Phool Singh and Ors. Vs. State

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Court : Delhi

Decided On : Apr-29-2015

Judge : G. S. Sistani

Appellant : Phool Singh and Ors.

Respondent : State

Advocate for Def. : Mr. Sunil Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 613/1999 Date of decision:

29. 04.2015 Appellants PHOOL SINGH & ORS. Through: Mr.Sheikh Issar Ahmed, Advocate Versus Respondent STATE Through: Mr. Sunil Sharma, APP for State with Inspector Ajmer Singh, PS - Punjabi Bagh. CORAM: HONBLE MR. JUSTICE G.S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL G.S. SISTANI, J.

1. Present appeals arise out of a common judgment dated 23.10.1999 and order on sentence dated 26.10.1999 passed by the learned Additional Sessions Judge in Session case No.11/98 by virtue of which all the appellants have been convicted under section 302/34 and section 307/34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), and sentenced to undergo Imprisonment for life and to pay a fine of Rs. 1,000/- each for the offence punishable under Section

302/34 of Indian Penal Code, and in default of the payment of fine to further undergo rigorous Imprisonment for a period of four months. The appellants were also sentenced to undergo Imprisonment for two years and to pay a fine of Rs. 500/- each for the offence punishable under Section 307/34 of IPC, and in default of the payment of fine to further undergo rigorous Imprisonment for a period of two months. All the sentences were ordered to run concurrently.

2. The appellant No.1 Phool Singh expired during the pendency of the appeal therefore his appeal stands abated. Accused Ramesh is a proclaimed offender.

3. The facts of the case, as noticed by the learned Trial Court, are as under:

(i) On 10.10.1997 at 7 p.m. PW8 Dharampal was at his house. The children came to him and told him that there is quarrel with his brother Satpal. When he came down he saw that his brother Satpal was coming towards house and when he entered the room, all the accused except Ramesh also came running behind him. Accused Naresh, Ramesh and Raju with Tilak Raj were having knives in their hands. Accused Phool Singh was having danda. All the accused dragged Satpal deceased into nearby Chopal from his house and assaulted him with knives. When Dharampal intervened to save his brother accused Phool Singh exhorted other accused to assault him. Satpal was assaulted with knife on his chest and abdomen. The mother, father and sister-in-law of Dharampal also came at the spot and they also tried to save the deceased but accused also assaulted them. Santra was given knife blow on the left side below shoulder and brick blow was given on the head of Dharampal. Dharampal was also given knife blow on his chest and father of Dharampal also received brick blow and danda blow on his head. The mother of Dharampal was also assaulted on her forehead with rod. She received some invisible injury. Dharampal went to PP to lodge report and he explained the facts in PP. Dharampal was sent to DDU Hospital in TSR. After 10/15 minutes of reaching hospital police called his brother, mother, father and Bhabhi to hospital in gypsy. The injured were medically examined by doctor and Satpal was declared dead by the doctor. (ii) PW3 const. Sukhpal Singh received wireless message from PCR about a quarrel and recorded DD No.22 and its copy was given to ASI Shishpal who left for the spot alongwith other officials. Incharge PP also left for the

spot. The copy of DD entry is Ex.PW3/A. (iii) After reaching the spot of incident he came to know that injured had already been taken to DDU Hospital in PCR Van. He dropped HC Purshottam Dass at spot and reached hospital along with other officials. IO obtained MLC of injured Dharampal, Kundan Lal, Satpal, Patase, Santra and Tilakraj. Statement of Dharampal (ExPW8/A) was recorded by IO. (iv) PW5 doctor Vivek Sharma examined complainant Dharampal and MLC Ex.PW5/A was issued. PW6 doctor L.K. Baruva conducted postmortem examination on dead body of Satpal and detailed report Ex.PW6/A was given. According to doctor, injury No.1 was sufficient to cause death in ordinary course of nature and injury No.1 & 2 were caused with sharp edged weapon and injury No.4 was caused with blunt weapon and similarly injury No.5 to 10 were caused due to impact against rough surface. (v) PW10 Inspector Devender Singh prepared scaled site plan Ex.PW10/A of the place of incident. PW12 is J.

C. Vashisht record clerk who proved MLC (Ex.PW12/A) of Santra prepared by doctor Anand who left the hospital and whose address is not known and also identified signature of doctor Veena at MLC Ex.PW12/B and PW12/C. Further PW12 and also identified signature of doctor Rakesh Gupta on Ex.PW5/A (MLC of Dharampal), PW12/D and on Ex.PW12/A(MLC of Santra) who has left the hospital and his present address is not known. (vi) At 1.30 am place of incident was photographed and after taking officials IO raided house of accused to arrest them but they could not be arrested. At 1.45 am SI Nand Kumar also came at the spot. IO received information regarding the accused Phool Singh, Naresh and Jai Prakash and accordingly, they were arrested at the pointing out of informer by the side of Kaccha wall of Naresh. All the accused were brought to SFL Flats and they were interrogated. Then they were taken to hospital and were sent behind bars. (vii) SHO Punjabi Bagh filed charge sheet against accused Phool Singh, Jai Parkash @ Raju, Tilak Raj & Naresh u/s 302/307/34 IPC. The case was assigned to this court by learned Sessions judge and after hearing both the parties charge u/s 302/34 and 307/34 IPC was framed against all the accused.

4. In order to bring home the guilt of the accused the prosecution examined 18 witnesses.

5. The appellants were examined under section 313 of the Code of Criminal Procedure in which they asserted that that they have been falsely implicated. Appellant Tilak Raj in his statement under 313 of Cr.P.C deposed that on 10.10.1997 PW8 Dharampal (complainant) came to his residence and quarrelled with him. He cried for help thereafter people of the village reached there and gave beatings to PW8 Dharampal. Appellant Tilak Raj further deposed that the PCR also arrived and took him to the hospital where his MLC was prepared thereafter police dropped him at his residence and arrested him the next day from his house at Madipur. No defence evidence was led by the appellants.

6. The learned trial court on consideration of evidence, found the prosecution story reliable and found the appellants guilty and convicted them u/s 302 and 307 of IPC read with section 34 of Indian Penal Code.

7. The counsel for the appellants submits that the learned trial court has completely overlooked the fact that the ocular evidence in the form of testimonies of the eye witnesses are not corroborated by the medical evidence. As per the prosecution the eyewitnesses received stab injuries but according to the MLC of the eyewitnesses there is no stab injury rather all the injuries were with blunt object. Thus there is no sufficient material to hold the appellants guilty for an offence punishable under Sections 302/34 of the Indian Penal Code.

8. The counsel for the appellants further contended that the prosecution has failed to prove the place of incident, there is no evidence which proves that the place of incident is near house No.WZ580Madipur. On the contrary it was submitted by the appellants that the place of incident is WZ231 Madipur which was manipulated by the prosecution and deliberately neglected by the investigating agencies.

9. The counsel further submits that there were no recoveries effected by the investigating officer, neither blood stained mud was taken for investigation purposes nor blood stained clothes of the deceased were taken into possession. Elaborating his arguments further counsel for the appellants submits that the weapon of offence used in the commission of offence has also not been recovered which makes the case of the prosecution more doubtful.

10. The counsel for the appellants further submits that ASI Kalyan Singh who took the injured to the hospital did not prove the place of occurrence and the names of the assailants were not disclosed to ASI Kalyan Singh nor to the doctor while recording the MLC. The trial court has overlooked the fact that injuries were sustained by the appellant Tilakraj which had been admitted by the prosecution in the FIR but the same have not been explained by the prosecution.

11. The counsel further submits that the incident took place at 7:00 p.m. on 10.10.1997 but the rukka was sent to the Police Station at 11:00 p.m. and FIR was recorded at 11:50 p.m. and no explanation has been offered for the delay in the registration of the FIR. Counsel further points out that the inquest proceedings were not conducted in the night but were held on the next day and the inquest papers reached the autopsy surgeon at 1:00 p.m. on 11.10.1997.

12. The counsel for the appellants also submits that the investigation in the present case was tainted and biased because no public witness was joined and examined. Counsel next submits that only interested witnesses were examined by the prosecution and the case could not have been decided on the testimony of interested witnesses.

13. Lastly, counsel for the appellants urged that even if allegations against the appellants are believed to be true, the case falls under Section304 Part II of IPC and not Section 302 of IPC. It has also been argued that the appellant No.2 & 3 have already undergone the sentence of more than seven years and appellant No.4 has undergone sentence for six years and nine months; and the conduct of the appellants in jail is also satisfactory and at no stage they misused the liberty granted to them, and thus the appellants pray that the order on sentence be modified to the period already undergone and in that case appellants would not challenge the judgment on conviction.

14. Per contra, Mr. Sunil Sharma, learned APP for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. There are three eye witnesses to the incident and perusal of their testimonies point towards the guilt of the appellants. Elaborating his arguments further, counsel for the state submits that all the three witnesses have attributed specific roles to the

appellants and their testimonies are consistent and supported by the medical evidences.

15. Learned APP for the State also contends that the prosecution has been able to establish the motive of the appellant which is corroborated by the testimony of PW8 Dharampal and PW11 Kundan Lal, that there was a plot of land in their possession which the appellant Phool Singh wanted to occupy.

16. Learned APP for the State also submits that in case there are any omissions and commissions by the investigating officer, the benefit cannot accrue to the appellants and the appellants cannot be acquitted solely on account of any technical defect.

17. Lastly, learned counsel for the state submits that the evidence produced on record clearly establishes the guilt of the appellants and the learned trial court has rightly convicted the appellants for the offence punishable under section 302 and section 307 Indian Penal Code, hence the impugned judgement does not call for any interference.

18. We have heard the counsel for the appellants as also learned APP for the State and considered their rival submissions. The counsel have also taken us through the record of the trial court and the testimonies of the witnesses.

19. The case of the prosecution rests on the testimonies of eye witnesses i.e. PW8 Dharampal, PW11 Kundan lal and PW15 Pataso.

20. PW8 Dharampal is the brother of the deceased and a complainant in the present case. PW8 in his testimony deposed that on 10.10.1997 he was present at his house and about at 7.00 pm some children came and told him that there is a quarrel going on with his brother Satpal. PW8 further deposed that when he came down he saw his brother Satpal (deceasd) coming towards his house and being chased by the appellants and that his brother Satpal (deceased) was crying while being chased. PW8 next deposed that appellant Naresh, Ramesh, Raju and appellant Tilakraj were carrying knives in their hands and appellant Phool Singh was carrying danda and that all these appellants dragged Satpal (deceased) in the

nearby chopal and started assaulting him with knife on his chest and abdomen. PW8 also deposed that when he intervened to save his brother Satpal (deceased) appellant Phool Singh exhorted other four appellants to assault me, my mother, my father and sister in law who had reached at spot by then. PW8further deposed that knife blows were inflicted on the left side below shoulder to his sister in law and brick blow and knife blow were given on his head and chest respectively. PW8 next deposed that his father received brick blow and danda blow on his head and his mother was assaulted on forehead with a rod. PW8 also deposed that he went to the police post from the roof side to lodge a report and explained the facts of the incident to one official sitting in the police post. PW8 further deposed that he was sent to DDU hospital in TCR from the police post and after 10-15 minutes his brother, mother, father and sister in law reached hospital in a police Gypsy and on being medically examined by the doctor, Satpal (deceased) was declared brought dead.

21. PW11 Kundan lal is the father of the deceased Satpal and PW15 is the mother of the deceased and they both deposed on the similar lines as PW8.

22. From the perusal of the testimonies of PW8, PW11 and PW15 we are of the view that there is absolutely no reason to disbelieve them and all the eye witnesses namely, Dharampal (PW8), Kundan Lal (PW11), and Pataso (PW15) are consistent in their respective testimonies. Further PW8, PW11 and PW15 have corroborated each other on all aspects.

23. Regarding the argument raised by the counsel for the appellant with regard to place of incident the testimony of PW13 HC Purshottam, it has been testified that on 10.10.97 he was posted at police post Madipur and after receiving DD No.22 he alongwith SI Nand Kumar, ASI Shishpal and Const. Vikram reached H. No.WZ-580, Village Madipur where they came to know that the injured has already been taken to DDU Hospital. Further PW13, in his cross examination PW13 stated that it is incorrect to suggest that he did not go to WZ-580 Madipur and he went to WZ-231 Madipur and also stated that blood was found at the spot in huge quantity and several pieces of bricks and stones were lying there.

24. Thus, from the testimony of PW13 it stands established that there was blood near house No.WZ-580, Madipur. Further, PW8, PW11 and PW15 in their deposition clearly stated that when the incident happened they were in their house i.e. House No.WZ-580 and this proves the place of occurrence. Accordingly, the submission of the counsel for the appellants is without any force.

25. As against the submission of the counsel for the appellants that there was delay in registration of case and the copy of FIR was not given to learned Metropolitan Magistrate personally nor learned Metropolitan Magistrate has been examined to prove that it was received by him on time, it can be noticed from the facts of the case that DD No.22 was recorded on 10.10.97 at 8.20 PM and immediately thereafter FIR Ex.PW14/B was registered at 11.50 PM and was sent out from the Police Station and was handed over at the residence to the servants of learned Metropolitan Magistrate. Supreme Court in Ishwar Singh Vs. State of U.P. (1976) 4 SCC355observed that:

Section 157 of the Code of Criminal Procedure, 1898 as well as of 1973 both requires the first information report to be sent forthwith to the Magistrate competent to take cognizance of the offence.

26. In our opinion, delay is not unreasonable as the Investigating Officer must have taken time to obtain the reports related to the death of the deceased. At the same time in the cross examination the investigation officer was not asked as to why the inquest proceedings were not prepared on the night of incident and the reason for delay in postmortem of the deceased.

27. The learned counsel for the appellants also found fault for not examining ASI Kalyan Singh who took the injured to the hospital. In our view this fact is not of much importance as ASI Kalyan Singh was not an eye witness to the incident but he was merely a formal witness who took the injured to the hospital and his nonexamination is not fatal to the case of the prosecution.

28. The law with regard to motive is well settled that it is not necessary for the prosecution to prove the motive for the crime and conviction can take place even if motive does not stands established as held in the case of State of U.P. v. Hari

Prasad (1974) 3 SCC673 wherein Apex court observed that:

This is not to say that even if the witnesses are truthful, the prosecution must fail for the reason that the motive of the crime is difficult to find. For the matter of fact, it is never incumbent on the prosecution to prove the motive for the crime. And often times, a motive is indicated to heighten the probability that the offence was committed by the person who was impelled by that motive. But, if the crime is alleged to have been committed for a particular motive, it is relevant to inquire whether the pattern of the crime fits in with the alleged motive.

29. PW11 Kundan Lal, father of the deceased in his testimony deposed that house of appellant Phool Singh is adjacent to his house and they share a common wall. PW11 further deposed that appellants had a grievance against them due to a plot at Bhagwanti Mandir Road which was in possession of the deceased and his family and appellant Phool Singh wanted to take forcible possession of the said plot and used to threatened them. PW8 in his testimony corroborated the depositions made by PW11. Relevant para of the testimony of PW8 Dharampal, brother of the deceased is reproduced below:

There was quarrel also before incident over plot situated near Shiv Mandir between my family and accused. They used to tether buflow there over which we objected. Accused tried to take illegal possession of plot several times and threatened us to go to court given on pretext of money and manpower. I lodged report on police Ex.PW8/A bears my signatures at point A. Our house is situated adjust to house of accused and they used to quarrel daily. Before assaulting Satpal, Phool Singh was exhorting that let Satpal be finished and I was assaulted on my head.

30. Learned trial court observed that from the perusal of the testimony of PW8 Dharampal and PW11 Kundan Lal, motive has been clearly established and it stands proved that there were quarrels between appellants and the deceased and his family with regard to a plot of land which was in their possession and the appellant Phool Singh wanted to occupy the same. We agree with the observation made by the learned trial court that the motive to kill the deceased stands proved as evident from the testimonies of PW8 and PW11.

31. The learned counsel for the appellants also submitted that in the MLCs of the deceased or of the injured witnesses, the names of the assailants were not mentioned. With regard to this submission in our view the learned trial court rightly concluded that when the injured were taken to the hospital, the deceased was unconscious and injured were also in fear after seeing the condition of the deceased and in the situation did not give the names of the assailants to the doctor. Further in the case of Ishtkar & Anr. Vs. State of Delhi, Crl. Appeal No.152/2004 it has been held by Delhi High Court that:

We find no force in the submission of the counsel for the appellants that since the injured was alive when he was removed to the hospital, he could have given the name of the assailants, whom he knew, to the doctor.

Thus in the light of above case, we may agree with this view that different persons react differently to a situation and there cannot be any straightjacket formula that as to how a person would react in a situation like this. In the case of Rana Pratap v. State reported at 1983 Cri.LJ1272it has been held that to discard the evidence of a witness on the ground that he did not react in particular way, is to appreciate the evidence wholly in unrealistic and unimaginative manner

32. The position of law in this regard is clear that in case the injured does not mention the names of the assailants to the doctor, this by itself cannot be a ground to discredit the case of the prosecution. Neither the doctor is under an obligation to write the names of assailants on the MLCs, as not mentioning the names to the doctor can be for a number of reasons including that the doctor may not ask or the person who has accompanied the victim or deceased may not be in a fit state of mind to give the names or the person may not be aware that the name of the assailants is to be given to the doctor as the general perception is that the name is to be given to the police. Hence this argument of the learned counsel for the appellants is without any force.

33. The next contention raised by the learned counsel for the appellants was that PW8, PW11 and PW15, being the brother, father and mother of the deceased, respectively, are interested witnesses so their testimonies are not reliable and trustworthy because they belong to the same family and that no independent

witnesses were examined by the prosecution due to which the investigation was tainted and biased.

34. There is no quarrel to this proposition that the evidence of interested or partisan witnesses are to be examined with great care and caution and require great scrutiny. It would be worthwhile to note herein the observations of this Court in Crl.A.No.470/2003 Harish Vs. The State and more particularly paragraphs 41, 42 and 44, which reads as under:

41. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of Masalte v. State of Uttar Pradesh, reported at AIR1965 Supreme Court 202, relevant portion of which is reproduced below:

14. Mr. Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

42. Similar view has also been expressed in the case of State of Punjab v. Karnail Singh, reported at AIR2003 Sc 3613 wherein it has been observed that :

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC364 in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J.

it was observed:

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rajasthan' AIR 1952 SC54at p.59. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

9. Again in Masalte and Ors. v. The State of U.P. AIR 1965 SC202this Court observed : (pp. 209-210 para 14):

But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

10. To the same effect is the decision in State of Punjab v. Jagbir Singh : AIR 1973 SC2407and Lehna v. State of Haryana:

2002. (3) SCC76 As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. : AIR 1981 SC1390 normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who are not normal, and not expected of a normal person. Courts have to lable the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc. : JT2002(4) SC186

44. Again in the case of Manoj v. State of Tamil Nadu, reported at JT20075) Sc 145 wherein it was held that 9. In regard to the interestedness of the witnesses for furthering the prosecution version, relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

10. In Dalip Singh and Ors. v. The State of Punjab it has been laid down as under: A witness is normally to be a 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 relation 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 there 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 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 generalization. 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 rue. Each case must be limited to and be governed by its own facts.

35. Similarly in the case of Gangadhar behera and Ors. Vs. State of Orissa reported at AIR 2002 SC3633 the Honble Court held that:

Relationship is not a factor to affect the credibility of a witness. It is more often that a relation would conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

36. Keeping in view the law discussed above and on careful examination of the testimonies of PW8, PW11 and PW15 we find that the submission of learned counsel for the appellants is without any force for the reason that the appellants were identified by PW8, PW11 and PW15 and their testimonies stand corroborated by the post mortem report Ex PW6A and the opinion of the doctor. Hence the testimonies of PW8, PW11 and PW15 are truthful and reliable and the graphic details of the incident by all the witnesses are almost identical. Further the time, place and the manner in which the incident took place is also identical. In their testimonies, all the witnesses have given a correct account as to how the appellants had inflicted injuries and on which portion of the body of the deceased; the manner in which the deceased was dragged; and the manner in which stones were pelted. Thus, the testimonies of PW8, PW11 & PW15 cannot be rejected merely on the ground that they happened to be the relatives of the deceased.

37. The next contention raised by the learned counsel for the appellants was that the investigation is faulty as the Investigating Officer did not lift blood stained mud and blood stained clothes from the spot and that no weapon of offence was recovered. With respect to faulty investigation, it will be useful to go through the testimony of PW18 SI Nand Kumar, Investigating Officer who in his testimony deposed that:

I did not examine any witness residing near WZ-580 to prove that incident took place near that house. XXXXX I did not lift anything such as blood or weapon of offence from that place or pieces etc. to show that incident took place there.

PW18 SI Nand Kumar, Investigating Officer in his testimony admitted that he did not take blood sample from the spot nor weapon of offence was recovered. It is clear that the Investigating Officer did not make the effort to affect such recoveries for the reasons best known to him and on the basis of this trial court observed that the Investigating Officer favoured the appellants openly and did not put any effort to investigate the case properly.

38. In the case of C. Muniappan v. State of T.N., (2010) 9 SCC567 it has been held by the Honble Supreme Court that:

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. Similar view was taken by the Apex Court in the case of Sunil Kundu v. State of Jharkhand, (2013) 4 SCC422 wherein it was held that:

29...It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the depreciable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality.

If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored....

In yet another case of Hema v. State, (2013) 10 SCC192 it was observed by the Apex Court that:

18. It is clear that merely because of some defect in the investigation, lapse on the part of the investigating officer, it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions, etc. it is the obligation on the part of the court to scrutinise the prosecution evidence dehors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth.

39. On the basis of the law discussed above, we are of the opinion that despite there being a lapse on the part of IO in lifting sample of blood stained mud, blood stained clothes from the spot and the weapon of offence, the benefit cannot be given to the appellants as the prosecution was able to complete the chain of circumstances which can only lead to the conclusion of guilt of the appellants. One of the reasons to remove the earth from the spot of the incident is to establish that the incident took place at the said site. In the present case this fact stands duly established based on the testimonies of PW8, PW11 and PW15 and also from the DD entry No.22.

40. Counsel for the appellant also submitted that the trial court has overlooked the fact that there were injuries sustained by appellant Tilakraj which had been admitted by the prosecution in the FIR but the same has not been explained by the prosecution. In this regard the law is well settled that where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

41. In the case of Takhaji Hiraji vs. Thakore Kubersing Chamansing and Ors. reported in (2001) 6 SCC145 the Supreme Court dealt with the question of non-

explanation of injuries sustained by the appellant by the prosecution. The Supreme Court observed that in Rajender Singh vs. State of Bihar, (2000) 4 SCC298 Ram Sunder Yadav vs. State of Bihar, : (1998) 7 SCC365and Vijayee Singh vs. State of U.P (1990) 3 SCC190 all three Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before the non-explanation of the injuries on the person of the accused by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution.

42. Similarly In State of Gujarat vs. Bai Fatima, (1975) 2 SCC7 the Supreme Court held that there may be cases where the nonexplanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. In the present case the injured Tilak Raj was not admitted to the hospital which would show that the injuries of Tilak Raj were minor in nature.

43. The last submission of the learned Counsel for the appellants is that in any event, the present case does not fall within Section 302 of IPC and the appellants be given benefit of Section 304 of IPC. In order to consider the contention of learned Counsel for the appellant, it would be fruitful to have a look at the law relating to murder and culpable homicide which has been discussed in the judgments given below: In Virsa Singh vs. State of Punjab, AIR 1958 SC465 it has been held as under:

..whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code.

In the case of Chacko @ Aniyan Kunju and Ors. Vs. State of Kerala 2004) 12 SCC269 it was held by Honble Supreme Court that: 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 the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes 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 the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type 10. The academic of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. 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:

1. 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 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.

2. 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 probability as distinguished from a mere possibility. The 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.

44. In Shiv Kumar Vs. State (NCT) of Delhi 2014(2) JCC1 282, it was held that in dealing with Exception 4 to section 300 in Mahesh Balmiki versus State of Madhya Pradesh, (2000) 1 SCC310 it has been observed:

7. Now Exception 4 to Section 300 IPC is in the following terms: Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. Explanation.--It is immaterial in such cases which party offers the provocation or commits the first assault. The requirements of this exception are: (a) without premeditation in a sudden fight; (b) in the heat of passion upon a sudden quarrel; (c) the offender has not taken undue advantage; and (d) the offender has not acted in a cruel or unusual manner. Where these requirements are satisfied, culpable homicide would not be murder.

In another case of Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC444 the Honble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Court observed:

...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally

absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention...

Similarly in Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC528and Sukbhir Singh v. State of Haryana (2002) 3 SCC327 it was observed that : ...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused Appellants had come prepared and armed for attacking the deceased....

45. The distinction between 304 Part I and Part II has been drawn by the Honble Supreme Court in Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC648 in the following words: .....For punishment Under Section 304 Part I, the

prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death.... In another case of Jai Prakash v. State (Delhi Administration), 1991(2) SCC32 the Apex Court held as under:

...when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death, it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in Virsa Singh case the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused... 46. From a perusal of the aforesaid judgments it becomes clear that if the offence under any of the clauses under Section 300 itself is not made out, the offender would be liable for committing an offence of culpable homicide not amounting to murder under Section 299 IPC punishable under either Section 304 Part I or Part II of the IPC.

47. While deciding the present appeal we need to keep in view the true and accurate version of the prosecution as to the origin and genesis of the occurrence, it is inferable from the circumstances that the occurrence had happened in a spur of moment and in the heat passion upon a sudden quarrel. Crl. Appeal

No.613/1999 The inference is fortified by the Page 30 of 32 testimony of PW8 Dharampal that he was informed that there was a quarrel with his brother Satpal and when he went downstairs he saw his brother Satpal coming towards the house and when he entered the room the accused Naresh, Ramesh, Raju and Tilak Raj were following him with knives in their hands. Accused Phool Singh was having a Danda. They all dragged Satpal near the Chopal of the house and when he intervened to save his brother, accused Phool Singh exhorted other accused and Satpal was assaulted with knife on his chest and abdomen, his father received a danda blow on his head and his mother and sister in law also received minor injuries. Thus, the occurrence had happened most unexpectedly in a sudden quarrel and without pre-meditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, the offence falls within the purview of part II of Section 304 of the Indian Penal Code. We are supported in this view by a series of decisions of this Court, namely, (1) Jagrup Singh Vs. State of Haryana , (2) Kulwant Rai Vs. State of Punjab , (3) Randhir Singh Vs. State of Punjab (4) Gurmail Singh and Ors. Vs. State of Punjab. and (5) Jagtar Singh Vs. State of Punjab. Following the ratio of the aforementioned decisions, we hold in the present case that the offence committed by the appellant is the one punishable under Section 304 Part-II of the Indian Penal Code but not under Section 302 of the Indian Penal Code.

48. On the issue of sentence to be inflicted upon these appellants, we note that all the appellants have already undergone a sentence for more than 7 years. Nominal roll do not evidence their involvement in any other offence and do not even raise any doubts on the conduct of the appellants during their period of incarceration. We have been informed that even after granting bail the appellants were not found involved in any criminal activity and they are leading their respective lives peacefully with their family members.

49. Taking into consideration the individual profile of these appellants as stated above, we are of the view that the sentence already undergone by these appellants would be sufficient to meet the ends of justice. Ordered accordingly. Appeal partly allowed.

50. Trial Court record be sent back along with a copy of this order. G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

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