

**Ashok Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Mar-31-1983

**Reported in :** 1983(2)Crimes70; 24(1983)DLT20

**Judge :** R.N. Aggarwal and; G.R. Luthra, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300; [Evidence Act, 1872](#) - Sections 332

**Appeal No. :** Criminal Appeal No. 57 of 1980

**Appellant :** Ashok Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** B.B. Lal,; Dhanbir Singh,; R.P. Kathuria,;

**Judgement :**

**G.R. Luthra, J.**

(1) 1.ON 18th December, 1979 an Additional Sessions Judge, Delhi convicted Ashok appellant for having committed an offence punishable under Section 302 Indian Penal Code and sentenced him to undergo imprisonment for life and pay a fine of Rs. 1,000.00 It was found that he (Ashok) committed murder of his real sister Kusum Lata and her husband Suresh. The motive of the crime was that Kusum had the cheek to defy opposition and break the shackles of her family in

selecting Suresh as her life partner and marrying him on September 23, 1975 at Arya Samaj Mandir, Sector No. 1, N.I.T., Faridabad.

(2) Previously the case was pending before the Court of Sessions, Gurgaon but by means of an order dated October 16, 1978 the Supreme Court transferred the case to the Court of Sessions, Delhi.

(3) Kusum Lata was living with her parents at F-5/2, Krishan Nagar Delhi. Just in front of the said house, Suresh was living with his parents in house No. F-4/1 Krishan Nagar, Delhi. Both the families were having good relations. Kusum used to get lessons of sewing and stitching from Sint. Chand Rani (Public Witness 31), mother of Suresh. Thus an opportunity of meeting each other by Suresh and Kusum existed. With the approach of youth both developed deep love for each other. The family of Kusum was against the matrimonial alliance between Kusum and Suresh. When they came to know about the aforesaid love affairs, they brought it to the notice of parents of Suresh and told in point blank words that the former did not approve of the love culminating into marriage. Kusum was defiant and bluntly told her family members that she must marry Suresh. The family of Suresh also started opposing the marriage. But the opposition of the family was not able to cool down his yearning for taking Kusum as better half. The allegation of the prosecution is that Kusum was given severe beating many a time by her brothers including Ashok appellant as well as her maternal uncle yet the desire of Kusum was not quelled According to prosecution family of Kusum, including Ashok extended threats of killing to both the lovers.

(4) Secretly from their families, Kusum and Suresh married on September 23, 1975 at Arya Samaj Mandir and started living merrily at Faridabad. Suresh, being a Graduate of Mechanical Engineering got a job in a factory at Faridabad. Family members of Kusum were scarring. On October 10, 1975, (statements of Bhup Singh, Public Witness 38, Vijay Kumar Public Witness 19 and S. D. Kaushal, Public Witness 12), father of Suresh and Vijay Kumar told Suresh that Ashok, Subhash. Ram Chander, Ram Kumar and Munna intended to; take away Kusum from Faridabad and they were threatening to kill Suresh to which Suresh replied that all those 5 persons had already met him and Kusum and that Kusum had

refused to go back along with them.

(5) Then the. ominous day of October 13, 1975 arrived. It was on that day- that Kusum died of stab injuries while Suresh received such injuries by way of a dagger which ultimately resulted in the death of Suresh on October 15, 1975 at about 6.15 p.m.

(6) The case of the prosecution is as follows. Ashok went to the home of Suresh and Kusum which consisted of one room in house No. 1-B-89, Punjabi Colony, Faridabad township. He wanted to take back Kusum to which the latter was not agreeable. He took a knife (which has been described as dagger as well as chhuri also) from an almirah and stabbed at her chest at about 7 p.m. She died on the spot. There was grappling between Ashok and Suresh also and the former caused injuries in abdomen and chest etc. to the latter. In the scuffle, Ashok also received some minor injuries on the fingers of his left hand and some other places. Hakim Khan (Public Witness 13) who was one of the owners of the house in which Suresh and Kusum were living, Mahipal (Public Witness 14), a resident of that house and Pritam Lal (Public Witness 15) who was having a shop on the outer side in the same building and who had gone to 1) the inner portion of the building for taking water from a hand pump, arrived at the spot. They caught hold of Ashok and also snatched the dagger from him. Ashok was kept at the spot by Pritam Lal and Mahipal while Hakim Khan left for the police post for lodging a report. In the way near about a ganda nala Faridabad, S. 1. Rameshwar Dass (Public Witness 37) who was' then in charge of Police Post Mujesar and happened to be on patrol duty, met Hakim Khan at 8.15 p.m. who gave information to the former. S. I. Rameshwar Dass recorded statement of Hakim Khan Ex. Public Witness 37/A On the said statement Rameshwar Dass made endorsement Ex. Public Witness 34/ and sent the same through Patch Singh, Constable for recording of formal Fir at the police station (Central) Faridabad.

(7) Suresh was taken away by ambulance to B. K. Hospital, Faridabad. It was on account of telephone call by Hakim Khan that ambulance came. In B. K. Hospital, Faridabad at about 8.15 p.m. on October 13, 1975 itself, Suresh was medically examined and treated by Dr.-R. K. Sharma (Public Witness 2) who was then

working as Casualty Medical Officer. Dr. Sharma found the following injuries on his person : 1. Stab wound on the abdomen, size 1.25x0.75 deep peritonium. Omentum was protruding out from the wound. 2. Stab wound left side chest in front, 2.5' away from mid line and 4' below left nipple, measuring 0.5X0.25' and depth was not explored. 3. Incised wound superficial on palmar aspect of right thumb, middle and ring finger measuring 0.73'X1/6'X1/6' each. At that time Suresh was conscious and was able to talk and, therefore, he disclosed his name, name of his father and the place where he was working. After giving some treatment, Dr. Sharma referred Suresh for admission and treatment in Safdarjung Hospital, New Delhi.

(8) In Safdarjung Hospital, Suresh was received by Dr. Dharam E Pal who was then working in the Casualty Department of the said hospital. Dr. Dharam Pal prepared the casualty ticket Ex. Public Witness 10)A. It was at 10.59 P.M. on October 13, 1975 that Suresh was admitted in the Emergency Ward of the said hospital. Dr. Ragwan handed the case. He found that the abdomen of Suresh was rigid and there was a wound on the abdomen just above the umbilicus about 2' X ' in size and the said wound was inclined towards liver. Dr. Ragwan took advice of Dr. P. C. Rai (Public Witness II) of the Safdarjung Hospital and Suresh was operated upon on October 14, 1975 at 2 A.M. The findings of the operation are as under:

On opening the abdomen, there was profuse bleeding and about 1000 c.c. of blood was present in the abdomen. There was bleeding in the transverse mesocolon. The bleeding was stopped by ligating the arteries. There was incised wound in the right lobe of the liver, 1'X1" size. There was a through and through wound in the middle of the transverse colon, about 1'X 1/2' size. There was another wound 1/2'X 1/2" size in the transverse colon towards the hepatic flexure. There was 1 1/2" wound in the ascending colon with no viability of cut. The injured colon was brought out and colostomy was done. The wound in the liver was closed and the abdomen was closed in layers.

At 10 A.M. on October 14, 1975 Suresh was restless. He was examined by Dr. P. C. Rai (Public Witness 11). He found that there was sudden fall of blood pressure

and his impression was that the said fall was due to high hypovolaemia or septicaemia.

(9) It was on October 14, 1975 at about 10 P.M. that father (Shri S. D. Kaushal, Public Witness 12) and mother (Smt. Chand Rani, Public Witness 31) of Suresh came to know that the latter was admitted in Safdarjung Hospital. Shri S. D. Kaushal (Public Witness 12) reached the said hospital at about 10.30 or 10.45 P.M. Smt. Chand Rani (Public Witness 31) accompanied by her daughter also reached the said hospital. Suresh was then in the Emergency Ward. Smt. Chand Rani asked Suresh as to what happened to which the latter replied that he had been injured by Ashok who had also killed Kusum.

(10) On October 15, 1975 at about 5 P.M. Shri S. D. Kaushal (PW 12) met Shri Maha Singh, (Public Witness 17) the then S. 1. in Police Station Vinay Nagar and told the latter that the condition of Suresh was very serious, that Suresh was likely to die and that, therefore, his statement must be recorded. Shri Maha Singh then immediately went to the hospital. He tried to contact the doctor in charge of the ward in which Suresh was. But he was not available. Suresh was on a bed near operation theatre. An under training doctor was present. Shri Maha Singh asked the said doctor if the statement of Suresh could be recorded. The said under training doctor told that he could not give any opinion as to whether the patient was fit to make a statement or not. A nurse was also present. Maha Singh felt that Suresh was in a critical condition and was- not likely to survive. He, therefore, talked to Suresh who was speaking in a faltering manner. On an enquiry, Suresh told that he could give statement. One Dr. R. L. Verma (PW 3) employed in the Anatomy and History of Medicine Department of All India Institute of Medical Sciences, New Delhi happened to be present. Dr. R. L. Verma was holding degree of Bachelor of Indian Medicine and Surgery but he was employed in All India Institute of Medical Sciences as Persian and Arabic Scholar because he happened to possess a degree of Munshi-Fazal in Persian and a diploma in Arabic. Dr. R. L. Verma happened to go there in connection with meeting a foreign, doctor. S. 1. Maha Singh then recorded the statement of Suresh which is Ex. Pw 3/A. Thumb impression of Suresh was taken on the said statement. Suresh then stated that he could sign also. So a pen was given to Suresh and he signed the statement in

broken letters. Since the first thumb impression already taken was not clear, another thumb impression was taken. The statement of Suresh was recorded in the form of questions and answers, and will be dealt with in detail hereinafter. The sum and substance of the statement was that he was stabbed in his house at Faridabad by Ashok. At about 6.15 P.M. on October 15, 1975 itself Suresh breathed his last. The post mortem on his dead body was performed on October 16, 1975 at about 5 P.M. by Dr. Bharat Singh (PW 16). Police Surgeon, Delhi. The findings of Dr. Bharat Singh were as under:

'1. One stitched wound over the right para medial line 8" long x abdominal cavity deep. (Operational wound). 2. One stitched wound over the left side front of abdomen 1/2" above the umbilicus placed obliquely with tale and directed outward. Size of the wound was 1 1/2" x abdominal cavity deep. 3. One incised gapping wound over the right side front of abdomen in anterior axillary line 9" below the armpit through which loafs of intestine was protruding out. Size of the wound was 2' X 1' X abdominal cavity deep. 4. Operation wound on both size of lower part of abdomen for drainage tube. 5. One stitched wound over the left side of chest 4' below the nipple. Size 1/2' x mussel deep. Tale end was downward. 6. One stitched wound on the left side back of chest below the inferior angle of scapulla, placed obliquely size 1"x2|10x3|10'.

7. One linear healing wound over the palmer surface of right thumb size 1/2' long. 8. One incised wound over the palmer surface of distal inter-phalange joint placed horizontally. Size 1/2' X muddle deep, clotted dried blood was present on the surface of the wound. Internal Examination One stitched wound was present on the transverse colon below injury No. 2. It was 2' long into lumen deep. There, was one stitched wound over the transverse colon 2' away from the above stitched wound 1' long. There was a gapping wound over ascending colon below external injury No. 3 though which faeces were coming out. There was mild degree of inflammation of peritoneum. Liver, spleen and kidneys were normal. Stomach was empty. Bladder contained clear urine. Rectum was empty. Lungs were normal. Heart was normal. Skull bones were normal. Brain was normal. All injuries were ante-mortem. Injuries No. 1, 3 and 4 were operational. Other injuries were caused by a sharp weapon, Injury No, 2 was sufficient to cause death in ordinary course of

nature. .... .All the injuries except the operational ones could have been caused by the dagger Ext. P1.' According to Dr. Bharat Singh, all the aforesaid injuries except the operational ones could have been caused by the dagger Ex. P1. It may be recalled that this was the dagger which was recovered from the scene of occurrence as having been used by Ashok for causing injuries to Kusum and Suresh.

(11) Kusum, as already stated, died at the spot at Faridabad itself. Inquest report was prepared by S. 1. Rameshwar Dass (Public Witness 37). For the purpose of preparing the inquest report he recorded statements of Rasool Khan (Public Witness 32), (one of the owners of the building in a room of which the occurrence took place) and Mehar Chand-(PW 33), one of the residents in the same building. That report is Ex. Public Witness 2|H. The dead body of Kusum along with inquest report etc. were sent for post mortem examination which was performed at 2 P.M. on October 14, 1975 by Dr. R. K. Sharma of B. K. 'Hospital, Faridabad. He found a stab wound on the chest in front portion on the left side in the sixth inter-costal space measuring 1 1/4" X 1/3' X 5 1/2" The wound was 1 1/2" away from mid-line. The doctor found the following:

The direction of the wound was back-ward and upward. There were also corresponding cuts on the left side pleura, lung and left ventricle, and also on the pericardium'. There was profuse bleed and blood clots present around the cut viscera. Left side chest cavity was also full of blood and blood clots. There were also corresponding cut marks on the Saree and Blouse.

He expressed his opinion that the injury was sufficient in the ordinary course of nature to have caused death, and that the same could have been caused by the dagger Ex. P1.

(12) Ashok was apprehended at the spot by S. 1. Rameshwar Dass (Public Witness 37) who took into possession blood stained red shirt, black pant and a banian of Ashok. Ashok was formally hand- cuffed at 2 A.M. (on the night between October 13/14, 1975) and was put into lock up of the police station at about 6.30 A.M. of October 14, 1975.

(13) As Ashok had also some minor injuries he was also got medically examined from Dr. M. M. Sharma (Public Witness 1) of B. K. Hospital, Faridabad. Dr. Sharma found the following injuries on the person of Ashok : 1. Incised wound front of terminal phalanx of left little finger. Wound was spindle shape edges and margins were clean cut. Edges were united by a blood clot, soft and on removing of the clot, oozing of blood was found to be present. The size of the wound was 1 cm X 5cmX 3 cm, placed slightly obliquely downwards and upwards. 2. Superficial cut on the distal part of middle phalanx of left finger, direct obliquely size was 1.2 cmX .1 cm. 3. Superficial cut on terminal phalanx of left ring finger, 2 cm from the distal crease. It was obliquely placed. Size was 1 cm X .1 cm. 4. Superficial cut on the middle phalanx of left middle finger, size was 1 cm X. 1 cm obliquely placed. 5. Superficial cut on terminal phalanx of left middle finger, .4 cm from distal crease. Size was .8 cmX .1 cm. 6- Superficial cut .4 cm distal to injury No. 5. Size was 1.5 cm X 1 cm. It was obliquely placed. 7. Superficial cut on the terminal phalanx of left index finger. Size was 1 cm X.1 cm. 8. Superficial cut on middle phalanx of left index. Size was .8 cm X.1 cm. 9. Abrasion on the inner side of left thumb, .5 cm distal to the proximal crease. Size was 1 cmX.5 cm. It was covered by soft scab. 10. Abrasion .5 cm distal to injury no. 9. Size was .5 cm. x 4 cm. Soft scab was present over it. 11. Contusion on front of left thigh obliquely placed. Size was 7.5cmX1.5 cm radish in colour. 12. Abrasion front of left knee size was 1 cm X, cm. 13. Contusion on front of right thigh. Size 7 cmX 2 cm radish in colour obliquely placed. 14. Abrasion back of right forearm, 1 cm below elbow. Size was 1.5 cm X.5 cm.'

(14) According to Dr. Sharma, injuries 1 to 8 could be caused by sharp edged weapon which could be dagger Ex. P1 while injuries 9 to 14 could be caused by blunt weapon. He also expressed the opinion that injuries 9 to 14 could be caused as a result of fall due to grappling.

(15) In his statement under section 313 of the Code of Criminal Procedure, Ashok admitted that to the disliking of his parents, brother and him, Kusum had fallen in love with Suresh and wanted to marry him. He also admitted that Kusum left on September 23, 1975 and joined Suresh at Faridabad. He expressed ignorance if Suresh and Kusum were married at Faridabad. He denied that he ever went to

Faridabad or that he was' instrumental in the murders of Kusum and Suresh. He also denied that he was arrested at the scene of occurrence at Faridabad on October 13, 1975. He further denied that the red shirt Ex. P8, black pant Ex. P 9 and banian Ex. P10 belonged to him or that they were taken into possession from his person. According to him, he was arrested from his residence at Krishan. Nagar at about 4 a.m. on October 14, 1975, that his brother Subhash, his father Ran Chander and he were taken in a taxi to police post Mujesar. He alleges that all the three including him were given beating and that the injuries which were found to be existing on his person on medical examination were inflicted at the police station (Central), Faridabad

(16) There is overwhelming evidence to prove the motive of the crime. According to prosecution, as already mentioned, the family of Kusum first employed the method of beating and threats to her life as well as Suresh for dissuading her from continuing to tread the path of love affairs , when all their attempts failed, Ashok killed the couple. It is admitted by the appellant that his sister Kusum and Suresh had fallen in love and that they wanted to marry despite strong opposition of both the families. There is also no denial that Kusum left for Faridabad. Shri S. D. Kaushal (PW 12) and Smt. Chand Rani (Public Witness 13), father and mother respectively of Suresh deceased, after making statements about the love affairs of both the deceased and their going away from Delhi, narrated as to how threats, to life were being received both by Kusum and Suresh from the family members of Kusum. S. D. Kaushal stated that a few -months before the incident of murder, he once saw accused Ashok threatening Kusum. Lata in his house and shouting that they would murder her and that Ashok then was having a dagger in his hand. He also deposed in respect of heating given to Kusum and that once she was showing injuries on her body to her neighbouring girls and friends when she was beaten by her maternal uncle. This is more or less the statement of Smt. Chand Rani (Public Witness 31). Smt. Shakuntala Dave (Public Witness 30) as she states, was living as a tenant in. house No. F5/2, Krishan Nagar, Delhi and that she had resided, in that very house for several years. After telling that parents and family members of Kusum including Ashok were unhappy over the love affairs between Kusum and Suresh and the insistence of Kusum that she must marry Suresh, she narrated that brothers' of Kusum including Ashok, her maternal uncle

and father used. to threaten and beat her from time to time, that once she was taken to the house of her maternal uncle and on return she told that she was beaten there and that her maternal uncle had even put a knife on her chest to threaten her. She is a very natural witness being a close neighbour. Her statement was not challenged in cross-examination. Only one question was asked from her to which she replied that police did not record her statement at all. But that fact is not at all sufficient ground for discarding her statement having regard to the fact that she being a close neighbour had always the opportunity to see what was happening in the family of Kusum.

(17) There are some letters of Kusum written to Suresh which indicate that threats to her life were being extended by her family members including Ashok. The prosecution placed on record 7 letters of Kusum which are Ex. X-1 to Ex. X-4 and Ex. X-6 to Ex. X-8. Letter Ex. X-4 dated nil reads that she will face the consequences, that at the most she could be killed, that she did not care for her death because one dies once only and not more than once. Same is expressed in letter Ex. X-8 also. In the letter Ex. X-6 the following words used by Kusum are material:

Ashok and brother were getting enraged very much. They get ready to either to kill or die even on petty matters. For this reason I had told you to go inside as I thought that in case some body said anything to you, I will be forced to speak against my family members.

(18) In the letter Ex. X-7 Kusum describes the threats in the following words : (The original is in Hindi and it is the English translation which is being reproduced).

Suresh if any members of my house gives any threat to you or causes physical harm to you please do consult me before leaving Ghaziabad. It is just possible that in case you consult me, you will not be leaving for any other place. Whatever is to be done by us we will do together and it will be in Our interest.

(19) There is one letter of Suresh written to Kusum and the same Ex. X-5. English translation of a portion of the said letter reads as under:

KUSUM, your family members have told my father that he should ask his son to retrace his steps otherwise, dead bodies will be coming out from both of the houses.

It apparent from 'the above letters that Ashok and other family members of Kusum were posing real threat of life to her as well as Suresh. Further, the trend of the letters aforesaid shows that both Kusum and Suresh were trying to boost the morale of each other and were advising to each other not to worry and that soon the atmosphere would be cleared.

(20) The next link in the chain of the case of the prosecution is that Kusum and Suresh were married on September 23, 1975 which was intolerable to the appellant and his family members. The marriage stands proved from the statements of Sunder Lal (PW 4), K. L. Mehta (Public Witness 5) and Mohan Singh (Public Witness 6). K. L. Mehta (Public Witness. 5) stated that he was President of Arya Samaj, Nehru Ground, -NIT Faridabad and that he performed the marriage ceremony of Suresh and Kusum on September 23, 1975 at Arya Samaj Mandir. He also brought the record of marriages maintained by the Arya Samaj Mandir. Mohan Singh (Public Witness 6) stated. that he was present at the time of the aforesai'd marriage. According to Sunder Lal (Public Witness 4) he was running a shop of photography in Sector 1, Nit Faridabad and that he took photographs of the ceremonies of a marriage at Arya Samaj Mandir on September 23. 1975. He placed on record a negative photograph Ex. Public Witness 4/A and positive of the same Ex. Public Witness 4/B. He stated that he did not remember the names of the bride and the bride-groom but that in the photograph Ex. Public Witness 4/B the bride-groom was marked as 'X' and the bride as 'Y'. K. L. Mehta (Public Witness 5) also supported the factum of taking of photographs Ex. Public Witness 4jB at the time of marriage of Suresh and Kusum. He pointed out that the bridegroom and bride were at points 'X' and 'Y' in the said photograph, K. L. Mehta (Public Witness 5) is shown at point 'Z,' in the same.

(21) Ever since Kusum had left Delhi, her family members were searching for her and wanted to bring her back. S. D. Kaushal (PW 12) states that on October 10, 1975 Vijay Kumar (Public Witness 19) and he went to Faridabad to see Suresh,

that Bhoop Singh (Public Witness 38) joined them at Faridabad, that he wanted to warn Suresh to be careful in respect of the threats of killing which were being received from the family of Kusum. He adds that they reached the factory where Suresh was working and at about 11.30 p.m. met the latter. He further states that he told Suresh 'that Ram Chander, Ashok, Munna, Ram Kumar and Subhash were threatening to kill him unless the address of Suresh and Kusum Lata were told because they wanted to take away Kusum. He (S. D. Kaushal) further narrated that Suresh told that Kusum and he were married, that the aforesaid 5 persons, (Ashok etc.) had come and wanted to take back Kusum who refused to accompany them and that they had gone away. The aforesaid statement is supported 'by the statements of Vijay Kumar (Public Witness 19) and Bhoop Singh (Public Witness 38). Bhoop Singh also described as to how S. D. Kaushal came to his house at Faridabad and asked the former to accompany the latter to the Nuchem Plastic Factory where his son Suresh was working, that therefore he accompanied S. D. Kaushal to the said factory where it was found that Suresh was in the night shift which was to start at 12 mid-night, that ultimately after waiting for some time, son of S. D. Kaushal came and told that he had already married the girl and that neither he was ready to send her back nor the girl was ready to go back on which S. D. Kaushal warned that some boys would kill him (Suresh) because they wanted to take away the girl. Bhoop Singh gave the name of some of the boys as Munna and Ram Kumar.

(22) As already mentioned, the actual sad occurrence took place on October 13, 1975. Hakim Khan (Public Witness 13), Mahipal (PW 14) and Pritam Lal (Public Witness 15) supported the entire prosecution version before the police and that is why they were examined as witnesses but before the Court Public Witness 13 and Public Witness 15 deposed as to the grappling between Suresh and a boy (named Ashok by Pw 15) and they had found Kusum lying on one side of the floor. Hakim Khan told that 3 or 4 years back at about 7 p.m. he heard shrieks from the room of Suresh and Kusum, that Mahipal, Pritam and he were there outside the room, that he found that Kusum was lying on one side of the floor and Suresh was grappling with another boy whom he did not know, that grappling was going on over a knife and that each was trying to snatch the knife. He added that the boy who was grappling with Suresh was wearing red shirt and black pant. He, in examination in

chief supported the prosecution story to this extent that he had lodged a report with Si Rameshwar Dass who met the former at the ganda-nala but on cross-examination by the appellant he made a somersault and stated as follows :  
Question building: I suggest it to you that your statement at Ganda- nala was not put into writing and your signatures were taken there on a blank paper 'Ans' : This is correct.'

(23) Statement of Pritam Lal (Public Witness 15) is to the effect that on October 13, 1975 at about 7 or 7.30 p.m. he went to take water from a hand pump installed in the building in a room of which Suresh and his wife were residing, that he heard shrieks from inside the room of that boy, that Hakim Khan came out of his room, that Mahipal was already present at the hand pump for taking water and that he saw that a girl was lying on the floor with face down and that two boys were grappling with each other. He added that Hakim Khan, Mahipal and he separated the boys, that the boy who was residing in that building was crying and that the other boy whose name was later On known from the police as Ashok was made to sit there by Mahipal.

(24) The aforesaid statements of Hakim Khan and Pritam Lal show that there was grappling between Suresh and Ashok, that each wanted to take possession of the knife and that Kusum was laying on the floor with her face downward.

(25) Mahipal did not state anything about grappling, According to him, he heard a noise and reached inside the house of Hakim Khan, that many people had collected and that he saw through the window of the room of Suresh that Kusum was lying dead on the floor of the room while Suresh was lying in agony and there was a young boy in the room who was just standing. He further told that Kusum had stab injury on her person and was bleeding, that Suresh was lying on a cot and had bleeding injuries on his abdomen. 25A. The statements of the aforesaid witnesses made in the court receive corroboration from the statements of Rasool Khan (PW 32) and Mehar Chand (Public Witness 33) who supported the prosecution version a little further.

(26) Rasool Khan (Public Witness 32) stated that at about 6.30 p.m. he reached the room where Kusum and Suresh were staying, that Kusum was lying dead and

that Suresh was injured and that Ashok was there. He added that Kusum had knife injuries on her chest, that Suresh was lying in front of window of the room and he had several stab wounds. He further stated that Ashok was standing in the room in between the body of Kusum and the place where Suresh was lying and that Ashok was having some injuries on his hand. He also stated that police sent Suresh to hospital, that dead body of Kusum continued to lie there, that Ashok was taken away to police station by the police and that he signed the inquest report Ex. Public Witness 2/H. He also stated that before the police came, Pritam and Mahipal kept the room bolted from outside while the dead body of Kusum. Suresh in injured condition and Ashok were inside and after the police came, Ashok was handed over to the police.

(27) Mehar Chand (Public Witness 33), as he says, was residing in a room adjacent to the room where Suresh and Kusum were residing. He narrated that when he reached his residence at about 7.30 or 8 p.m. he learnt of the occurrence, that he saw that dead body of Kusum was lying that police was sitting outside the room, that police was having custody of the boy present in court (pointed out towards the appellant), that husband of Kusum was not there and that he had already been removed to the hospital. He testified that inquest report was prepared by the police in his presence and that he signed the same (Ex. Public Witness 2/H) at point 'Y'.

(28) These two witnesses, as is apparent, arrived at the spot after the occurrence was complete and they testified as to the presence of the appellant at the spot having been first apprehended by Pritam and Mahipal and then having been handed over to the police. Their statements obviously belie the version of the appellant that he was not arrested at the spot but was arrested from his house at Krishan Nagar, Delhi.

(29) S.I. Rameshwar Dass (Public Witness 37) who recorded the statement of Hakim Khan and sent the same for recording the first information report and who investigated the case is also very important. His statement is that when he reached the place of occurrence, he found Mahipal and Pritam were keeping control over Ashok Kumar, appellant, that dead body of Kusum was lying in the

room, that she had a stab injury on the left side of her chest and that Mahipal produced the dagger Ex. P1 which was taken into possession by him. He added that the aforesaid dagger was blood stained when it was produced by Mahipal (PW 14).

(30) Shri B.B. Lal, learned counsel for the appellant, assailed the credibility of all the witnesses. He explained that Public Witness 13, Pw 14 and Public Witness 15 were unreliable because on account of having made different statements before the police, at the request of the public prosecutor they were permitted to be put such questions which could be asked in cross-examination, that meant that prosecution itself had lost faith in such a witnesses and that then how it could be safe for the court to place reliance on the statements of such witnesses. The learned counsel, urged that the trial court had wrongly selected only some lines, which favored the prosecution, out of the statements of the aforesaid witnesses which amounted to wrong approach. He condemned the statement of Rasool Khan (Public Witness 32) on the ground that he had given a version against the version of the prosecution, that according to the case of prosecution Suresh was sent in an ambulance before the arrival of the police at the place of occurrence and statement of Hakim Khan was recorded at Ganda Nala and not at the spot while Public Witness 32 stated that Suresh was sent to hospital by the police after their arrival and that statement of Hakim Khan, Mahipal and Pritam were recorded at She spot. He further attacked the statements of Public Witness 32 and PW33 on the ground that they were merely witnesses to the inquest report, that they did not state anything about the occurrence before the police, that yet they had stated something about the presence of the police and Ashok at the spot. and in which condition Suresh and Kusum were. He concluded that statement of Rameshwar Dass S.T. police could not be believed " because he being police officer was interested in the success of the prosecution and also, as held by the trial court, it was doubtful if the daily dairy entry and the first information report relating to occurrence was recorded at the time at which it was purported to have been recorded. The learned counsel asserted that actually the aforesaid daily dairy entry and the first information report were recorded after Ashok appellant was arrested from his residence in the morning of October 1975 but the time of recording was shown as 8.45 p.m. on 13th October, 1983 byway of not allowing

making of entry in the daily diary as well as the first information report register, till the report in the daily diary and the first information report were recorded in the present case.

(31) The learned counsel also pointed out that the very basic prosecution story to the effect that all the three witnesses PW13, Public Witness 14 and Public Witness 15 were watching as to the happening in the room of Suresh and Kusum from 6 to 7 p.m. was totally improbable because no person would stand for such a long time outside the room of another and Suresh could have objected to their standing at the door of their room for such a long time.

(32) It is true (as already stated) that Public Witness 13, Public Witness 14 and PW15 supported the entire prosecution story before the police but they did not do so before the trial court and at the request of public prosecutor he was allowed to put such questions to the said witnesses as could be asked in cross-examination. But that factor by itself is no ground for discarding their entire statements as absolutely useless and nothing more than a scrap of paper. In *Satpal v. Delhi Administration* : 1976 CriLJ295 , the Supreme Court dealt with the evidentiary value of such witnesses. It was held that the evidence of such a witness could not be discarded as a whole, that such evidence cannot be treated as washed off the record altogether and it was for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction the witness stood thoroughly discredited or could still be believed in regard to a part of his testimony. It was further held that in respect of such a witness due caution and care should be exercised and a court could in the light of the other evidence on record accept such part of testimony of such a witness which the court finds to be creditworthy. The approach the trial court was in accordance with the law laid down by the Supreme Court. It appears to us that the appellant or his relatives were able to tamper with such evidence and these witnesses had become willing to depart from the statements given by them before the police except to the extent the truth cannot be departed from and that is why Hakim Khan who was the star witness of the prosecution and who was the person who had lodged the report was too willing to toe the line of the appellant in cross-examination. In examination-in-chief, he had stated that he was going for lodging the report with the police when he met S.

1. Rameshwar Dass (Public Witness 37) on the way and that he gave the statement before the said police officer. He also said that he signed that statement. That means that the statement was recorded and then he signed the same yet in the cross- examination he was too willing to accept the suggestion of the appellant that it was on a blank paper that signatures were obtained. The relevant portion of his cross-examination has already been reproduced.

(33) The discrepancy in the statement of Public Witness 32 in respect of sending Suresh in ambulance to hospital can be ascribed to an or of memory. It was in quick succession that events were happening. It was only a small gap between the dispatch of Suresh in ambulance and the arrival of police. thereforee. an impression might have struck in his memory that it was after arrival of police that Suresh was sent to hospital whereas he had been sent earlier. Further, there is no contradiction as far as recording of statement of Hakim Khan in It'S presence is concerned. Statement of Hakim Khan was not confined to one time only. Supplementary statements had to be recorded under section 161 Cr. P.C. thereforee, as it appears Public Witness 32 was referring to the recording of supplementary statement of Hakim Khan which fact goes in harmony with the recording of the statement of Hakim Khan at Ganda, Nala also.

(34) There is no reason to disbelieve Mehar Chand (Public Witness 33) and Rasool Khan (Public Witness 32) on the ground that their statements under section 161 Criminal Procedure Code. were not recorded. The fact remains that they signed the inquest report. They are also natural witnesses on account of the fact that both of them arc residing in the same building and Mehar Chand was in occupation of a room adjacent to that of Suresh, The mere fact that Public Witness 37 is a police officer is no ground to disbelieve him especially when it has not been shown that he had any enmity against the appollant. The appellant is a resident of Krishan Nallar. Delhi and there could not be any chance of his antagonising Public Witness 37 in any way who belongs to Haryana Police.

(35) Then there is evidence to corroborate the statements of the aforesaid witnesses. That corroborative evidence, in view of the judgment of the Supreme Court referred to above, is sufficient to believe and rely upon those portions of the

statements of PW13, Public Witness 14, and Public Witness 15 which support the prosecution version and lends further assurance to the veracity of statements of PW32, Public Witness 33 and Public Witness 37. That corroborative evidence consists of establishing of a fact beyond doubt that Ashok appellant was arrested at the spot. The prosecution has placed on record a copy of an application Ex. Public Witness 3?IQ filed by Shri B.L. Malhotra, Advocate, Gurgaon on behalf of Ashok for grant of bail to the latter. In that application the opening sentence is that the accused (applicant was arrested in the case by the Central Police Faridabad on October 13, 1975. There is mention of Fir No. 39 dated October 13, 1975 Police Station (Central) Faridabad under section 304 Indian Penal Code .which are the particulars of the present case. That application was filed on December 12, 1975. It is, thereforee, apparent that even upto December 1975 the appellant was admitting that it was on October 13,1975 (and not on October 14, 1975 which is the case now) that he was arrested. Obviously that arrest was at Faridabad. It is apparent that the defense now being put forward is totally an after thought and having been. prepared after examining all the records and getting full searching and scrutinising legal advice. In December 1975 the case was at the initial stage. At that time neither the appellant nor his counsel knew that in the records of the police station, Faridabad, the- appellant was shown to have been put in the lock-up at 6.30 a.m. on October 14, 1975. It further appears that as soon as that fact came to be known by an advocate of the appellant, a brain wave came that a plea of arrest of the appellant from his residence than from the spot be taken. thereforee, it was considerably at a late stage that the present defense of denial of arrest at the spot and arrest from residence was chalked out and put forward.

(36) The further corroborative evidence is that when the aforesaid application was given, there was no denial about the occurrence and participation of the appellant in the same. At that time emphasis was on a plea of exercise of right of private defense and existence of incised wounds on fingers of a hand of Ashok and other injuries were being utilised for substantiating that defense. With that object in view, following was stated in para 4 of the aforesaid application for bail.

The accused is also otherwise entitled in exercise of judicial discretion of the court to be released on bail because there being admittedly a large number of incised

wounds on his person, the issue regarding the accused having acted in self defense shall be a hotly contested issue at the trial. In this situation the case furnishes a special feature for the grant of bail to the accused.

The: aforesaid, therefore, indicates that the appellant was present when the occurrence took place and that he took part in the same. This circumstance vouchsafes the veracity of the statement of Hakim Khan(PW13) that there was grappling between Suresh and Ashok over the possession of the knife and in that process the appellant received minor incised wounds on the fingers. The appellant also received six other injuries description of which has already been given. As already stated, according to Dr. Sharma the injuries 1 to 8 could be caused by a sharp edged weapon which could be dagger, Ex. Pi, while injuries 9 to 14 could be caused as a result of fall due to grappling.

(37) Statement of Hakim Khan (Public Witness 13) is to the effect that the boy who was grappling with Suresh was wearing a red shirt and black pant. Those clothes along with banian of the appellant were taken into possession by Si Rameshwar Dass (Public Witness 37) who prepared the seizure memo Ex. Public Witness 37/E in that respect. It was sent to the Forensic Science Laboratory and it was found (see report dated February 20, 1976 Ex. Public Witness 37/K) that the said bushirt and pant were having human blood on them. That clearly shows that not only the appellant had taken part in the grappling but was also arrested at the spot.

(38) Shri B.B. Lal, learned counsel for the appellant, contended that even if it were taken for granted that grappling between Suresh and Ashok stood proved, it could not be said as to who was the assailant and that, therefore, the benefit of doubt must go to the appellant.

(39) But the circumstances of the case are such that there is no question of Suresh and Kusum being the assailants. Both Kusum and Suresh had run away from their families. They wanted to live together in peace at Faridabad, completely divorced from the affairs of their respective families, if not for ever, at least for some time after the marriage. It was on his own accord that Ashok came up. There is evidence that previously also (already referred) on October 10, 1975 Ashok and

others tried to take back Kusum but were unsuccessful. therefore, it was only natural and probable- that Ashok had come with the dosing of taking back Kusum to his house to which Kusum resisted and there was flare up and Ashok who had the past history of threatening Kusum, attacked her with knife with the result that Kusum succumbed to injuries. The further version that Ashok also attacked Suresh, on account of which there was grappling and ultimately Suresh received serious and dangerous injuries is also natural and probable. It was absolutely improbable in the circumstances that Ashok received injuries on account of exercise of right of private defense or on account of having been attacked.

(40) It may be mentioned that in his statement under section 313 Criminal Procedure Code. Ashok merely exposed ignorance about the aforesaid bail application and did not deny any of the content or the filing of the application itself. The relevant question and answers reads as under:

Q.56 It is in evidence against you that your counsel Shri B.L.Malhotra, Advocate representing you moved an application Ext. Public Witness 37/Q for seeking your release on bail before the Sessions court, Gurgaon on 15-12-75 stating therein that you had been arrested on 13-10-75 and further that there will be a contest on the issue of your having acted in exercise of right of private defense. What have you to say? Ans: I do not know anything.' That clearly shows that that application was made, at his instance and or on the basis of his instructions.

(41) Although from the aforesaid evidence it stands established beyond all reasonable doubt that it was Ashok Kumar appellant who had caused deaths of Kusum and Suresh, yet there is some more evidence which independently proves his guilt. That evidence consists of dying declarations of Suresh, first in time being before his mother on October, 14, 1975 and for the second time before Maha Singh, S.I. police (Public Witness 17) and Dr. Verma (Public Witness 3) on October 15, 1975. As already mentioned Smt. Chand Rani (Public Witness 31) is the mother of Suresh. Her statement in this respect reads as follows:

I then went to Safdarjung Hospital along with my daughter. Suresh was in Emergency Ward, I saw him. When I addressed him he asked if i did not know

about earlier. He said to me that he had been injured by Ashok and that he had been harassed by his family members. He also said that Kusum had also been killed by Ashok and also spoke out that he did not know that Kusum's Jeeja had come to his house with such an intention to see his house to get them killed.

According to the learned counsel for the appellant, it was not safe to rely upon Public Witness 31 because, she being mother, could be expected to implicate Ashok by setting up aforesaid dying declaration. Learned counsel also stated that the trial court had not relied upon aforesaid dying declaration

(42) There is no doubt that we have to be captious in accepting the testimony of mother,. But there is hardly any justification to discard that without scrutiny. There cannot be any manner of doubt that she, as mother, must have gone to hospital and sat with her injured son. It is also most natural for her to ask immediately from her son as to how he received injuries. Son must reply and tell correctly, as he cannot have any motive to implicate anyone wrongly Had Suresh named some one else as assailant, his mother would have been-the last person to implicate an innocent person and she must have given correct version before the court with a view to bring the real offender to book. It could never be her desire that real culprit should go scot free and an innocent person should be punished, Hence if Ashok was innocent and had not been named as assailant by Suresh, Smt. Chand Rani (Public Witness 31) would not have named him. We are of the opinion that in the present case her statement is worthy of reliance and dying- declaration given before her by Suresh should be acted upon especially when there is corroboration of that dying declaration by another one made on October 15, 1975 before PW17 and Public Witness 3.

(43) Si Maha Siagh (Public Witness 17) stated that he was posted in the Police-Station, Vinay Nagar in the month of October, 1975, that for the period from October 13, to October 16, 1975 he was on emergency duty at the said police station, that he received an information on October 13, 1975 that Suresh Kaushal was admitted in Safdarjung Hospital, that he immediately went to the hospital, that the doctor attending on him stated that the patient (Suresh) was not fit to make a statement and also that the said patient had been taken to operation theatre, that

he went even, on October 14, 1975 and he could not contact any doctor for recording statement of Suresh, that on October 15, 1975 at about 5 p.m. father of Suresh came and requested that condition of Suresh was very serious and that steps should be taken to record his statement. Relevant portion of his further statement is as under:

THESHO, therefore called me and asked me to go to the hospital and record the statement of the patient. I found the patient in the recovery room. This recovery room is in the operation-ward. It is alongside the operation theatre. When I reached there, the doctor in charge was not there and only an under trainee doctor was present and on enquiry he said that he could give no opinion as to whether the patient was fit to make a statement or not. nurse was also there.. I felt that the patient was in a critical stage and not likely to survive, I talked to him and he was speaking in faltering manner. I asked him if he could give the statement and he said that he could give a statement. One Dr. R. L. Verma was present there. He was a doctor from All India Institute of Medical Science. New Delhi. I asked Dr. R. L. Verma if he could certify the patient as fit or unfit to make a statement but he said that since he was from another hospital, he could not do it but that he could attest the statement if it is recorded in his presence. I found the patient in a fit condition to make his statement. So I recorded his statement.

He then narrated that he obtained the thumb impression of Suresh with the help of an ink pad on the aforesaid statement, that then Suresh, told that he could sign, that he was given a pen and he signed the statement in broken letters.

(44) Maha Singh identified the thumb impression of Suresh at points Z and Z-1. his (Suresh) signature point K. signatures Dr. Verma at point X and his (Maha Singh) own signatures at point Z-2 and Z-3

(45) Dr. R. L. Verma supported Maha Singli (Public Witness 17) and also stated that he (Public Witness 3) attested the said dying declaration. Statement of Suresh is Ex. Public Witness 3/A which is in Urdu. English translation of the same reads as under:

Q. When did the incident occur? Ans. On 13-10-75 at about 5.00 p.m. Q. What happened? Ans. I was stabbed by knife by Ashok who happens to be the younger brother of my wife. Q. What was the quarrel? Ans. Prior to the aforesaid incident once Ashok along with Pair, Kumar Subhash and Munna had visited our house. His father Ram Chander was also with him.

(46) The learned counsel for the appellant assailed the reliability of both the witnesses, Maha Singh and Dr. R. L. Venna. According to the learned counsel Dr. R. L. Verma being a chance witness should not be believed while Maha Singh seemed to have been influenced by father of Suresh. The learned counsel submitted that the so-called dying declaration was forged one and must have been recorded after Suresh had died. He pointed out that it appeared from the dying declaration Ex. Public Witness 3/A that the same was finished at 6 p.m. nearabout which time according to the case history which appeared in cross-examination of Dr. P. C. Rai. Public Witness 11. Suresh could not be in a position to give statement. The case history inter alia reads that pupils of Suresh were dilated at 5.45 p.m. and were not reacting<sup>^</sup> to light, that at 6 p.m. pulse was not palpable and Suresh became breathless and unconscious.

(47) The learned counsel also argued that admittedly a junior doctor was present when the 'statement of Suresh is alleged to have been recorded, that signatures or the said junior doctor should have been obtained and that, therefore, the dying declaration could not be relied upon.

(48) It is true that a doctor, whom Maha Singh (Public Witness 17) described as an under-trainee, was present. But Maha Singh has stated that the said under-trainee doctor expressed his inability to give any opinion as to whether the patient was fit to make a statement or not. That clearly indicates that the said doctor was not ready to take any part in the recording of statement of Suresh and matchless sign the same. Hence, the absence of signatures of that under-trainee doctor does not in any way detract from the evidentiary value of the dying declaration.

(49) There is no reason to disbelieve Dr. R. L. Verma. Although he is not working as a doctor in the Alt India Institute of Medical Sciences and held the post as scholar, yet the fact remains that he holds a degree Bachelor of Indian Medicine

and Surgery. He is having a respectable position. It is not expected that he will go out of the way to attest a statement which was never given by Suresh. Such a respectable person could not unnecessarily involve himself in the forgery of such a statement. No suggestion was made to him in cross-examination that he had any good relations or connections with the family of Suresh, Even if a person has good relations. it is hardly believable that he would go to the length of involving himself in a crime of forgery for the sake of other and that too in connection with such a serious offence like the one involved in the present case.

(50) There is also. nothing to shew on record that Maha Singh was under the influence of father of Suresh and hence there is hardly any reason why he should not be believed.

(51) No doubt the condition of Suresh, as it appears from the case history, was one mentioned already. But it also appears from the statement of Dr. P. C. Rai on cross-examination that it could not. be said will definiteness if the patient was able to speak or not or give. replies or not during the time 5.30 p.m. to 6 p.m. Dr. P. C. Rai gave his opinion that speaking generally and medically it differed from patient to patient and that some were able to speak and some not in such condition but that after 6 p.m. since the patient became unconscious there was no chance of his speaking. therefore, according to the opinion of Dr. P. C. Rai. Suresh could be in a fit condition to speak. therefore, that being so, there is hardly any reason for discard the dying declaration and the arguments of the learned counsel for the appellant have no force.

(52) The last armament of the learned counsel for the appellant was that the appellant was held by the Chief Judicial Magistrate, Faridabad to be a child within the meaning of Haryana Children Act which was applicable to Faridabad where occurrence took place and that therefore even if the trial held by the Court of Session did not stand vitiated, the appellant could not be kept in imprisonment. In this connection reliance, of the learned counsel was on a judgment of the. Hig Court of Punjab and Haryana in Criminal Revision No. 4-R of 1978 having the. title State of Haryana vs. Ashok Kumar. decided on October 3, 1979 by the Chief Justice Gokal Chand Mital, J. A certified copy of tint judgment has been placed on

record in this court That judgment contains an order of reference passed by Shri Ved Parkash Aggarwal. Sessions Judge, Gurgaon. That indigent indicates some facts which are being stated. The Case against Ashok Kumar was pending in the Court of Sessions at Gurgaon. On behalf of the appellant, an application under Section 17 of Haryana Children Act of 1973 was made before the Chief Judicial A Magistrate who happened to be the Children Court and it was prayed that as the appellant was child on the date of alleged commission of occurrence, being under 16 years of age, he should be released on bail. The Chief Judicial Magistrate on the basis of a birth entry showing the date of birth of the appellant as 24th December, 1959 held that the appellant was child and that he should be kept in Children's School at Madhuban. He, however, refused bail but the same was granted ultimately. When the question came up for consideration of charge before Shri S. C. Goel, Sessions Judge, Gurgaon, it was urged by Shri B.L.Malhotra, Advocate for the appellant, that the appellant was a child and that he should be tried by the Court of Chief Judicial Magistrate.

(53) It was held by Shri S. C. Goel Sessions Judge, Gurgaon that as the Chief Judicial, Magistrate had, failed to follow the procedure as prescribed by Section 31 of the Haryana Children's Act, his order holding the appellant as a child was not final and that even if it were taken for granted that the appellant was child at the time of alleged commission of offence, in view of Section 27 of the Code of Criminal Procedure, 1973, the case was triable in a Court of Session, and not the Children's Court. Shri S.C. Goel was transferred and the matter came up before Shri Ved Prakash Aggarwal, Sessions Judge whose attention was drawn to a judgment of Punjab & Haryana High Court holding that the trial of a child could be held by a Children's Court only. Shri Ved Prakash Aggarwal then made a reference to the High Court of Punjab and Haryana that the matter was not free from doubt in view of a number of conflicting authorities and the provisions of Article 254 of the Constitution which gave overriding effect to Central law like Criminal Procedure Code as against State law like Haryana Children's Act and that, therefore, a final and binding judgment may., be given. During the pendency of. that reference, the case was transferred from the Court of Sessions, Gurgaon to the Court of Sessions at Delhi, by, virtue of an order dated October 16, 1978 of the Supreme Court of India. Further, during the pendency of the said reference,

the Supreme Court held in Rohtas vs. State of Haryana that provisions of Haryana Children's Act have overriding effect over the provisions of Section 27 of the Code of Criminal Procedure. Accordingly, a Division Bench of the Punjab & Haryana High Court following that judgment of the Supreme Court gave its opinion to the effect that provisions of Haryana Children's Act prevailed.

(54) It is apparent from the above that the judgment of the Chief Judicial Magistrate was held to be not binding by the Court of Sessions. Punjab and Haryana High Court did not express any opinion if factually the appellant was a child or not. In the present case there is unimpeachable evidence to establish that the appellant was about 17 years old on the date of the commission of the crime. Dr. M. M.Sharma who examined the appellant stated the age of the latter as 17 years. In cross-examination he added that it was on the basis of enquiry from the appellant that he recorded the aforesaid age. That means the appellant admitted before the said doctor that he was 17 years old on October 14, 1975 (the date following the date of occurrence). In his statement under Section 313 Criminal Procedure Code, the appellant did not deny that he made that admission. He only stated, that he did not know his age. In case he was ignorant about his age he could have so stated before the doctor but the fact that he did state his age as 17 years was clear admission on his part which is a very strong piece of evidence to show that his age was at least about 17 years on the date of the commission of

(55) Besides S. D.Kaushal (Public Witness 12) placed on record a certified copy of birth entry which shows the date of birth of the appellant as 29th March, 1957. That means that the appellant was 18 years and 7 months old on October 13, 1975. The Chief Judicial Magistrate, Faridabad had relied upon a copy of birth entry relating to the appellant which showed his year of birth as 1959. Shri S.N. Somestham, Establishment Officer, Faridabad (PW 21) stated that an enquiry was held in respect of entry No. 330 relating to the birth of the appellant, that it was found that the entry aforesaid was tampered with and that on the basis of the said enquiry it was ordered that the said entry should stand cancelled. therefore, the entry certified copy of which is Ex. Public Witness 12/F represents correct state of affairs.

(56) In defense one witness Dhani Ram (DW 1) was examined who supported the Story of defense to the effect that the appellant, his brother Subhash, their father Ram Chander and Munna were arrested from their respective residences by the police. It may be mentioned that Munna is son of this witness. Munna, Subhash and Ram Chander were also accused along with the appellant but they were discharged by the Sessions Judge, Gurgaon and even the revision petition assailing that discharge was dismissed by the High Court of Punjab and Haryana. Dhani Ram (DW 1) seems to be biased against the prosecution on account of his son having been also arrested and having remained in jail for some time. We have already held that there is very cogent evidence to prove beyond reasonable doubt that the appellant was not arrested from his residence, was arrested from the place of occurrence. The trial Court rightly disbelieved Dhani Ram.

(57) The learned trial Court had rightly held that the appellant was guilty of the offence of murder. He had caused injuries to Kusum and Suresh on their vital parts'. Both succumbed to injuries. There is history of threats of tilling Kusum and Suresh. therefore, it is apparent that the appellant had come with the intention of causing death in case Kusum did not accompany him and he did cause death of both of them. His case is covered by clause firstly of Section 300 Indian Penal Code which defines 'murder'. His case is also covered by clause 3rdly of Section 300 Ipc which reads as under:

Except in the cases hereinafter excepted, culpable homicide is murder, 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.

(58) There is no doubt that the injuries which were found on the person of Kusum and Suresh were intentionally caused by the appellant and those injuries were on vital parts of the body. Dr. R. K. Sharma (Public Witness 2) who performed post mortem examination on the dead body of Kusum states that the injury on her chest was sufficient in the normal course of nature to have caused death. therefore, both the ingredients of clause 3rdly are satisfied, namely, the stabbing by knife was with the intention of causing bodily injury and the injury was sufficient in the ordinary course of nature to cause death.

(59) As already mentioned, the post mortem on the dead body of Suresh was performed by Dr. Bharat Singh (Public Witness 16). The particulars of the injuries found by him have already been detailed. According to Dr. Bharat Singh, injury No. 2 was sufficient to cause death, in the ordinary course of nature.

(60) Under the above circumstances the appellant was rightly convicted of an offence of murder punishable under Section 302 Ipc He has already been awarded minimum punishment of imprisonment for life. Hence the appeal is hereby dismissed and the conviction and sentence already passed by the trial Court is confirmed.

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