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Vipin Sharma & Ors. Vs.state

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Court : Delhi

Decided On : Nov-30-2018

Appellant : Vipin Sharma & Ors.

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved On:

30. 10.2018 Judgment Pronounced On:

30. 11.2018 CRL. A. 709/2018, Crl.M. (Bail) Nos.1076-78/2018 VIPIN SHARMA & ORS. ..... Appellants Through Mr. Ramesh Gupta, Senior Advocate with Mr. Bharat Sharma, Advocate Versus STATE ..... Respondent Through Ms. Radhika Kolluru, APP Insp. Pramod Kumar SHO/Krishna Nagar CORAM: HONBLE MR. JUSTICE SIDDHARTH MRIDUL HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT
SIDDHARTH MRIDUL, J1 The present appeal under section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C') assails the judgment and order of conviction and order on sentence dated 24.04.2018 and 08.05.2018 Crl. A. 709/2018 Page 1 of 37 respectively, in Sessions Case No.497/2016, titled as 'State vs. Mahadev Rawat and Ors.', emanating from FIR No.90/2011 (hereinafter referred to as the 'subject FIR').

2. By way of the impugned judgment and order of conviction and order on sentence dated 24.04.2018 and 08.05.2018 respectively, Vipin Sharma (hereinafter referred to as 'Appellant No.1'); Vivek Sharma @ Billo (hereinafter referred to as 'Appellant No.2') and Gaurav Sharma (hereinafter referred to as 'Appellant No.3'), were convicted and sentenced under the provision of section 302 read with section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') to life imprisonment along with a fine of Rs. 50,000 each, as well as, under Sections 323/3
IPC and sentenced to Rigorous Imprisonment for 1 year. In default of payment of fine, the Appellants have been sentenced to undergo simple imprisonment for a further period of six months. However, the benefit of the provision under section 428 Cr.P.C has been granted to the appellants. All the sentences have been directed to run concurrently.

3. Charge was also framed against the Appellants, as well as, three other accused persons, namely, Mahadev Rawat, Rajesh Sharma and Yash Gupta @ Chotti (hereinafter referred to as the assailants) under Section 3
of Crl. A. 709/2018 Page 2 of 37 the IPC and they were all convicted accordingly and sentenced to Rigorous Imprisonment of seven years each with fine of Rs. One Lac only by the Trial Court by way of said judgment and order on sentence dated 24.04.2018 and 08.05.2018 respectively.

4. The fulcrum of the case of the prosecution is that on 30.03.2011, the Appellants, in furtherance of their common intention attacked several persons present at Gali No.4, Shankar Nagar, Delhi (hereinafter referred to as the gali), namely, Kuldeep Thakur (PW-1), Subhash Chand (PW-7), Neeraj Chandhok (PW-8), Naveen Malhotra @ Akshay @ Vicky (PW-12), Sanjeev Malhotra (PW-13), Shivam Malhotra @ Pinku (PW-14) and Abhishek (PW-15) (hereinafter collectively referred to as the public witnesses) using weapons and during the course thereof, committed murder of one Gaurav (hereinafter referred to as the deceased) by inflicting multiple knife blows, including one on his abdomen.

5. On 30.03.2011 around 10:04 PM, HC Ram Prasad (PW-3) recorded DD No.32A in relation to the underlying incident. ASI Om Pal (PW-17) reached H. No.28, Gali

No.4, Shankar Nagar, Delhi (hereinafter referred to as the crime spot) and admitted the deceased, who had sustained stab injuries to GTB hospital. The PCR took the other injured persons, including Crl. A. 709/2018 Page 3 of 37 the assailants to different hospitals. Ct. Jitender Dagar (PW-18) and Insp. Subhash Kumar (PW- 40), the IO in the present case, collected the MLCs of the injured persons, including the eye witness PW-1, upon whose statement the rukka was prepared and sent for registration of the subject FIR. A scaled site plan was prepared on the pointing out of the crime spot at the instance of PW-1. [Ex.PW-4/A].. Pursuant thereto, the crime spot was investigated and photographs thereof were taken. During investigation, earth control, blood stained earth were seized. Articles including broken glass pieces, one blood stained shirt, a wooden thapi were seized and were sent for forensic examination. One wiper and a pair of blood stained slippers [Ex.PW-1/P3]. were also seized. Two motorcycles bearing registration number DL-7SBB- 3210 [Ex. PW- 1/P5]., as well as, DL-7SBA-6888 [Ex. PW-1/P4]. were seized.

6. The deceased was declared brought dead to the hospital at 11:15PM. The dead body of the deceased was identified by his relatives [Ex.PW- 18/S and Ex. PW-18/T].. Post mortem on the dead body [Ex.PW-26/A]. was conducted by Dr. Thejaswi (PW-26) and the body was handed over to the relatives of the deceased. The cause of death was opined to be hemorrhagic shock and its complications due to stab wound on the abdomen. Crl. A. 709/2018 Page 4 of 37 7. During the investigation of the case, on receiving information through secret informers, the IO along with PW-18 apprehended Appellant No.1[vide arrest memo Ex. PW-18/D]. and Appellant No.3[vide arrest memo Ex.PW- 18/I]. on 05.04.2011 and 21.04.2011 respectively from their residences. Appellant No.2 was subsequently arrested by IO along with PW-20 on 21.04.2011 [vide arrest memo Ex. PW-20/A]..

8. The disclosure statement of all the Appellants was recorded by the IO [exhibited as PW-18/F, PW-18/G, PW-18/K, PW-18/M, PW-20/C].. At the instance of all the appellants, the clothes worn by them at the time of the incident were recovered and seized [Ex. PW- 18/H, Ex.PW-20/E and Ex.PW-18/N]. and sent for forensic examination. Further, on the pointing out of the Appellants, the crime spot got verified [vide pointing out memos : Ex. PW- 18/P, Ex. PW- 20/D and Ex. PW-

18/L].. At the instance of Appellant No.2, one baseball bat which was used in the commission of the offence was also recovered from Brij Ghat Garhganga, U.P [Ex.PW-1/P6].. However, the knife used in inflicting the fatal blow to the deceased was not recovered. Test Identification Parade (TIP) of the Appellant Nos. 1 and 3 was conducted but they refused to participate in it. Crl. A. 709/2018 Page 5 of 37 9. By way of order dated 12.12.2011, charges were framed under sections 147; 148; 302 read with 149;
read with 149;
and
of IPC against all the accused. The accused pleaded not guilty and claimed trial. At the stage of evidence, in support of its case, the prosecution examined 42 witnesses. The statement of the Appellants was recorded under section 313 of the Cr.P.C. All the Appellants denied any recovery effected at their instance, as well as, claim over the case property so recovered. The assailants chose to examine 3 witnesses in their defence.

10. Broadly, the Trial Court has based the conviction of the Appellants on the following grounds : i. Deposition of the star witness, as well as, the material public witnesses confirming the involvement of the Appellants in the commission of offence; ii. Nature of injuries inflicted by the Appellants; and iii. Common intention to murder/cause injuries so inflicted.

11. Learned counsel appearing on behalf of the appellants limits his challenge in the appeal to urge that, even if allegations against the appellants are believed to be true, the case falls within the purview of Section 304 Part Crl. A. 709/2018 Page 6 of 37 II of the IPC and not under Section 302 thereof, inasmuch as, in the present case, only a single injury is found to be fatal and there is nothing on record that shows either preparation or premeditation on part of the appellants or discloses the motive behind the commission of the crime.

12. In order to buttress this submission, reliance would be placed on the decision of the Honble Supreme Court of India in Gurmail Singh and ors. v. State of Punjab reported as AIR 1982 SC1466 as well as, the decision of a Division Bench of this Court in Radhey Shyam v. State of NCT of Delhi being CRL.A. 1384/2012.

13. Learned counsel appearing on behalf of the Appellants would then urge that there are contradictions and improvements in the testimonies of the eye witnesses and save and except PW-1, the rest have turned hostile. It would be urged that therefore, it would not be prudent to base conviction thereupon.

14. Per contra, Ms. Radhika Kolluru, learned Additional Public Prosecutor appearing on behalf of the State, whilst supporting the impugned Crl. A. 709/2018 Page 7 of 37 judgment in its entirety, would urge that the findings of the Ld. Trial Court require no interference.

15. It would be asseverated that the prosecution has established beyond reasonable doubt, by way of cogent medical evidence, as well as, the evidence of the eye witnesses that the appellants have, with common intention, committed murder of the deceased and therefore, the mandate of the provisions of Section 302 read with Section 34 of the IPC is satisfied in the facts of the present case.

16. We have heard counsel appearing on behalf of the parties and perused the evidence on record.

17. On the facts of the present case, the court is confronted with the solitary question as to whether there was an intention to kill the victim thereby making out a clear case of an offence under section 302 IPC or was there an intention to merely cause bodily injury which would fall within the pale of section 304 Part II thereof.

18. For the sake of completeness, we may, at this stage, briefly recapitulate the relevant provisions of Section 300 and Section 304 IPC : 300. Murder.-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- Crl. A. 709/2018 Page 8 of 37 (Secondly) -If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or- (Thirdly) -If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or- (Fourthly) -If the person committing the act knows that it is so imminently dangerous that it must, in all

probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. homicide not murder.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. Exception 1.-When culpable is The above exception is subject to the following provisos- First.-That or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. provocation sought not the is Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. 304. Punishment for culpable homicide not amounting to murder Crl. A. 709/2018 Page 9 of 37 Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. 19. The Honble Supreme Court of India in Abdul Waheed Khan and Ors. v. State of A.P. reported as (2002) 7 SCC175 whilst appreciating the distinction between Section 299 and Section 300 of the IPC and in particular, clause (3) of Section 300 thereof, reiterated the principle laid down in the celebrated decision in Virsa Singh v. State of Punjab reported as AIR 1958 SC465as follows : 11. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC culpable homicide is the genus and murder, its specie. All murder is culpable homicide but not vice versa. Speaking generally, culpable homicide sans special characteristics of murder is culpable homicide not amounting to murder. For fixing punishment, proportionate to the gravity of the generic offence, three degrees of

culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide, which is defined in Section 300 as murder. The second may be termed as culpable homicide of the second degree. This is punishable under IPC practically recognizes the purpose of Crl. A. 709/2018 Page 10 of 37 this degree the first part of Section 304. Then, there is culpable homicide of the third degree. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of is punishable under the second part of Section 304.

12. The academic distinction between murder and culpable homicide not amounting to murder has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences: Section 299 A person commits culpable homicide if the act by which the death is caused is done- Section 300 Subject to certain exceptions culpable homicide is murder if the act by which the death is cause is done- (a) (b) with the intention of causing death; or with the intention of such bodily injury as is likely cause death; or causing to (c) with the knowledge that the act is likely to cause death. INTENTION (1) with the intention of causing death; or (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or (3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or KNOWLEDGE (4) with the knowledge that is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above. the act 13. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar

condition or state of health that the Crl. A. 709/2018 Page 11 of 37 internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the intention to cause death is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

14. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words likely to cause death occurring in the corresponding clause (b) of Section 299, the words sufficient in the ordinary course of nature have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word likely in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The Crl. A. 709/2018 Page 12 of 37 words bodily injury sufficient in the ordinary course of nature to cause death mean that death will be the most probable result of the injury, having regard to the ordinary course of nature.

15. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant Singh v. State of Kerala [AIR 1966 SC1874:

1966. Cri LJ1509 is an apt illustration of this point.

16. In Virsa Singh v. State of Punjab [AIR 1958 SC465:

1958. Cri LJ818 Vivian Bose, J.

speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 thirdly. First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The ingredients of clause thirdly of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows: (AIR p. 467, para

12) 12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 thirdly; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; These are purely objective investigations. Crl. A. 709/2018 Page 13 of 37 Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the

injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. 18. The learned Judge explained the third ingredient in the following words (at p. 468): (AIR para

16) The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. 19. These observations of Vivian Bose, J.

have become laid down by Virsa Singh locus classicus. The test case [AIR 1958 SC465:

1958. Cri LJ818 for the applicability of clause thirdly is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the Crl. A. 709/2018 Page 14 of 37 there was an intention to inflict intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in Virsa Singh case [AIR 1958 SC465:

1958. Cri LJ818 even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

21. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages. (Emphasis supplied) Crl. A. 709/2018 Page 15 of 37 20. The Apex Court in a catena of decisions has eloquently elucidated as to when the nature of an offence committed by an accused falls under the purview of Section 302 IPC and Section 304 Part II thereof, respectively. In Satish Narayan Sawant v. State of Goa reported as (2009) 17 SCC724 the Honble Supreme Court of India observed as follows : 35. Section 299 and Section 300 IPC deal with the definition of culpable homicide and murder respectively. Section 299 defines culpable homicide as the act of causing death (i) with the intention of causing death, or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such act is likely to cause death. The bare reading of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expressions

intent and knowledge postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

36. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then Crl. A. 709/2018 Page 16 of 37 the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court. 21. At this stage, it would be profitable to briefly encapsulate the legal position that emerges from a careful consideration of the above discussion, in light of the facts and circumstances of the present case, as follows : a) If the subject injury is intended and is not caused by an accident or otherwise is not unintentional and the injury is sufficient in the ordinary course of nature to cause death, then the same would fall under Section 300 clause (3) and be punishable under Section 302 of IPC; b) If there is intent and knowledge to cause a bodily injury likely to cause death, then the same would be a case of Section 304 Part I of IPC; and c) If it is only a case of knowledge and not intention to cause a bodily injury likely to cause death, then the same would fall under Section 304 Part II of IPC.

22. In the present case, the material public witnesses implicating the Appellants are eyewitnesses to the incident who have correctly identified the Crl. A. 709/2018 Page 17 of 37 assailants in the crime and corroborated with the prosecution story. PW-1 is the star witness of the prosecution, who has identified the Appellants and assigned specific roles to them in the commission of the crime. Therefore, it would

be crucial to first examine the testimony of PW-1.

23. In relation to the sequence of events, PW-1 has deposed that on the night of 30.03.2011 around 9:40 PM, while some of the residents of the gali were watching a cricket match at the spot, an altercation broke out between them and a group of 2-3 boys, who came to the crime spot on two motorcycles. Although the matter was pacified and the police was informed of the same, around 15-20 minutes later, a group of 8-10 boys, armed with knives, glass bottles, dandas, baseball bat and cricket wicket arrived at the spot and started attacking the residents present in the gali indiscriminately. Appellant No.2 held a baseball bat in one hand and a knife in the other and caught hold of the deceased. Appellant Nos. 1 and 3 inflicted the knife blows on the deceased. A resident of the Gali, namely, Naveen Malhotra @ Akshay @ Vicky (PW-12) intervened in order to save the deceased from their clutches and suffered a knife blow in the abdomen at the hands of Appellant No.2. in the scuffle. Crl. A. 709/2018 Page 18 of 37 Apart from the Appellants, the other assailants involved in the crime also came armed with knives and inflicted knife blows on the residents of the gali including PW-8, PW-14 and pelted glass bottles on them. He further deposed that two other assailants present on the spot were apprehended by the public and beaten up. He also stated that he took out the key from the ignition of the bike on which Appellant No.2 tried to flee.

24. The relevant portion of the testimony of the injured witness, PW-12, who sustained injuries at the hands of Appellant No.2, corroborating the testimony of PW-1 is as under: I have been residing at the aforesaid address since birth. I have been doing the work of driver for last about 12 years. On 30.03.2011, I along with other persons were watching Cricket Match on television at the ground floor in the house of Kuldeep Thakur bearing No.28, Shankar Nagar situated in Gali No.4. Cricket match was going on between India and Pakistan. As and when wickets of Pakistan were falling, children and public persons were expressing their happiness by bursting crackers. At about 9:40 pm, three boys came on a bike. Bike was being driven by accused Yash Gupta @ Chhoti, who is present in the court today (correctly identified). Two more boys of lesser age group were sitting on th bike as pillion riders. Accused Yash Gupta was driving the bike in rash and negligent manner. On this, uncle Subhash Chand Malhotra stopped him and asked him to

drive the bike slowly stating that kids were sitting as pillion rider. On this, accused Yash Gupta @ Chhoti became furious and left the spot. After some time, accused Yash Gupta again came along with 3-4 friends and quarreled with us. I do not know the friends of accused Yash Gupta @ Chhoti who had come along with him. The Crl. A. 709/2018 Page 19 of 37 locality people intervened and put the quarrel at rest and left the place again. We also made telephone call on 100 number. Police came there. After about 5 minutes, police also left the spot. I do not recollect as to who had made the telephone call on 100 number. After about 5 minutes, accused Yash Gupta @ Chhoti came along with Billu @ Vivek Kumar Sharma who is present in the court today (witness correctly identified) and some other persons whose names I cannot tell but I can I identify accused Vipin who had also identify them. come with these two accused. I cannot identify any other accused present in the court today. I had not seen remaining accused persons present in the court today as I had received stab injury. Accused Yash Gupta, Billu and Vipin along with other persons had come on foot, while running towards us. They were having dandas, knives and baseball bats with them. It was 9:45 pm. They started beating us with their respective weapons/arms. Accused Vipin Sharma gave knife blow to Gaurav Panesar. On this, I caught hold accused Vipin Sharma and asked Gaurav to run away from there. In the mean time, accused Billu @ Vivek Kumar Sharma stabbed me in my left side abdomen. After I received stab injury, accused Vipin Sharma also stabbed me in the front abdomen. Someone assaulted me on my head with some object from back side and I became unconscious. When I regained consciousness, I found myself in police jeep and at that time, accused Mahadev Rawat and accused Rajesh Sharma were also found sitting the police jeep. Accused Mahadev Rawat and accused Rajesh Sharma, both are also present in the court today (witness correctly identified). I was taken to GTB hospital. Later on, I came to know that Gaurav had expired. I do not want to say anything more about this case. (emphasis supplied) 25. PW-15, another injured witness who was stabbed by Appellant Nos. 1 and 3, supported the prosecutions case and deposed as follows: Crl. A. 709/2018 Page 20 of 37 I have been residing at the aforesaid address since childhood. In the year 2011, I was doing private job. On 30.03.2011, I along with other boys of our gali were watching cricket match on television which was going on between India and

Pakistan which was installed at the shop of H.No.28. As and when wickets of Pakistan were fallen, said boys were expressing their happiness by bursting crackers. At about 9:40 pm, three boys came in our gali on motorcycle while driving the said motorcycle in rash and negligent manner and pillion riders of the motorcycle were of tender age. Subhash Chand old person of our gali stopped the motorcycle rider and advised them to drive the motorcycle properly. On this, motorcycle rider misbehaved with Subhash Chand and became furious. Said motorcycle was being driven by accused Yash Gupta @ Chhoti who is present in the court today (witness correctly identified). Thereafter, accused Yash Gupta along with pillion riders left the spot by giving threat to boys of our gali by saying to see us after some time. Due to said threat, Kuldeep Thakur made telephone call on 100 number to the police. Police came there but police went back because said motorcycle rider had already left the spot. After departure of the police from the spot, about 10 boys armed with dandas, cricket wicket, glass bottles, baseball bats, knives and chhuri came on foot as well as on motorcycle and they started assaulting all of us. Name of those assailants were revealed as Mahadev, Rajesh, Shanky (Juvenile), Vipin Sharma, Yash Gupta, Raunak (PO) and Gaurav (brother of Rajesh). These accused persons were residents of Shanti Mohalla, Gandhi Nagar and I was knowing them before the incident. All the five accused persons present in the court today (withness correctly identified them) had assaulted us. Accused Billu @ Vivek Sharma, accused present in the court today (witness correctly identified) was exhorting the other accused persons to kill us. Accused Billu was armed with knife. I sustained stab injury in my abdomen in this incident as a result of which I fell down and became unconsciousness. I regained consciousness in the hospital. Crl. A. 709/2018 Page 21 of 37 I was caught hold by accused Vipin whereas I do not want to say accused Gaurav stabbed me. anything more about this case. (emphasis supplied) 26. A bare perusal of the testimony of PW-1, the star witness of the prosecution, as well as, other public witnesses would reveal that there was an altercation between the latter and a group of three boys who reached the spot, initially unarmed, on two motorcycles around 9:40 PM whereafter, they left the spot, extending threats to them. After 15-20 minutes to the incident, the assailants arrived at the spot, armed with sharp-edged weapons and attacked the public witnesses, as well as, inflicted grave

injuries on them and caused death of the deceased.

27. The Appellants arrived together at the crime spot post the altercation, armed with baseball bats, glass bottles, knives etc. Appellant No.2 caught hold of the deceased and Appellant Nos. 1 and 3 inflicted the fatal blow on the abdomen of the deceased. Appellant No.2 also gave a knife blow on the abdomen of PW-12, besides attacking the public witnesses indiscriminately. Therefore, the offence was found to be committed with enough time to meditate on the action to inflict serious injuries on the public witnesses present at the spot. Crl. A. 709/2018 Page 22 of 37 28. This circumstance, coupled with the threat extended by one of the assailants to not spare the public witnesses, which evidence to this effect remains unassailed, points unerringly towards the due deliberation on the part of the assailants, including the Appellants, enraged by the antecedent altercation that ensued between them and the public witness; as also elicit that the Appellants shared the common intention to cause fatal injuries to the public persons; and that, the Injury No.2 inflicted upon the abdomen of the deceased was a consequence of their common intention, which was sufficient in the ordinary course of nature to cause death, thus satisfying the mandate of Sections 302 and 34 IPC in the present case.

29. Furthermore, it would be observed that no plausible reason is offered by the Appellant Nos. 1 and 3 for refusal to participate in TIP which would be sufficient to draw an adverse inference against them.

30. The Honble Supreme Court of India in State of Rajasthan v. Dhool Singh reported as (2004) 12 SCC546, whilst promulgating inter alia the nature of injury, part of the body where it is caused and the weapon used in causing such injury to be the indicators of intention to establish an offence under Section 302 of IPC observed as follows : Crl. A. 709/2018 Page 23 of 37 13. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft in length on a vital part of the body, namely, the

neck. This act of the respondent though solitary in number had severed sternocleidal muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking and causing death of the victim, therefore, is wholly erroneous and cannot be sustained. 31. PW26 after conducting postmortem on the body of the deceased, opined the cause of death to be hemorrhagic shock and its complications due to stab wound on the abdomen. The injuries found on the body of the deceased are extracted hereinbelow : 1. Incised stab wounds measuring 3cms X02cms X95 cms obliquely placed is present on the left lower side of the chest 26.5 cms below the clavicle & 6 cm from the midline. The direction of the track is backwards, medially and upwards. On exploration of the wound track, it is seen cutting the abdominal walls muscles. Inter costal space, left dome of the diaphragm & upper end of the stomach. The lower medial angle of the stab wound is sharp & upper lateral is blunt. Crl. A. 709/2018 Page 24 of 37 through track, superior iliac spine.The wedge Incised stab wound of size measuring 3 cms x 0.2 2. cms x 11.05 cms, horizontally oriented is present on the left upper side of the abdomen. The medial end is located 6 cms from mid line & 10 cms above the anterior shaped wounds medial angle is sharp and lateral end is blunt. On further exploration of the wound track which is directed backwards and medially, omental tissue is seen lacerating inserting abdominal muscles peritonium cutting layers of the small the jejunum) through and through.

3. Reddish colored abrasion measuring 2 cms X15 cm is present on the lateral aspect of the right forearm in the backside 5.5 cm below the lateral epicondyle, 3 cm from its midline.

4. Reddish colored abrasion measuring 1 cm X04 cm is present on the outer aspect of the right forearm 13 cm below the elbow. intestine and the mesenteric

vessels (of the wound 5. Reddish colored abrasion measuring 1 cm X04 cm is present on the medial aspect of the right elbow 2 cms below the olecranon process.

6. Reddish colored abrasion measuring 2 cms X1 cm is present on the upper aspect of the knee joint just above the patella on the right side. Incised wound measuring 4.1cms X02 cms is 7. present on the right side of the scalp, obliquely oriented, 6cms from the midline & 12cms behind orbital ridge. The depth being 1.6 cms with bone being intact & its margin are clean.

8. Incised wound measuring 4.5 cms X02 cms is present on the right frontal region of the scalp, 3cms from midline & from right orbital ridges 15cms behind it.

9. Reddish colored abrasion 0.5cms X02 cms is present on the dorsum of the right hand 4cms below the wrist joint. (emphasis supplied) Crl. A. 709/2018 Page 25 of 37 32. In this behalf, the intention to kill can be ascertained from the medical evidence coupled with the magnitude of the injury caused with the sharp- edged weapon. The stab wound on the body of the deceased measured 3cms x 0.2cms x 9.5cms deep and the cause of death is opined to be hemorrhagic shock and its complications due to stab wound on the abdomen. The force with which the fatal stab/injury was caused by a dangerous sharp-edged weapon i.e. the knife, leads to an inescapable conclusion that the same is sufficient in the ordinary course of nature to cause death. A fortiori, the ferocity of the attack is further emphasized by the post mortem report [Ex. PW- 26/A]. which reveals that besides the fatal stab wound, multiple other blows were also inflicted on the body of the deceased. Thus, in the facts and circumstances of the present case, there can be no manner of doubt that the injury found to be present on the deceased was the injury intended to be inflicted.

33. Besides the injuries inflicted on the deceased, the MLCs of the injured public witnesses namely, PW-8, PW-12, PW-14, PW-15 exhibited as Ex. PW- 27/A, Mark X1 PW-30/A and PW-30/B reflect that the injuries sustained by the latter were also found to be grievous in nature. Crl. A. 709/2018 Page 26 of 37 34. It is a settled legal position qua discrepancies in the evidence of witnesses that unless the discrepancies are of material dimension, the same should not be used to jettison

the evidence of such witnesses in its entirety. In this behalf, reliance is placed on a decision of the Honble Supreme Court of India in State of U.P. v. Naresh reported as (2011) 4 SCC324 which observed as follows: embellishments inconsistencies, 30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. 9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. [Ed.: As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC186 p. 192, para 9.]. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the Crl. A. 709/2018 Page 27 of 37 testimony of the witness liable to be discredited. [Vide State v. Saravanan [(2008) 17 SCC587: (2010) 4 SCC (Cri) 5

AIR 2009 SC152 , Arumugam v. State [(2008) 15 SCC590: (2009) 3 SCC (Cri) 11

AIR 2009 SC331 , Mahendra Pratap Singh v. State of U.P. [(2009) 11 SCC334: (2009) 3 SCC (Cri) 1352]. and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC657: JT (2010) 12 SC287 .]. (Emphasis supplied) 35. The Ld. Trial Court on a conjoint reading of the testimonies of all the eye witnesses, rejected the contention to the effect that the prosecution case suffers from glaring contradictions and observed as follows : 73.From the material on record as well as deposition of the witnesses, PW-1 Kuldeep Thakurs testimony is

unrebutted on the issue that the two motorcycles rided by 2-3 persons at 9:45 pm and they had some altercations and while going away from the gali were intimated to the public persons including PW Subhash, Kuldeep Thakur etc. One of the person who came on the motorcycle is accused Yash Gupta who is correctly identified. Later on 8-10 boys came on motorcycles armed with wickets, lathies and baseball bats, glass bottles etc. and suddenly attacked with the said weapons, the accused Vivek Sharma holding baseball bat in one hand and knife in the other and caught hold Gaurav, deceased. Accused Gaurav Sharma and Vipin inflicted knife blow on the person of said Gaurav. Accused Billu gave a knife blow in the abdomen of Vicky. Billu also shouted that the Gaurav should not be spared and caught hold of him. Accused Gaurav Sharma and Vipin chased Gaurav (deceased): accused Mahadev Rawat and Rajesh Sharma gave beating to Sanjeev Malhotra with baseball bat and wicket. Accused Shanky stabbed Shivam in his abdomen. One of them also gave knife blow on inside his house. Accused Yash Gupta started Neeraj pelting glass bottles upon them. Abhishek, Neeraj Chanodk @ Vicky, Shivam and Kuldeep Thakur suffered Crl. A. 709/2018 Page 28 of 37 injuries. The suggestion made to this effect about the injuries not caused by the accused persons to the abovenamed injured have been vehemently denied and the role of each of the accused in the commission of the offence has been specifically narrated. Though there is a little bit improvement in the statement recorded before the court but the same is natural one and the witness has narrated the same in his own way as happened and observed from their vivid eyes. It is categorically denied by PW-1 Kuldeep Thakur that he did not tell the exact position of accused person to the IO and the Draftsman no such incident has taken place as the accused persons or that he had signed the memos subsequently. It is also denied that accused Yash Gupta was caught in the PS and was implicated falsely at his instance or that he is deposing falsely being tutored witness or that Subhash become a false witness at his instance. It is denied that accused Gaurav Sharma has beaten anyone or that his name has been implicated falsely. It is also denied that he identified accused Gaurav Sharma at the instance of the IO first time in the court. It is also denied that name of accused Vivek & Vipin has came to his knowledge through public he stated that he know them as he contested elections and name of Vipin was taken during incident. He was

beaten by accused Mahadev Rawat and Rajesh with baseball bats and danda. It is denied that the quarrel had taken place between him on one side and Vivek and his supporters on the other side and due to this reason he falsely named Vivek and his nephew in this case. It is also denied that he was not present at the spot or that for that reason he did not help the deceased or not intervened in the quarrel and that he is deposing falsely.

74. PW-7 Subhash Chand, PW-8 Neeraj Chandok, PW-12 Naveen Malhotra PW-14 Shivam Malhotra and PQ- 15 Abhishek have not denied that there is no such incident taken place in the gali Everyone who is witness of the occurrence has categorically testified that 8-10 boys came there and attached with chhaku chhuri etc. on the persons who came in their front and watching cricket match. PW-7 Subhash Chand categorically stated that- the accuse persons present in the court today are the same person who Crl. A. 709/2018 Page 29 of 37 came there and attached on the persons who were watching cricket match on the TV. My nephew and few others received injuries because of beating of the accused persons and one Gaurav had died. The deposition of above named witnesses have 75. been duly consistent and corroborated and on the contrary there is no evidence in rebuttal The suggestions made to these witnesses with regard to their identification involvement in the crime and caused no injury had been denied. to this effect.

36. The Honble Supreme Court of India in Govindaraju v. State reported as (2012) 4 SCC722whilst holding that the evidence of a hostile witness ought not stand effaced altogether and that the same can be accepted on a careful scrutiny to the extent found dependable and duly corroborated by other reliable evidence available on record, observed as follows. : 36. It is also not always necessary that wherever the the prosecution case must fail. witness turned hostile, Firstly, the part of the statement of such hostile witnesses that supports the case of the prosecution can always be taken into consideration. Secondly, where the sole witness is an eyewitness who can give a graphic account of the events which he had witnessed, with some precision cogently and if such a statement is corroborated by other evidence, documentary or otherwise, then such statement in face of the hostile witness can still be a ground for holding the accused guilty of

the crime that was committed. The court has to act with greater caution and accept such evidence with greater degree of care in order to ensure that justice alone is done. The evidence so considered should unequivocally point towards the guilt of the accused. Crl. A. 709/2018 Page 30 of 37 37. In view of the above legal position and having considered the testimonies of the public witnesses on record which duly corroborate with the testimony of PW-1 and further the circumstance that the statement of the latter has remained unshattered in his cross-examination despite a few embellishments that do not shake the case of the prosecution; it would be apposite to hold that the testimony of PW-1, the star witness of the prosecution is worthy of credence and inspires confidence.

38. Further, as rightly observed by the Ld. Trial Court that all the eye witnesses, save and except PW-1, albeit having been declared hostile, have given a consistent narration of the incident that corroborates with the material on record. PW-7, PW-12, PW-13, PW-14 and PW-15 have duly identified the Appellants. PW-12 has categorically assigned specific roles to Appellant Nos. 1 and 2 whereas, PW-15 has assigned specific role to Appellant No.2 in the commission of the offence, barring a few minor improvements which do not affect the core of the prosecution case. Hence, the same ought not to be discredited and rejected ipso facto.

39. In a catena of cases, the Honble Supreme Court of India has laid down the correct position of law qua testimony of an injured witness. In this regard, it would be profitable to extract the following paragraphs from the Crl. A. 709/2018 Page 31 of 37 decision of the Apex Court in Abdul Sayeed v. State of M.P. reported as (2010) 10 SCC259: Injured Witness:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) someone. Convincing evidence is required to discredit an injured witness. to

falsely implicate in order 29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC719: (2010) 1 SCC (Cri) 107]. , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29) 28. Darshan Singh (PW4 was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC235 1994 SCC (Cri) 1694]. this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC629:

2004. SCC (Cri) 2021]. a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact the witness that Crl. A. 709/2018 Page 32 of 37 sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC459: (2007) 2 SCC (Cri) 214].). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4 has rightly been relied upon by the courts below. 30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. (emphasis supplied) 40. In light of the above mentioned legal position, it would be relevant to observe that all the public witnesses present at the spot, at

the time of the incident are eye witness to the crime, except for PW-16, who reached at the spot after the assailants had left, on hearing noises of quarrel. Besides PW-16 and PW-7, all the other public witnesses received injuries at the hands of the assailants which is supported by the medical evidence on record and the evidence of the doctors [PW-27, PW-30, PW-39 and PW-43]..There is nothing on record to show any prior enmity of the public witnesses with the Crl. A. 709/2018 Page 33 of 37 assailants. In such circumstances, it is unlikely that they would let the actual assailants go scot-free and implicate an innocent person. In the absence of any convincing reasons to disbelieve an injured witness, his evidence stands on higher footing.

41. Coming to the reliance placed by learned counsel for the Appellants on the decisions in Gurmail Singh (supra) and Radhey Shyam (supra), the same is completely misplaced, inasmuch as, they are distinguishable on the basis of facts and circumstances, as well as, the evidence adduced therein.

42. In the case of Gurmail Singh (supra), the Honble Supreme Court of India upheld the conviction of the appellant therein for an offence under Section 304 Part II IPC on the ground that although there was an intention to inflict an injury on the deceased, who was an intervener in the scuffle that took place between the parties; and the injury was sufficient in the ordinary course of nature to cause death, there was no evidence to prove that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. The same is in stark contrast to the instant case where the totality of circumstances indicate that the bodily injury so caused, by way of the fatal blow, as well as, multiple blows on a Crl. A. 709/2018 Page 34 of 37 vital organ, such as, the abdomen of deceased, was the injury intended to be inflicted and sufficient in the ordinary course of nature to cause death.

43. The reliance placed on the decision in Radhey Shyam (supra) is clearly distinguishable on facts from the present case as the former involved an outbreak of a sudden fight, encompassed within the meaning of Exception 4 to Section 300 IPC whereas, the present is a fit case of premeditation to cause bodily injury sufficient in the ordinary course of nature to cause death, falling within the

meaning of Clause (3) of Section 300 IPC.

44. Insofar as the argument advanced by the appellant to the effect that there is nothing on record to show either the preparation or premeditation on part of the appellants or the motive behind the crime is concerned, the same would be of no assistance to the appellants, inasmuch as, the mandate of Section 300 IPC does not presuppose the existence of any premeditation, rather it postulates the existence of the element of intention to inflict particularly the bodily injury so caused that would be sufficient in the ordinary course of nature to cause death.

45. In sum and substance, the totality of circumstances have to be taken into consideration in order to ascertain the nature of the offence. The events antecedent to the incident will also have a bearing on the determination of Crl. A. 709/2018 Page 35 of 37 whether the act responsible for causing death was done with or without an intention of causing death or knowledge that it is likely to cause death.

46. In this behalf, in the present case, the return of the assailants including the Appellants to the spot, armed with dangerous weapons, after extending a threat to the public witness; and resultantly, causing Injury No.2 on a vital organ being sufficient in the ordinary course of nature to cause death with a shared common intention clearly and unequivocally attracts the provision embodied in Section 300 clause (3) IPC and the corresponding punishment in Section 302 thereof.

47. In view of the above-stated facts and circumstances, we see no infirmity in the finding of the learned Trial Court based upon just appreciation of the evidence in the present appeal and therefore the same does not warrant any interference.

48. Consequently, the conviction of the Appellants as recorded in the impugned judgment, as well as, the sentence awarded to each one of them by way of the order on sentence, are upheld.

49. Copy of the judgment be supplied to the Appellants through the Superintendent, Central Jail, Tihar and also be sent for updation of the records. Crl. A. 709/2018 Page 36 of 37 50. In view of the foregoing the present appeal

lacks merit and is dismissed with no order as to costs. Pending applications also stand disposed off.

51. The Trial Court record be sent back. SIDDHARTH MRIDUL (JUDGE) SANGITA DHINGRA SEHGAL (JUDGE) NOVEMBER30 2018/ns/as Crl. A. 709/2018 Page 37 of 37

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