the house after 10 minutes of the quarrel near piao and the time was around 7:45 PM. He affirmed that the deceased came to the house with Kittu (PW-1) and that he had reached the house within a gap of 1 minute to the deceased. He also affirmed the suggestion that he was going to climb the stairs to the first floor, which start from the street itself, with his back towards the deceased when he heard the alarm papa mujhe bachao (Father, save me) and he took a turn and saw the accused stabbing his son. In respect of the recovery, he stated that some construction was going on in the MCD Park and public movement remains in the park.

21. We may note that the investigating officer Ins.Yogesh Malhotra (PW-

13) has also deposed as to the recovery of the knife at the instance of Sumeet (JCL). He deposed that pursuant to the disclosure statements of the appellant and Sumeet (JCL), Sumeet (JCL) had led them to D- Block, Jhilmil Colony and there from a park near under construction MCD Dispensary, he got recovered a dagger stated to be the weapon of offence, which was seized vide Ex.PW-7/J.

22. The dagger (marked as exhibit 6) was sent to the FSL for examination, which by its Report dated 18.01.2011 (Ex.PX-1) detected blood on the dagger; but the ABO Grouping was inclusive.

23. It is also useful to analyse the medical evidence relied upon by the prosecution. Dr.S. Lal (PW-6) had conducted the post mortem on the body of the deceased. He deposed that the deceased was brought by Ins.Yogesh Malhotra (PW-13) with alleged history of stab injuries and Crl. A. 329/2012 Page 11 of 25 taken to Dr.Hedgewar Hospital vide MLC No.3957 dated 31.08.2010 at 9:36 PM and he expired during treatment at 10:30 PM. The post mortem report (Ex.PW-6/A) details the following ante mortem injury: Incised stab wound 7.0 x 1.0 cm x cavity deep on Lt. side lateral aspect of upper abdomen, vertically placed, lower angle of wound is acute and upper angle is blunt. The wound is placed just below the sub costal margin and 17 cms to umblicus. The wound entered the cavity in backward and medially direction to cut the spleen, Lt. kidney and intestine. The cut

mark is also seen in peritoneum and mesentry. The total depth of the wound is about 13.0 cms. 24. The cause of death was opined to be haemorrhagic shock due to ante mortem stab injuries to abdomen and sufficient to cause death in ordinary course of nature. Subsequent opinion (Ex.PW-6/B) was sought with respect to the weapon of offence, i.e. dagger, wherein PW-6 opined as under: through the P.M. report After going finding and examination of weapon (dagger) I hereby opined [sic: opine]. that Injury no.1 mentioned in P.M. report finding could have been possible to cause by this weapon of offence produced before me for examination. The cut mark on the clothes, I already mentioned in the P.M. report which is possible to be caused by this weapon of offence and correspond to injury No.1 mentioned in P.M. report finding. 25. Having examined the testimony of the prime prosecution witnesses the incident unravels that on 31.08.2010 at about 7:30 PM, the deceased was standing outside his house in Balmiki Basti when he met Dhruv Vats @ Kittu (PW-1), who was going to the market to buy mehandi/henna. He accompanied PW-1. Upon reaching Pratap Khand, the deceased remained near a piao/water tank while PW-1 proceeded to the shop. Some altercation took place between the deceased on one side and the appellant, Kale (JCL) and Sumeet (JCL) Crl. A. 329/2012 Page 12 of 25 on the other when both sides exchanged blows. The parents of Sumeet (JCL) and deceased, including Amar Singh (PW-7) rushed to the spot. With the intervention of public persons, the parties were pacified. The deceased went back to his house on the scooter of PW- 1, where his father (PW-7) also reached within 1 minute. The appellant, Kale (JCL) and Sumeet (JCL) also rushed towards Balmiki Basti. PW-1 left the deceased at the gate of his house and went away. PW-7 was on the steps of the stairs to the first floor, when alarm was raised by the deceased. PW-7 turned around to see that the appellant and Kale (JCL) had caught hold of the deceased while Sumeet (JCL) was withdrawing a dagger from the stomach of the deceased. Thereafter, the appellant, Kale (JCL) and Sumeet (JCL) fled away and the deceased was taken to the Hospital where he later succumbed to his injury. The testimonies of PW-1, PW-3 and PW-7 are consistent in this regard. Further, the same are duly corroborated by the recovery of the blood stained weapon of offence, i.e. dagger, on the instance of Sumeet (JCL) and the medical evidence on record.

26. The contradictions in the testimonies of PW-1, PW-3 and PW-7 remain superficial and do not go to the root of the matter rendering their testimonies unreliable.

27. Ms.Lamba had tried to impress upon us that the recovery of the dagger at the instance of Sumeet (JCL) was doubtful as no public witnesses were enjoined and the recovery was from a park allowing access to the public in general. It has come in the testimony of Ins.Yogesh Malhotra (PW-13) that he requested public persons to join, but none agreed. Interestingly, not even a suggestion has been given to the recovery witnesses that no such knife/dagger was recovered at the instance of accused Sumeet (JCL). Further the recovery is duly Crl. A. 329/2012 Page 13 of 25 witnessed by the father of the deceased (PW-7) and it cannot be said that the same was only before police witnesses and PW-7 has also identified the dagger in his dock deposition before this Trial Court. It is not mandatory but only a rule of prudence that a public witness should be associated at the time of recovery [State v. Vikas @ Bhola & Anr., ILR (2013) 5 Del 4032 (paragraph 13)].. It is only when other cause is shown to suspect the recovery that the same may be discarded. A coordinate bench of this Court in Titu v. State, ILR (2007) 1 Del 990 (paragraph

30) had observed that merely because all the witnesses of recovery were police witnesses and no independent public witness was joined for affecting the recovery would not be fatal. In the present case as well, the recovery of the dagger at the instance of Sumeet (JCL) is not doubtful merely because public witnesses were not enjoined.

28. As regards the second prong of the argument of Ms.Lamba, the recovery cannot be said from a public place as the same was recovered from a heap of construction material. It is also pertinent that the recovery took place the very next day from the date of incident excluding time for the general public to become aware of the weapon. In this regard, we may usefully refer to the judgment of the Apex Court in State of H.P. v. Jeet Singh, (1999) 4 SCC370wherein recovery was effected from tobacco bushes, heap of rubbish situated in the compound of the residence of the accused and his cowshed and the High Court had repelled the circumstance inter alia as recoveries made were open and accessible to others;

this was reversed by the Supreme Court observing as under: Crl. A. 329/2012 Page 14 of 25 26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is open or accessible to others. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. (Emphasis Supplied) [Also see Titu (Supra) (paragraphs 28 - 29)].

29. In the present case the recovery at the instance of Sumeet (JCL) cannot be said to have been effectuated in an open and accessible place as the dagger was concealed in a heap of construction material and the same was recovered on the very next day. Accordingly, the recovery of the dagger in the present case cannot be said to be doubtful. Additionally, the FSL (Ex.PX-1) detected blood on the dagger and the same as per the opinion (Ex.PW-6/B) of Dr.S. Lal (PW-6) could of caused the stab injury found on the body of the deceased.

30. We are also unable to subscribe to the submission of the learned counsel for the appellant that as public persons were not examined despite their presence in respect of the first incident, the same raises a doubt upon the story of the prosecution. It is a well-known maxim Crl. A. 329/2012 Page 15 of 25 that Evidence has to be weighed and not counted i.e. the courts may even rely upon the sole testimony of a single witness provided the evidence of that witness is reliable, unshaken and consistent [Kartik Malhar v. State of Bihar, (1996) 1 SCC614. We may also notice a judgment of a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member in Durg Pal v. State, 221 (2015)

DLT683(paragraphs 7 and

29) wherein the bench rejected the contention of the appellant that merely because rickshaw pullers at the spot were not examined would not create a doubt regarding the genuineness of the case.

31. It was also contended that PW-1, PW-3 and PW-7 were interested witnesses and their testimonies could not be relied upon. Again the same is without any force. No enmity has been ascribed to either of them to discredit their testimony. Kittu (PW-1) was the friend of the deceased; PW-3 was the childhood friend of the deceased brother of PW-7 and had previously brokered a deal for PW-7; and Amar Singh (PW-7) was the father of the deceased. These relations cannot ipso facto make them interested witnesses. Such specious contentions have been rejected as far back as 1953 by a Full Bench of the Apex Court in Dalip Singh v. State of Punjab, AIR 1953 SC364 wherein it was observed as under: 27. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a Crl. A. 329/2012 Page 16 of 25 criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

28. This is not to say that in a given case a Judge for reasons special to that case and to that witness cannot say that he is not prepared to believe the witness because of his general unreliability, or for other reasons, unless he is corroborated. Of course, that can be done. But the basis for such a conclusion must rest on facts special to the particular instance and cannot be grounded on a

supposedly general rule of prudence enjoined by law as in the case of accomplices. (Emphasis Supplied) 32. Nothing has been shown to prove that PW-1 or PW-3 harboured any animosity against the appellant. Even against PW-7, it has only been vaguely stated in the statement of the appellant under Section 313 Cr.P.C. that he had an enmity with the appellant. Again the same is shy of any details and nothing has come in evidence to incline us to take him as a interested witness. [See Masalti v. State of U.P., (1964) 8 SCR133(paragraph 14)].

33. The final contention of Ms.Lamba that the FSL Report (Ex.PX-1) does not support the prosecution as the same is inclusive is also unpersuasive. No doubt, the blood group of the blood on the dagger was not detected, however, blood was still found on the weapon of offence recovered at the instance of Sumeet (JCL) giving credence to the story of the prosecution. Additionally, in view of the other clinching evidence against the appellant, the non-detection of blood group does not raise a doubt upon the story of the prosecution. Crl. A. 329/2012 Page 17 of 25 34. Thus, having regard to the evidence led by the prosecution and the medical and forensic evidence, we find no infirmity in the judgment of the Trial Court to the extent it has convicted the appellant for causing the death of the deceased.

35. At the same time, we find force in the submission of the counsel for the appellant that a case under Section 302 IPC is not made out. An analysis of the judgment of the Trial Court, more particularly paragraph 20, would show that it was primarily the time gap between the two incidents which established the intention of the appellant and Sumeet (JCL) to do away with the deceased.

36. It has come in evidence that two incidents took place between the appellant, Kale (JCL) and Sumeet (JCL) and the deceased: first, near the piao/water tank and the second, infront of the house of the deceased. During the first, an altercation took place where both parties exchanged blows. Then all persons went to Balmiki Basti, where the second incident of stabbing took place. There is only one stab injury on the body of the deceased. In this background, the moot question arising for our consideration is whether there was sufficient cooling off period to allow tempers to cool.

37. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in respect of Explanation IV of Section 300 in Kamaljeet v. State, Crl.A. 453/2013 dated 23.05.2017 has observed that [t].o bring a case under the exception, fourfold requirements must be satisfied: first, there must be a sudden fight; second, absence of pre-meditation; third, the accused must have been overcome with the heat of passion; and fourth, the accused must not have taken undue advantage or acted in a cruel or unusual manner. Crl. A. 329/2012 Page 18 of 25 38. In respect of cooling off period, we may refer to the judgment of a coordinate bench in Mohd. Sultan @ Kallu v. State, 2011 Cri. L.J.

4680, wherein the accused had returned in 2-3 minutes after a heated exchange of words with a knife and stabbed the deceased, the conviction of the appellant was changed from one under Section 302 IPC to Section 304 Part I IPC. The relevant paragraphs read as under: 14. It is clear from the testimonies of P Ws 8, 9 and 10 that there was no previous enmity between the Appellant Mohd. Sultan @ Kallu and Yamin and his brothers and cousin. It is also apparent from their testimonies that a theft had taken place in the night intervening 17/18.09.1992 in the factory of Mohd. Farukh and his brothers. There was a heated exchange of words on the next night around 9:15 pm between Mohd. Sultan @ Kallu and PW8 Mohd. Farukh, in which the Appellant Mohd. Sultan is said to have questioned Mohd. Farukh as to why the former's name was being dragged in connection with the theft of the previous night. The altercation between the two escalated and resulted in Mohd. Sultan @ Kallu slapping Mohd. Farukh
times. On the intervention of the other brothers and cousin Mumtaz, Mohd. Sultan left the premises threatening to teach them a lesson. He went to his brother's factory nearby in the same gali and returned with a knife within 2-3 minutes and immediately thereupon stabbed Yamin who was standing outside the factory with PW9 Yasin. This incident was, of course, seen by PW9 Yasin. Immediately thereafter, Mohd. Sultan @ Kallu ran away from the scene. This is clearly a case of culpable homicide. It would not be murder and would fall under Exception 4 if it was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. There is no doubt in our minds that the incident took place without premeditation and the time gap between the heated

exchange of words and the second incident of stabbing is only of 2-3 minutes, which clearly indicates that it was a sudden fight and there was no time for the tempers to have cooled so as to allow in the concept of premeditation. The tempers had not cooled and, Crl. A. 329/2012 Page 19 of 25 therefore, in our view, the stabbing incident has to be regarded as in the course of a sudden fight in the heat of passion upon a sudden quarrel.

15. A similar situation had arisen in the case of Sukhbir Singh v. State of Haryana (2002) 3 SCC327 In that case also there was no enmity between the parties. The occurrence had taken place when Sukhbir Singh got mud splashes on account of sweeping of a street by Ram Niwas and a quarrel ensued. The deceased slapped the Appellant for no fault of his. The quarrel was sudden and on account of the heat of passion. The accused went home and came armed in the company of others without telling them of his intention. The time gap between the quarrel and the fight was a few minutes only. The Supreme Court observed that it was, therefore, probable that there was insufficient lapse of time between the quarrel and the fight which meant that the occurrence was sudden within the meaning of Exception 4 of Section 300 IPC. (Emphasis Supplied) [See also Darshan Singh (Supra) (paragraphs 20 - 24)]. In Tayyab v. State NCT of Delhi, 2014 (1) JCC271the accused 39. persons had hot talks with the deceased on the issue of money, when the accused rushed to his house to bring a chhura, with which he had inflicted the stab injury on the body of the deceased, this Court had converted the conviction from one under Section 302 to Section 304 Part I IPC, observing that: 23. In the present case, PW-1 in his examination-in-chief, had admitted the fact that he was not aware as to how the quarrel had started and at whose instance. He volunteered to say in his cross-examination that the quarrel was continuing when he had reached the spot. PW-4, Mohd. Ansar Ahmed also deposed on the same lines confirming the fact that some hot talks were in progress between the accused persons and his brother on the point of money and the deceased Rashid told him and his brother (PW-1) that the accused persons had to give money but they were not willing to return the same. Crl. A. 329/2012 Page 20 of 25 With the deposition of said two eye witnesses, one thing becomes crystal clear, that a sudden quarrel had taken place between the deceased and the accused persons. It also becomes clear that both the said witnesses were not

exactly aware as to how the said quarrel had begun but they are consistent in their stand that the quarrel was on the issue of money which the accused owned to the deceased but they were not willing to return back. From their deposition, another vital fact that emerges is that the appellant was not carrying any weapon of offence with him as amidst quarrel he had rushed to his house to bring chhura with which he had inflicted stab injury on the body of the deceased. Further a time gap between the said quarrel and the bringing of the murder weapon by the appellant was also quite narrow, as the house of the appellant was located very nearby and within two-three minutes he could bring the said chhura from his house to inflict the stab injuries, which ultimately resulted in the death of the deceased. Thus there was no time for the accused to cool down or plan his action. 27. In the facts of the present case also what we find is that a sudden quarrel between the accused persons and the deceased had taken place over some money transaction and the sudden quarrel ultimately turned ugly, resulting into a sudden fight and ultimately, the murder of the deceased at the hands of the appellant. There was neither any premeditated plan or common intention of the accused persons to carry out the murder of the deceased nor there was any cooling time between the said fight and the act of the appellant, as the house of the appellant was nearby from where he brought the weapon of offence just within two-three minutes. The recovery of weapon of offence was also not believed by the learned trial court and therefore, it cannot be said whether the chhura used by the appellant was a small knife or was a big dagger, as per the sketch of the same proved on record as Ex. PW-17/F. Further the injuries sustained by the co- accused, Mohd. Rafiq may be simple in nature but they cannot be completely overlooked at least to prove the fact that there was a quarrel taken place between the accused Crl. A. 329/2012 Page 21 of 25 persons on the one hand and the deceased on the other hand. (Emphasis Supplied) 40. Similarly, a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in Vinod Kumar. v. State, 2016 Cri. L.J.

4810 had while converting the conviction from Section 302 to Section 304 Part I, observed as under: they assaulted 39. From the evidence on record, it is very clear that the appellants intended to cause bodily injuries which culminated into the death after 7 days. In our opinion, there was a sudden altercation which ensued in the heat of the moment and there is no deliberate planning. In the

present case, as stated above there was no due deliberation on the part of the appellants and the deceased almost immediately after the fact of the quarrel between the children came to their knowledge. It was further established that there was no cooling off period as the gap was short and they were in the same state of mind and wanted to take revenge with the deceased. The quarrel between the children was lingering in their mind and tormented them mentally. Treating the time gap between the quarrel and the incident which resulted in the death of the deceased to be negligible, we conclude that the appellants had not committed the crime with any pre- meditation. It is very likely that the intervention of the deceased between the quarrel of the children provoked the appellants to such an extent that they chose to take this extreme step. The entire incident happened within a very short span of time. The intention probably was to merely cause such bodily injuries. (Emphasis Supplied) 41. We may also fruitfully refer to the judgment of the Apex Court in B.D. Khunte v. Union of India, (2015) 1 SCC286wherein in respect of Exception I to Section 300, it was observed as under: Crl. A. 329/2012 Page 22 of 25 19. Between 1400 hrs when the appellant was given a grave provocation and 2130 hrs, the time when the appellant shot the deceased there were seven hours which period was sufficient for the appellant to cool down. A person who is under a grave and sudden provocation can regain his cool and composure. Grave provocation after all is a momentary loss of one's capacity to differentiate between what is right and what is not. So long as that critical moment does not result in any damage, the incident lapses into realm of memories to fuel his desire to take revenge and thus act as a motivation for the commission of a crime in future. But any such memory of a past event does not qualify as a grave and sudden provocation for mitigating the offence. The beating and humiliation which the accused had suffered may have acted as a motive for revenge against the deceased who had caused such humiliation but that is not what falls in Exception 1 to Section 300 IPC which is identical to Exception 1 to Section 300 of the Ranbir Penal Code applicable to the State of Jammu and Kashmir where the offence in question was committed by the appellant. (Emphasis Supplied) From the aforegoing, it is clear that for a case to fall within Exception 42. IV of Section 300, the incident must have taken place in a sudden fight in the heat of passion. There must not be any time gap or the time gap should be insufficient to allowed

tempers to cool off. If the tempers continued to run high, then the case would fall within Exception IV; but if they cool down, then the heat of passion gives way and retribution/revenge may bear in the mind of the culprit.

43. In the present case as well, we find that there was no cooling off period between the two incidents, it has come in evidence that the distance between the piao/water tank and the house of the deaceased could be covered in 2-4 minutes on foot. After the first altercation, all parties had hurried to Balmiki Basti, where the incident of stabbing took place. It cannot be said that there was a sufficient cooling off Crl. A. 329/2012 Page 23 of 25 period. Thus, all the four essentials of Exception 4 stand satisfied: the offence was committed pursuant to a sudden fight, there was no pre- meditation, the single solitary blow was inflicted in the heat of passion without sufficient time to cool down, the appellant did not carry with him the weapon of offence and procured the same after the first altercation, and the appellant neither acted in a cruel nor unusual manner. [See Sandhya Jadhav v. State of Maharashtra, (2006) 4 SCC653(paragraphs 8 - 9)]..

44. However, having regard to the weapon of offence, i.e. dagger having a blade of 23 cms, and the severity of the injury caused, the appellant must be imputed to cause such bodily injury as was likely to cause death, if not the intention to cause death. Accordingly, the conviction of the appellant is modified from Section 302 to one under Section 304 Part I of the Indian Penal Code.

45. Having regard to the culpability of the appellant, the fact that the appellant has been incarcerated for about 8 years 5 months including remission, his conduct in jail has been satisfactory barring the one occasion of surrendering late by two days and the fact that he would have been of mere 21 years at the date of the offence, we are of the view that the ends of justice would be met if the sentence of the appellant is modified to imprisonment for the period undergone under Section 304 Part I IPC.

46. Thus, the appeal is partly allowed and orders of conviction and sentence are modified in the above terms. The amount of fine shall remain the same.

47. Trial Court record be returned along with copy of this judgment. Crl. A. 329/2012 Page 24 of 25 48. Copy of this Judgment be sent to the concerned Jail Superintendent for updating the jail record. JUNE01 2017 // G. S. SISTANI, J.

VINOD GOEL, J.