

Sikander Lal Vs. State

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Court : Delhi

Decided On : Jul-22-1996

Reported in : 63(1996)DLT624

Judge : Arun Kumar and; K.S. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Arms Act, 1959](#) - Sections 27

Appeal No. : Criminal Appeal No. 209 of 1992

Appellant : Sikander Lal

Respondent : State

Advocate for Pet/Ap. : P.R. Thakur,; amices Curiae,; H.J.S. Ahluwalia and;

Judgement :

Arun Kumar, J.

(1) This appeal is directed against the judgment dated 24th September, 1992 and order dated 26th September, 1992 of the Addl. Sessions Judge, Delhi convicting the appellant under Sections 302 I.P.C. and 27 of the Arms Act and sentencing him to undergo imprisonment for life and pay fine of Rs. 2000.00 under Section 302 and R.I. for one year and fine of Rs. 500.00 under Section 27, Arms Act.

(2) There was a dispute between the appellant Sikander Lal (hereinafter referred to as the appellant) and his brother-in-law Ram Nath about a shop being shop No. 31, Central Road, Bhogal, New Delhi. Chaman Lal and Kundan Lal were real brothers who were running a business of selling vegetables in the said shop. Chaman Lal died and in his place his son Sikander Lal, the appellant started doing the same business in the shop. Kundan Lal, the other brother who was doing business Along with father of the appellant became too old and stopped attending to the shop. In his place he put up his son-in-law. Ram Nath in the shop. Ram Nath was selling tea from one side in front portion of the shop.

(3) As per the prosecution case on 30th June, 1987 at about 1.40 p.m. a quarrel took place at the said shop between Sikander Lal, the appellant and the deceased Ram Nath. In the course of the quarrel the appellant took out a knife from his Dub and stabbed Ram Nath in the abdomen. Ram Nath received another knife blow on his left arm. Two policemen, namely. Constable Kitab Singh and Constable Ram Avtar were on patrol duty at the relevant time and witnessed the crime. In fact they over powered the appellant and held on to him till the police arrived and arrested him. The appellant was already known to both the policemen as they were the beat constables of the area. On arrival of the police the statement of Constable Kitab Singh was recorded which formed the basis of the F.I.R. Vikas Chawla, son of Ram Nath was present at the spot at the time of the incident. He, Along with a neighbouring shop keeper, Suraj Bhan took the injured in a three-wheeler scooter to the hospital. The appellant was caught red handed and the blood stained knife, i.e. the weapon of offence was taken into possession by constable Kitab Singh which he later on handed over to the I.O. The I.O. took possession of the knife after preparing a seizure memo. He also prepared a sketch of the blood stained knife. The total length of the knife was twelve and half inches out of which the blade was eight and half inches and handle four inches. The knife had sharp edges on both sides.

(4) The I.O. took into possession the clothes worn by the appellant, i.e, a shirt and the trousers. The clothes were converted into a sealed parcel and taken possession of vide a seizure memo. The I.O. also took blood stained earth from the shop Along with control earth in separate parcels which were converted into

sealed parcels. The police photographer took photographs of the scene of the crime.

(5) Initially the F.I.R. was recorded for offence under Section 307, I.P.C. because at the time of registration of the F.I.R., i.e. 4.00 p.m. the victim was alive. He died at about 5.45 p.m. and the case was converted into one under Sections 302, I.P.C. After the death of the victim the inquest proceedings were conducted. The body of the deceased was identified by Vikas Chawla, his son and Kundan Lal, his father-in-law. The post-mortem on the body of the deceased was conducted by Dr. R.K. Sharma, Assistant Professor of A.I.I.M.S. on 1st July, 1987. As per the post-mortem report the following injuries were found on the body:-

(1) incised wound present on left arm interior aspect lower one third. Size 7 cm X 3 cm and .5 cm. (2) stitched incised wound present on right lumbar area 6 cm in length going deep into peritoneal cavity, small intestine was cut, omentum was stained with blood. Abdominal cavity was filled with blood, about 1500 ml. (3) stitched incised wound present in interior abdominal wall 18 cm in length 'Operative cut'. Slight repair of small intestine was done.

(6) The cause of death was given by the doctor as shock as a result of injury No. 2 mentioned above. All the injuries were opined as ante mortem in nature likely to be caused by sharp edged weapon and injury No. 2 was sufficient in ordinary course of nature to cause death.

(7) The prosecution examined several witnesses including various police officers who were associated with the investigation for one purpose or the other. The most important witnesses are:-

1. PW-1, Vikas Chawla, son of the deceased, an eye witness; 2. PW-8, Constable Kitab Singh who was on patrol duty and is an eye witness to the crime; 3. PW-14, Constable Ram Avtar who was on patrol duty and is an eye witness to the crime. 4. PW-19, S.I. Harcharan Verma, who was the Investigating Officer in the case; and 5. PW-I I, Dr. R.K. Sharma, who conducted the post mortem.

(8) The statement of the appellant was recorded under Section 313 Cr.P.C. The appellant did not dispute the fact that a quarrel had taken place between him and Ram Nath at the shop in question on the fateful day. He admitted that there was dispute between him and Ram Nath about the possession of the shop as according to the appellant Ram Nath wanted to grab the shop. According to the appellant at the time of the incident Ram Nath picked up a hammer and struck him on his nose as a result of which his nose started bleeding. The appellant snatched the hammer from Ram Nath and threw it down. According to the appellant Ram Nath picked up a knife from the shop and rushed towards the appellant to stab him. Both grappled with each other and in the process the knife of Ram Nath struck him in his abdomen and he fell down. Thus the appellant denied having stabbed Ram Nath.

(9) Shri P.R. Thakur, who was appointed as Counsel amicus curiae for the appellant urged the following points in support of this appeal:-

(1) Vikas Chawla, PW-I is a planted witness. He was not present at the time of occurrence and, therefore, was not an eye witness of the crime.

(2) No police constable accompanied the injured to the hospital. This shows that none was present at the time of the incident and the prosecution case that constable Kitab Singh and Ram Avtar were present at the scene of occurrence and are eye witnesses is false.

(3) The eye witnesses should have tried to diffuse the situation rather than remain spectators.

(4) The theory of the knife being taken out from his Dub by the appellant is false because such a long knife cannot possibly be kept in the Dub.

(5) The injury on the nose of the appellant was not possible in the process of overpowering him, by the police constable. The version of the appellant that the nose injury was caused by a hammer blow given to him by Ram Nath deceased should have been believed.

(6) The 1.0. sent the accused for medical examination on the date of occurrence itself and as per the application of the 1.0. the injury on the nose of the appellant was sustained during a scuffle. This lends credence to the defense case about nose injury to the appellant.

(7) Suraj Bhan, PW-2 projected as an eye witness by the prosecution, did not support the prosecution case.

(8) The investigation is tainted and is full of flaws. In support of this argument the following instances were cited :- (a) The Fir was not sent to the Ilaqua Magistrate forthwith as required under the law. There is no evidence on record in this behalf. (b) Seal by the 1.0. was handed over to Constable Kitab Singh when there were other several persons who had arrived at the scene of the crime. (c) Different dates were given by the witnesses about the return of the seal to the 1.0. (d) No proof of recording of the D.D. entry at the police control room about the information of the crime received there.

Besides the above points the learned Counsel for the appellant tried to show certain discrepancies in the version of the crime, in the statements of witnesses to contend that the witnesses were lying.

(10) According to the learned Counsel for the appellant the entire prosecution case is false. None of the alleged eye witnesses were present at the scene of occurrence. Of course the fact that a scuffle did take place at the given time and place between appellant and deceased Ram Nath, is not denied. The theory propounded on behalf of the appellant is not one really claiming right of private defense on the basis of alleged hammer blow on the nose of the appellant said to have been given by Ram Nath. The theory is that Ram Nath had picked up a knife in the scuffle and he sustained the fatal injury from his own knife which was in his hand. The appellant thus denied having held the knife or having given the fatal blow to the victim of the crime and thus claims to be innocent.

(11) We now proceed to consider the various pleas advanced on behalf of the appellant. Eye Witnesses Being Planted (Points 1 to 3)

(12) The prosecution has examined three eye witnesses in this case, namely, PW-1, Vikas Chawla son of the deceased, PW-8 Kitab Singh and PW-14 Ram Avtar beat constables. According to the learned Counsel for the appellant none of these eye witnesses were present at the scene of occurrence. thereforee, these witnesses have been planted to prove the case of the prosecution. We have closely scrutinised the evidence of these three witnesses. The evidence is spontaneous, natural and consistent, thereforee, we are unable to accept this contention of the learned Counsel for the appellant. It has been said about Vikas Chawla that he is an interested witness. The other two eye witnesses are police constables and cannot be placed in the category of interested witnesses. The consistency in the version of crime as given by the three eye witnesses clearly shows that Vikas Chawla was present at the scene of occurrence and witnessed the crime being committed. Merely because he is the son of he deceased his evidence cannot be discarded. He has stood the test of crossexamination. According to Vikas Chawla, PW-1 on 30th June 1987, i.e. the day of occurrence, Sikander Lal, appellant came at the shop at about 1.30 p.m. Ram Nath, father of the witness was present at the shop at that time. This witness says he was also present. The appellant asked Ram Nath to vacate the shop which Ram Nath refused to do. Thereupon 'the accused Sikander Lal took out the dagger which he was having and struck my father on his abdomen. I became frightened. My father tried to stand up but he fell down as he had received the stab injury. I raised alarm. Suraj Bhan, who was running a shop in the neighborhood came there on hearing noise. At that time also when the police reached there who were on patrolling duty, the accused was stabbing my father. The accused was caught red handed with the help of the police along with the dagger. When my father tried to save himself he also got injuries on his hand. The police apprehended the accused along with the dagger and I along with Suraj Bhan removed my father to A.I.I.M.S. in a three wheeler scooter where he was admitted. He was declared dead at 5.45 p.m.' Later on, i.e. after Ram Nath was declared dead at the hospital this witness was brought to the scene of crime where the police carried on the investigation in presence of the witness. This included taking blood stained earth and control earth from the place of occurrence, clothes of the appellant which he was wearing at the time of incident were blood stained. The recovery memos with respect to these items

were signed by this witness also. While being examined as PW-I he identified the shirt of the accused as Ex.P-1 and his pyjama as Ex.P-2. The banyan worn by the deceased at the time of the incident was identified as Ex.P-3. The knife was identified as Ex.P- 4. In the cross-examination of this witness apart from questions about the scene of occurrence various questions were put about the market in which the shop which was the scene of crime, was located. The replies given to the various questions show that the presence of this witness at the time of incident cannot be doubted. He was present in the hospital when the police reached there and his statement was recorded there. A suggestion was put to the witness in cross examination that he was not present at the shop at the time of occurrence which the witness denied. The witness also denied the suggestion that he did not accompany his father to the hospital.

(13) Coming to the statement of Constable Kitab Singh, PW-8, another eye witness, it is clear that his presence at the time of the occurrence at the scene of the crime cannot be doubted. His description of the crime is consistent with the one given by Vikas Chawla. He was a beat constable on duty in the area. His duty hours were 8.00 a.m. to 8.00 p.m. The appellant was already known to him because the appellant was a vegetable vendor in the area. While patrolling along with the other constable Ram Avtar, PW-14, he heard some noise of a quarrel. He further says 'we both entered the shop bearing No. 31 where we found accused Sikander Lal present in Court was threatening an unknown person whose name came into my knowledge after his death as Ram Nath. I know the accused present in Court prior to this occurrence. I asked the accused Sikander Lal what he was doing. I called him by name. In my presence the accused present in Court stabbed Ram Nath with his knife (Chhura) on his left side abdomen. When I came forward but the accused inflicted another Chhura blow on left arm. We both apprehended the accused present in Court. I snatched the knife (Chhura) from the hand of the accused present in Court. I handed over the accused Sikander Lal present in Court to Const. Ram Avtar.' He goes on to say 'the son of the deceased Ram Nath named Vikas Chawla was also present inside the shop. Vikas Chawla and one another shop keeper removed the deceased Ram Nath from the spot to hospital. I remained on the spot. At the time of stabbing deceased Ram Nath, the accused present in Court was saying that he would kill him and thereafter he will take a sigh

of relief. The son of the deceased, namely, Vikas Chawla was raising noise 'Bachao Bachao'. He identified the Chhura, Ex.P-4 which he had recovered from the possession of the accused at the time of incident. According to him he handed over the Chhura to the I.O. who took possession thereof and sealed the same. He confirms the facts about the blood stained earth and clothes of the appellant being taken possession of by the I.O. in his presence. He identified the clothes of the appellant. He identified his signatures on the recovery memo regarding the clothes. In fact it is the statement of this witness which formed the basis of the F.I.R. The statement recorded at the scene of occurrence was forwarded to the Police Station for purposes of recording the F.I.R. He says that he left the spot at 8.00 p.m. He further says that he sent Vikas Chawla to hospital at 1.40 p.m. along with Ram Nath. In cross examination this witness was asked whether his clothes got any blood. He answered the questions in negative. About the injury on the nose bone of the appellant he could not say anything. However, he stated that when he caught hold of the accused he was bleeding from his nose. He was asked various questions about the shop where the occurrence took place and his answers to those questions tally with the photographs of the scene of occurrence. therefore, it is not possible to say that he was not present at the scene of occurrence or that he did not witness the crime. He has withstood the cross-examination fully and the version of the incident given by him is substantially the same as the one given by Vikas Chawla, PW-1. He denied the suggestion that he was not present at the scene of occurrence.

(14) Same is the position about the evidence of Constable Ram Avtar, PW.14, the third eye witness. His version of the crime is fully consistent with the version given by the other two eye witnesses discussed above. He stated that Kitab Singh, PW-8 tried to over power the appellant but before he could do that the appellant gave another Chhura blow on the fore-arm of the victim of the crime. His description of the occurrence, the scene of crime, how the injured was taken to the hospital and the police investigation at the spot is fully consistent with the version given by the other two eye witnesses. The description of injuries on the body of the victim of the crime as given by the three eye witnesses tallies with the M.L.C. of Ram Nath as also the post mortem report.

(15) Tested from another angle the argument about the two police constables not being present at the scene of occurrence is not sustainable. The fact that some incident involving the appellant and Ram Nath deceased took place at shop No. 31, Central Road, Bhogal, New Delhi, is not disputed even by the appellant. Further the fact that in the incident Ram Nath got some injuries is also not in dispute. The question arises that if the police constables Public Witness 8 and 14 were not present at the scene of occurrence why did the appellant not flee from the scene immediately he realised that Ram Nath had fallen on the ground as a result of injury received by him in the scuffle between him and Ram Nath. According to the eye witnesses it is these two police constables who were present at the scene of occurrence who over powered and caught hold of the accused and ultimately handed him over to the local police who reached at the scene of occurrence. Why would the appellant wait for the police to arrive and arrest him? If the version of the defense that none of the three witnesses were present at site at the time of the incident is correct, there was none to stop the accused/appellant from running away. The fact that the appellant was apprehended at the scene of the crime and was in fact caught red handed by the two constables lends credibility to the entire prosecution story.

(16) In view of the above discussion of the evidence of the three eye witnesses it is not possible to doubt their presence at the scene of the crime. All the three have described the occurrence consistently with each other and the tenor of their evidence leaves no scope for the argument advanced on behalf of the appellant that these witness were not present at the time of the occurrence and have been planted subsequently to prove the prosecution case. The evidence of Vikas Chawla can also not be doubted for the reason that he was an interested witness. Being an interested witness is by itself no ground for discarding the testimony of a witness who is otherwise found to be reliable and truthful. We reject the point Nos. 1 and 2 raised on behalf of the appellant.

(17) Then it was argued that the so called eye witnesses should have tried to diffuse the situation rather than remaining spectators. On the basis of this argument it was sought to be suggested that eye witnesses in fact were not present at the time of occurrence otherwise they would have tried to diffuse the

situation. For this argument also we have to turn to the incident as recounted by the eye witnesses. From the eye witness account it is apparent that the stabbing took place in a flash. There was hardly any time for anyone to prevent stabbing or to diffuse the situation. As stated by Vikas Chawla, PW-1, the appellant took out the knife and struck his father in the abdomen. His father tried to ward off the knife blow which also resulted in an incised wound on his left fore-arm. Thus there was hardly any time to diffuse the situation. In the facts of the present case it does not follow from this that the eye witnesses were not present at the scene of occurrence.

(18) Point No. 4 The next point raised by the learned Counsel for the appellant was that as per the prosecution case the length of the knife used as weapon of offence was eight and half inches blade plus four inches handle, thus totalling twelve and half inches. It is submitted that such a long knife could not have been kept concealed in his 'Dub' by the accused. This point loses all its significance in view of the fact that the appellant was apprehended at the spot with the knife in his hand. The knife had blood stains on it which fact is established by the C.F.S.L. report also. The evidence of the doctor who conducted the post mortem as also the post mortem report proves that the injuries on the person of the deceased were caused due to sharp edged weapon. thereforee, the use of sharp edged weapon in the commission of crime is fully established. Besides this the eye witness Vikas Chawla has stated that the accused Sikander Lal took out the dagger which he was having and struck his father on his abdomen. The police constables also stated that the accused was having a knife in his hand with which he gave blows to Ram Nath.

(19) In fact PW-14 confirms in his cross-examination that the Chhura was taken out by the accused from his Dub and not from his pocket. We have already stated that we believe the evidence of the eyewitnesses. This leaves no scope for the argument that the knife could not have been kept by the appellant in his Dub because of the length of the knife. Otherwise also we are unable to accept that the knife could not have been concealed by the appellant in his Dub. This is not an impossibility. Thus we reject this contention raised on behalf of the appellant.

(20) Injury on the Nose of the Appellant (Points 5 & 6) No doubt that there is sufficient evidence on record including the M.L.C. of the appellant showing that he sustained injury on his nose which in fact resulted in fracture of his nasal bone and that he bleed from his nose. The question is whether the appellant received this injury on account of a hammer blow given to him by Ram Nath or otherwise. The accused stated in his statement under Section 313 Cr.P.C. that Ram Nath had given him a blow on his nose with a hammer and the accused snatched it from Ram Nath and threw it. None of the eye witnesses had supported this. In fact the theory of hammer blow on the nose of the appellant was propounded by the defense at a very late stage. This was never put to Vikas Chawla, PW-1. It was only in a cross-examination of PW.14 that questions about this injury were put to him. He explained that he did not see any hammer at the scene of crime. He denied the suggestion that Ram Nath gave any hammer blow on the nose of the appellant. This was on 15th October, 1991 whereas the first prosecution witness was examined on 7th June, 1988. More than three years after the theory of hammer blow on the nose of the accused was prepounded.

(21) In fact .Ram Avtar, PW.14 explained in his cross-examination that the . accused suffered injury on his nose while he was being caught by the police constables. In the M.L.C. of the appellant which is Ex.PW-12/D, the details about the injury on his nose are given. It mentions about the fracture of the nasal bone. Further it mentions 0.2 cm laceration on the nose. This shows two things. Firstly, it was a blunt injury. Secondly, 0.2 cm is a very small area which may be just like a dot. If the injury was caused by a hammer blow such a small wound would not be left behind. The area of the wound would be larger if caused through a hammer blow. In this context it has also to be noted that the nasal bone is a very weak and sensitive part of the body. Even a fist blow can result in bleeding and fracture of the nasal bone. The crux of this discussion is that we are unable to accept the suggestion that the nasal injury on the appellant was caused by a hammer blow given to him by Ram Nath. By introducing the theory of hammer blow on the nose the defense probably wanted to build an argument of right of private defense. However, this argument did not find favor before the learned Sessions Judge and advisedly the learned Counsel for the appellant did not urge the argument of right of private defense before us.

(22) This discussion also answers another point (No. 6) raised by the learned Counsel for the appellant that in his application for medical examination of the appellant the 1.O. himself stated that the injury on the nose of the appellant resulted from a scuffle. This argument to our mind is of no consequence. The 1.O. was not an eye witness of the crime and, therefore, in the application for medical examination of the accused he stated whatever he had heard. In any case this alone cannot lead us to a different view of the main question. We may note here that if a hammer blow was given to the appellant during the course of the scuffle, where did the hammer disappear? [The 1.O. was asked about it.] The 1.O. denied that there was any hammer at the spot. There is no reason for the 1.O. to conceal the hammer if it was actually at the spot.

(23) Font No. 7 The next point urged by the learned Counsel for the appellant is that Suraj Bhan, PW-2, who was projected as an eye witness by the prosecution did not support the prosecution case and, therefore, the prosecution case should be disbelieved. This contention of the learned Counsel also is without any merit in view of the facts stated above. The evidence of the three eye witnesses already discussed hereinbefore shows that Suraj Bhan arrived at the scene after the scuffle had already taken place and Ram Nath had fallen on the ground as a result of the stabbing.

(24) Suraj Bhan joined Vikas Chawla, PW-1 in removing Ram Nath to the hospital and in fact his name is noted in the M.L.C. of Ram Nath as the person who brought Ram Nath to the hospital. Suraj Bhan has been examined as PW-2. He stated that he heard the noise from the shop where the incident took place and went there. He saw Ram Nath lying in injured condition. He further says that he removed Ram Nath to the hospital. Suraj Bhan refused to identify the appellant and, therefore, was declared hostile. Thus the role of Suraj Bhan to the extent that he removed Ram Nath to the hospital is established. So far as the question of his identifying the appellant as the assailant or having witnessed the occurrence with his own eyes is concerned, since he has chosen not to speak about it the prosecution case is not affected thereby. The other three eye witnesses have clearly stated about the incident and have implicated the appellant. Their statements are sufficient to convict him. Even if one of the eye witnesses turns

hostile it does not mean that the prosecution case must fail so long as there are other eye witness whose testimony is sufficient to implicate the accused.

(25) Pont No. 8 The learned Counsel for the appellant has tried to point out certain alleged flaws on the part of the investigating agency and on the basis of these flaws it has been urged that the benefit should go to the accused and he should be acquitted giving benefit of doubt.

(26) Let us first notice the alleged flaws in the investigation:

(A)The F.I.R.was not sent to the concerned Magistrate forthwith as required under Section 157 Cr.P.C.

(27) In the present case no evidence of RLR. having been sent to the concerned Magistrate has been placed on record. But failure to lead this evidence on the part of the prosecution cannot lead to the prosecution case being thrown to the winds. The requirement of sending the F.I.R. to the concerned Magistrate forthwith is to ensure that the investigating agency is not able to indulge in padding the evidence. By ensuring that the F.I.R. is with the Magistrate forthwith the investigating agency is pinned down to the case in the F.I.R. In the facts of the present case the object of sending the F.I.R. forthwith to the Magistrate cannot be said to be frustrated because the accused was caught red handed by the two police constables. There was yet another eye witness to the crime. Further evidence to implicate the accused was not required. The investigation of the crime started forthwith. There was no need for any padding. Non-compliance of this requirement cannot be said to be fatal to the prosecution case in view of the facts on record.

(28) The other discrepancies pointed out by the learned Counsel for the appellant is on the basis of evidence regarding handing over of the seal of the I.O. to the Police Constable Kitab Singh, PW-8 and its return to the I.O., (ii) not making of D.D. entry at the Police Control Room when for the first time information about the crime was received on telephone, (iii) time not being recorded by the Moharrar in the Malkhana register etc. These are points on the basis of which the fate of this case cannot be made dependent. Such discrepancies even if they are present, cannot lead to the investigation being thrown over board in the face of clinching

ocular evidence of the three eye witnesses referred to hereinbefore coupled with the statement of the appellant under Section 313, Cr.P.C. wherein he admits his involvement in the scuffle at the given time and having grappled with the victim of the crime. Even as per the version of the appellant the only thing which remained to be seen in this case was as to who wielded the knife. According to the appellant Ram Nath wielded the knife with which he wanted to attack the appellant and in the scuffle he got hurt himself whereas according to the prosecution version based on the evidence of the eye witnesses the appellant gave the knife blows to Ram Nath who ultimately died as a result thereof.

(29) The version of the appellant that Ram Nath held the knife and his own knife struck in his abdomen is belied by the following facts:-

(A) the place and position of the injury on the body of Ram Nath and depth of the injury shows that the same could not have been caused if Ram Nath held the knife in own hand. The depth of the injury suggests an attack with force with a knife. (b) there is another wound on the body of the deceased, i.e. an incised wound of the size of 7 cm X 3 cm and .5 cm on the left fore-arm of the deceased. Such a large wound could not have been caused specially if the knife was held by the victim himself in his own hand. The wound suggests an effort on the part of the victim to ward off a knife blow by another person and getting the cut on his fore left arm in the process. (c) there is total absence of any knife injury on the accused. If the accused and Ram Nath deceased were grappling with each other and knife was in the hands of Ram Nath as suggested by the appellant, the appellant in all probability would have also received some cut(s) on his body.

(30) In fact the second injury on the left fore-arm of the deceased leaves no scope for any doubt that the appellant was the assailant.

(31) The learned Counsel for the appellant finally tried to point out certain contradictions in the evidence of the witnesses. The alleged inconsistencies in our view are immaterial. The evidence of the eye witnesses on the main issue i.e. commission of the crime and as to who was the assailant is clear and convincing. There is no contradiction on this aspect. Certain amount of variance in description of the occurrence by the witnesses cannot be ruled out. Everyone has his own

language to describe events. Witnesses have different perceptions of the same event. Then the time gap between the date of incident and the date when the witnesses are examined in Court also plays its part.

(32) The learned Counsel for the State pointed out that on the knife as well as the shirt and pyjama of the appellant and the pants trouser the deceased 'O' group blood was found as per the report of the C.F.S.L. On the basis of this it was submitted by the learned Counsel that it was clear that the blood of the deceased which was of 'O' group was found on the clothes of the appellant as also on the knife used as a weapon of offence. This aspect of this case has a weaker side in as much as no effort was made to establish the blood group of the accused. The sample of the blood of the deceased which was taken also could not be certified by the C.F.S.L. as to which group it belonged because in the Chemical analysis no reaction was found on the sample. Thus neither the blood group of the deceased could be established nor the blood group of the appellant was ascertained. If this had been done the presence of same blood group on the clothes of the deceased and the knife which was the weapon of offence would have had great significance. In its absence not much significance can be attached to this argument in the present case.

(33) The result of the above discussion is that we find no merit in this appeal. We fully agree with the decision of the learned Addl. Sessions Judge convicting the appellant for offences under Section 302 I.P.C. and Section 27 of the Arms Act. This appeal is accordingly dismissed

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