Mohd. YamIn Vs. State

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Court : Delhi

Decided On : Jul-28-2008

Reported in : 2008(106)DRJ275

Judge : Vikramajit Sen and; P.K. Bhasin, JJ.

Acts : Arms Act - Sections 27; Evidence Act - Sections 27; Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) , 1973 - Sections 313

Appeal No. : Crl. Appeal No. 194/1992

Appellant : Mohd. Yamin

Respondent : State

Advocate for Def. : Manoj Ohri, Adv.

Advocate for Pet/Ap. : V.K. Malik an; Tanuja Bose, Advs

Judgement :

P.K. Bhasin, J.

1. The appellant has preferred this appeal challenging his conviction by the learned Additional Sessions Judge, Delhi in Sessions Case No. 162/92 under Section 302 IPC and Section 27 of the Arms Act for the murder of one Mohd.

Salim on 09.11.91.

2. The case set out by the prosecution against the appellant was that the appellant's married sister Mobina having three children had been deserted by her husband. After her desertion by her husband the deceased Mohd. Salim, who was also married already, married Mobina. Earlier marriages of both of them had not been dissolved. Mobina's family members, including the appellant, were not happy with her marrying Mohd. Salim.1 On 8.11.91 there was a quarrel between the appellant and the deceased over Mobina at the house of the deceased where the appellant-accused had gone to warn him not to have any relationship with Mobina. On 9.11.91 at about 11 p.m. the deceased went to the house No. 3971 of the appellant in Gali Khankhana, Macchli Walan in Jama Masjid area alongwith PW-1 Shariq Datt Khan, who was working with him, to take Mobina and the three children from there but the appellant told him that she had gone to Pakistan. Upon that the deceased said that he had checked up from the Embassy and the appellant was telling a lie. He then asked the appellant about the children. The appellant told the deceased that the children had been brought up by them and he (the deceased) had nothing to do with them. The deceased then told the appellant that he would take with him the girl child Ruby as he was opening a hotel in her name. All that led to exchange of hot words and abuses between the appellant and the deceased and at that time the appellant took out a 'chhura' from under the cushion of the sofa and stabbed the deceased in his abdomen 2-3 times due to which the deceased fell down on the floor and died there itself. That incident was witnessed by PW-1 Shariq Datt Khan and he had gone to the Jama Masjid police station immediately after the incident and lodged a report about this incident and on his report a case under Section 302 IPC was registered.

3. Pursuant to the registration of the FIR at the instance of the said Shariq Datt Khan the police apprehended the appellant on 10.11.91 and while in police custody he made a disclosure statement and got recovered from his house one 'kirpan' (Ex. P-l) which was kept in an almirah. The dead body of the deceased was subjected to post-mortem examination. The autopsy surgeon Dr. L.K. Barua (PW-15) found the following injuries on the body of the deceased.

External injuries:

1. One incised wound over left para umbilical region placed horizontally of size 2.5 cm x 0.7 cm.

2. Small punctured wound over right side of the chest just above the right side lower ribs of size 0.2 cm into 0.1 cm x skin to muscle deep.

3. Another small punctured wound 4 cm below the injury No. 2 of size 0.1 cm x 0.1 cm with abrasions below of size 1 cm.

4. Abrasions over lower chest on back side, right knee front. Injury No. 1 had entered the Upside abdominal cavity and continued to the right side and then cut the right kidney and small intestine at two places.

The autopsy surgeon opined that all these injuries were ante-mortem in nature and were caused by a sharp edged, weapon and that injury No. 1 was individually sufficient to cause death in ordinary course of nature and that death of the deceased was due to shock and haemorrhage resulting from these injuries.

4. During investigation, the 'kirpan' got recovered by the appellant-accused was sent to Central Forensic Science Laboratory, New Delhi along with some other articles and there on examination by the experts human blood of 'A' group was found on the 'kirpan'. The blood stained clothes etc. of the deceased which were preserved at the time of post-mortem examination were also examined at the CFSL and it was found that the blood of the deceased was also of 'A' group. That 'kirpan' was examined by the autopsy surgeon also who had conducted the post-mortem examination and he had opined that injury No. 1, which we have already noticed and which as per the autopsy surgeon was individually sufficient to cause death in the normal course of nature, could be caused by that 'kirpan'. The police after completing the investigation charge-sheeted the appellant for committing the murder of the deceased Mohd. Salim. After committal of the case to the Court of Sessions the appellant was charged by the learned Additional Sessions Judge under Section 302 IPC and Section 27 of the Arms Act. The appellant pleaded innocence and claimed trial.

5. The prosecution had sought to prove the charges against the appellant by examining PW-1, Shariq Datt Khan who was the sole eye-witness to the incident. He, however, took a somersault and turned hostile. During his cross-examination by the public prosecutor he admitted his signatures on the FIR but claimed that his signatures had been obtained by the police on a blank paper after confining him at the police station for two days. He denied the entire contents of the FIR Ex. PW-l/A wherein the facts leading to the murder of the deceased, which we have already noticed, had been recorded. The prosecution had then to fall back upon circumstantial evidence. Those circumstances were these:

(a) The appellant was unhappy with the deceased Mohd. Salim because of his marrying his married sister Mobina and so had the motive to kill Mohd. Salim;

(b) On 8.11.91 there was a fight between the appellant and the deceased at the house of the deceased in Welcome Colony, Seelampur over Mobina;

(c) On 9.11.91 the deceased was murdered and on the same day his dead body was recovered from the house of the appellant-accused in Macchli Walan;

(d) Recovery of a blood stained kirpan, Ex. P-1, pursuant to the disclosure statement made by the appellant-accused in police custody after his arrest;

(e) 'A' group blood was detected on the 'kirpan' Ex.P-1 which was the blood group of the deceased;

6. The appellant-accused when examined under Section 313 Cr.P.C. and was put these circumstances denied that his sister Mobina had married the deceased. He also denied that the house where the dead body of the deceased was found on the night of 09/11/91 belonged to him or was possessed by him. His stand was that that house was of his elder brother Mohd. Salim and his other two brothers alongwith their families were residing in that house. He also denied having got recovered any kirpan.

7. The trial Court found all these circumstances to have been established against the appellant-accused and convicted him for committing the murder of Mohd. Salim vide judgment dated 25.8.92 and awarded life imprisonment to him for the

offence of murder and rigorous imprisonment for three years under Section 27 of the Arms Act. The appellant-accused has come up in appeal questioning the correctness of the Judgment of the learned trial Court.

8. Learned Counsel appearing on behalf of the appellant accused had at the outset submitted that it was not being disputed that the deceased had died a homicidal death. It was, however, strongly disputed by the counsel that the death of Mohd. Salim was caused by the appellant-accused as had been held by the learned trial Court. He then read out the evidence of material prosecution witnesses and pointed out certain infirmities and submitted that from the evidence adduced by the prosecution none of the aforesaid circumstances relied upon by the prosecution as well as the trial Court could be said to have been established beyond any shadow of doubt and the conviction of the appellant was based by the learned trial Judge mainly on totally inadmissible evidence which included even the alleged confessional statement of the appellant-accused. On the other hand the learned Additional Public Prosecutor fully supported the trial Court's findings in respect of each of the circumstances relied upon while holding the appellant-accused guilty. It was contended that there were no infirmities in the prosecution evidence and no fault could be found with the appreciation thereof done by the learned trialJudge.

9. The fact that the deceased met with homicidal death is not in dispute and in any case it is fully established from the post-mortem report proved by PW-15 who had conducted post-mortem examination of the dead body of Mohd. Salim. We have already noticed the injuries on the dead body found by the autopsy surgeon and the opinion of the autopsy surgeon. We shall now proceed further to examine if the circumstances relied upon by the prosecution for securing the conviction of the appellant-accused can be said to have been established beyond reasonable doubt or not.

10. As per the prosecution case the appellant-accused had a strong motive to kill Mohd. Salim since he did not approve of the marriage between his married sister Mobina with the deceased Mohd. Salim during the subsistence of her earlier marriage from which wedlock she had three children also. It was the prosecution

case that the deceased Mohd. Salim was also a married man before his marrying appellant's sister Mobina. As noticed already, the appellant-accused during his statement under Section 313 Cr.P.C. had denied that his sister Mobina had married the deceased Mohd. Salim. The prosecution had sought to establish the circumstance of 'motive' through the evidence of the mother (PW-11) and brother (PW-3) of the deceased as well as the complainant PW-1 Shariq Datt Khan. The mother of the deceased PW-11 Zamila in her chief-examination had deposed that her son Mohd. Salim had married Mobina who was a married woman having five children and further that the accused was unhappy with the marriage between her son and Mobina. She further deposed that a day before murder of Mohd. Salim she was informed by her younger son that there was a quarrel between the accused and Salim but with the intervention of some public men both had been pacified. PW-3 Shamshuddin is the younger brother of the deceased. He also deposed in his chief-examination that his brother Salim was married to Mobina and that the accused used to object to her staying with his deceased brother. In cross-examination both these witnesses admitted that they had not attended marriage ceremony of the deceased and Mobina. It was put to PW-3 in his cross-examination that there was no regular marriage performed between Mobina and the deceased and the witness admitted that to be correct. In the cross-examination of the mother of the deceased she had stated that Mobina was living the life of sin since she was already married and her husband was alive. This statement of the mother of the deceased shows that there w as only a live-in relationship between her married son and the married sister of the appellant and that kind of relationship between the two was not liked by her also. From the evidence of these two witnesses it cannot be said to have been established that there was a marriage between the deceased and appellant's married sister Mobina. On the aspect of her marriage with the deceased Mobina herself could be the best witness in the absence any witness to the alleged marriage. But the prosecution chose, for the reasons best known to it, not to examine her as a prosecution witness in the Court and this fact also renders the case of the prosecution that Mobina and deceased were married to each other which was not accepted by the appellant highly doubtful.

11. Learned prosecutor, however, had submitted that from the statements of the mother and the brother of the deceased it can at least be said to have been proved that the deceased and Mobina were living together without divorcing their respective spouses. On the other hand, learned Counsel for the appellant had submitted that even that fact has not been established and even if it had been established then also the prosecution was expected to establish that the appellant had done something which could show that he alone was so annoyed with the relationship between his sister and the deceased that he could go to the extent of even killing the deceased but there is no evidence to that effect. We are also of the view that even the fact that the deceased and Mobina were living together does not get established. There is no cogent proof about that fact also which could have been established by examining any neighbour of the deceased and Mobina wherever they were living together. In fact, in his statement under Section 313 Cr.P.C. it was put to the appellant-accused that Mobina was in fact living with him in Machhliwalan and he had objection to the deceased meeting Mobina and not that Mobina was living with the deceased. We are further of the view that even if it is accepted that the deceased and Mobina had been living together without divorcing their respective spouses even then it was required to be established that the appellant alone had a motive to kill the deceased because of his living with Mobina but the prosecution has failed to establish that fact also.

12. As noticed already, the prosecution case was that not only the appellant-accused but his other family members were also not happy with the deceased and Mobina living together as husband and wife. However, during the course of the trial the prosecution appears to have given up its case that other family members of the appellant-accused were also unhappy with the deceased and that is evident from the fact that when the mother of the deceased and his brother came to give evidence they only claimed that appellant-accused was not happy with the marriage of Mobina and the deceased. They did not say anything about other family members of the appellant-accused and in this respect the submission of the learned Counsel for the appellant was that since as per the prosecution case built up initially all the family members of Mobina were unhappy with her relationship with the deceased it could not be said that the appellant alone could have the motive to kill the deceased and the prosecution was supposed to adduce evidence

to show that there were some special circumstances from which it could be inferred that the appellant was particularly more perturbed than his other brothers etc. because of the relationship of Mobina and the deceased but there is no evidence to that effect. We have gone through the evidence on this aspect of the prosecution case and find that the prosecution had sought to establish the unhappiness of the appellant-accused by showing that a day before the deceased was murdered the appellant-accused had gone to the house of the deceased and had fought with him over Mobina. However, the only witness of that incident was the complainant PW-1 Shariq Datt Khan who, however, as we have noticed already, did not support the, prosecution case on any aspect. He denied having informed the police about the fight between the appellant-accused and the deceased on 8.11.91. Although, the mother of the deceased had claimed during her evidence that a day before her son Salim was murdered there was a quarrel between him and the accused but that statement of hers cannot be accepted since she herself was not a witness to that incident. She had claimed knowledge about that incident through her younger son Isammuddin. The prosecution has, however, not examined that Isammuddin and so whatever PW-11 Zamila had stated regarding the incident on 8.11.91 was hearsay, Even PW-3 Shamshuddin, who had also to be cross-examined by the prosecutor because of his not supporting the prosecution case fully, had claimed in his cross-examination by the public prosecutor that he had only heard about the quarrel between the accused and the deceased but no quarrel had actually taken place in his presence. So, even the said statement of PW-3 Shamshuddin was of no help to the prosecution case about there being a motive for the appellant-accused to kill the deceased. In these circumstances, we have no hesitation in coming to the conclusion that the prosecution cannot be said to have established beyond reasonable doubt that the appellant-accused had a motive to kill the deceased. So, the first two circumstances, enumerated already, relied upon by the prosecution cannot be said to have been established.

13. The third circumstance sought to be relied upon by the prosecution for proving the allegations of murder against the appellant-accused was the recovery of the dead body of Mohd. Salim from house No. 3971, Macchli Walan, Gali Khankhana, Jama Masjid which was being claimed by the prosecution to be the house of the

appellant. The star witness of the prosecution in this regard also was PW-1 Shariq Datt Khan who had allegedly witnessed the commission of crime by the appellant in his own house but he, as noticed already, had not supported the prosecution case. The mother and the brother of the deceased examined by the prosecution did not say anything as to where the appellant-accused was residing. Rest of the witnesses were police officials who went to the spot after the complaint about the incident was registered on 9.11.91 at 11.25 p.m. The prosecution had examined Constable Leelu Ram (PW-7), Const. Jugal Kishore, (PW-8) and the Investigating Officer Rameshwar Dutt, (PW-14) on this aspect. PW-7 in his chief-examination has deposed that on 9.11.91 at about 11.45 p.m. he alongwith the SHO, V.P. Rathi PW-13 went to the spot where they found one dead body which was got identified by Shamshuddin and Zamila, who were the relatives of the deceased. PW-8 Jugal Kishore claimed in his chief-examination that on 9.11.91 he had accompanied SHO, (PW-13) to the spot i.e. house No. 3971, Macchli Walan, Gali Khankhana and he handed over the dead body along with the inquest papers for taking it to the mortuary. PW-14 the investigating officer also deposed on the same lines that the dead body of Mohd. Salim was found in the first floor of house No. 3971, Macchli Walan, Gali Khankhana. However, there is no whisper in the depositions of any of the witnesses that the house from where the dead body was recovered was owned by the appellant-accused or was in his exclusive possession so as to raise a presumption that it could only be accused and none else who could commit the murder.

14. Regarding the ownership and exclusive possession of the house where the dead body of the deceased Salim was found, the appellant-accused was put during his statement under Section 313 Cr.P.C. that the house in which Salim was slain was owned and possessed by him exclusively. In respect of this question put to the appellant-accused learned Counsel for the appellant had submitted, and in our view rightly so, that this question in fact could not be put to the accused since none of the prosecution witnesses had stated that the house where deadbody of the deceased was found either belonged to the accused or was in his exclusive possession. In any case, the accused in reply to the said had stated that the house in question was not owned and possessed by him at all and that it belonged to his elder brother Mohd. Salim who alongwith their other two brothers Mohd. Yasin and

Mohd. Ikrar were putting up in that house with their families. On this aspect of the matter learned Counsel for the appellant had relied upon a decision of the Apex Court in 'Mani v. State of Tamil Nadu' 2008 (1) Crimes 88 (SC). In that case one of the circumstances relied upon by the prosecution against one of the accused Mani was that one prosecution witness had noticed blood oozing out from underneath the door frame of the house, which the prosecution claimed to be belonging to accused Mani and from the trail of blood leading upto the nearby field dead body of the murdered person was recovered. The trial Court and the High Court relying upon that circumstance had come to the conclusion that the deceased was killed in the house from where blood had been seen oozing out by the prosecution witness and that house was of the accused Mani. Counsel for the appellant of that case had challenged this conclusion of the High Court on the ground that prosecution had failed to establish that the house from which the blood was seen oozing out by the prosecution witness belonged to and was possessed by the appellant-accused and so that circumstance was of no use. The Hon'ble Supreme Court accepted this argument advanced on behalf of the convicted accused and while rejecting the said circumstance relied upon by the trial Court and High Court observed (in paras No. 16-18) as follows:

15. An interesting statement was made by the High Court suggesting that if the appellant took the deceased at 6.00 p.m. on 24.11.1996 to his house where the deceased was done away with, the burden shifted on the first accused to show how the deceased died in his house. In our opinion, this is not the correct position of law. In order to hold this circumstance, the High Court has recorded the finding that the house belonged to the present appellant. The appellant had very clearly stated in his examination under Section 313 Cr.P.C. that the house did not belong to his father and it was lying vacant and nobody had occupied it. In our opinion, at least from the evidence on record, it cannot be concluded that the house belonged to the appellant. There is no evidence worth the name lead by the prosecution to suggest the exclusive ownership or the possession of the house belonged to the appellant. Both the courts have proceeded on the presumption that the house was owned or possessed exclusively by the appellant. Much could have been done to establish its ownership by filing the revenue record of that house. No such documentary evidence was collected by the prosecution. The high Court has not

discussed this aspect of exclusive ownership and possession at all and has proceeded on the presumption that the house belonged to and was possessed by the appellant herein.

16. The panch witness PW.6 Ganesan, though had referred to the said house as the house of the appellant, has clearly admitted in his cross-examination that he did not know as to in whose name stood the said house. It is very significant to note that he has lastly given the admission to the effect 'to say that (blood stained) that house is not Manis house and it was built by Manis father, cannot be objected'. This witness was a Village Administrative Officer through whom the investigating officer could have easily obtained the records of this house. Unfortunately, that was not done.

17. The only other evidence in this behalf is that of PW-14 Karunakaran who was one of the Investigating Officer. He has never asserted that the concerned house was appellants house though he, in his examination-in-chief referred to that house as Manis house. He had to admit in his cross-examination that he did not interrogate any other residents residing near Andiammals house. He also had admitted that he had never questioned the Village Administrative Officer as to in whose name was the said house. Though this witness commonly referred to that house as difficult to hold that the prosecution had established the exclusive ownership and possession of that house as against the appellant.

15. Thus, according to the Hon'ble Supreme Court the burden of proving the circumstance that the house from where dead body was recovered belonged to the accused being tried for murder rests upon the prosecution. In the present case, however, the learned trial judge in total disregard to the well settled legal position that it is the prosecution which has to establish the guilt of the accused and the accused is not expected to establish his innocence decided this circumstance as established against the appellant-accused because no evidence had been led by him to show that the house where dead body of Mohd. Salim was found did not belong to him. This reasoning of the trial judge being erroneous cannot be accepted by us.

16. The trial Court also relied upon the confessional statement allegedly made by the appellant-accused while in police custody after his arrest. The said confessional statement is Ex. PW-l/H. This document had been relied upon by the prosecution to establish the recovery of weapon of offence pursuant to the information given by the accused in this statement wherein the accused had allegedly offered to get recovered the 'kirpan' used in the incident from an almirah lying in his house. This document records the address of the accused as 3971, Gali Khankhana, Macchli Walan, Jama Masjid, Delhi. The learned prosecutor had argued that this document could be used against the accused since the weapon of offence had been recovered pursuant to the information given by the accused in his said disclosure statement and in that statement he himself had also admitted that house No. 3971, Machhli walan was his house and so that admission of a vital fact could also be used against the accused. In our view, however, this document could not be utilized by the trial Court for the purpose of recording the finding that the house from where the dead body of the deceased was recovered was owned by or was in the possession of the accused by treating the contents thereof as an admission of the accused that the aforesaid house belonged to him. This document could be used only to the extent it is permissible under Section 27 of the Evidence Act and not for any other purpose. It cannot be said that the police had discovered the fact that the house No. 3971 belonged to the accused pursuant to the said disclosure statement of the accused. The police had already reached house No. 3971 and found the dead body there. In any case, the said document Ex. PW-l/H was not even put to the accused when he was being examined under Section 313 Cr.P.C. and so it could not be used against him for this reason also. As far as the alleged recovery of the weapon of offence pursuant to this disclosure statement is concerned we shall deal with that aspect of the prosecution case after we have finished our discussion on this circumstance of recovery of dead body.

17. The learned trial Judge has also relied upon the seizure memo Ex. PW-l/E regarding the alleged recovery of the weapon of offence at the instance of the accused treating its contents also as an admission of the accused that house No. 3971, Macchliwalan belonged to him and was possessed by him exclusively. Learned APP supported this approach also of the trial Court. However, in our view this was also totally erroneous approach of the trial Judge. Whatever was

recorded in this seizure memo could not have been considered to be a substantive piece of evidence relating to an incriminating circumstance against the accused. None of the witnesses who had signed this seizure memo had claimed in evidence that house No. 3971 belonged to the accused. In fact, it was not even claimed by them that this memo was signed by the accused. Even the investigating officer did not claim so. In any case, even this document was also not put to the accused during his statement under Section 313 Cr.P.C. and so for that reason also it could not be utilized against the accused. In our view, the learned trial Court has found this circumstance of'recovery of dead body from the house of the accused' as established totally on inadmissible pieces of evidence and, in fact, it can be said that the finding on this circumstance has been returned by the learned trial judge against the appellant on no evidence at all.

18. The last two circumstances pressed into service by the prosecution were the recovery of one 'kirpan' Ex. P-1 at the instance of the appellant-accused pursuant to the disclosure statement Ex. PW-1/H allegedly made by him after his arrest and find of 'A' group blood on that kirpan which was the blood group of the deceased. According to the prosecution case the 'kjrpan' got recovered by the appellantraccused was used by him for committing the murder of the deceased and that was sought to be established on the basis of CFSL report (Ex. PW-14/F) to the effect that that 'kirpan' had blood on it of 'A' group which was the blood group of the deceased also and further from the evidence of the autopsy surgeon (PW-15) to the effect that the injury No. 1 which was found by him on the body of the deceased and which was sufficient to cause death could be caused with the 'kirpan' which was produced before him for his opinion. Regarding this circumstance, the submission of the learned Counsel for the appellant was that the evidence adduced by the prosecution regarding the recovery of the 'kirpan' Ex. P-1 was only of police officials and the only independent witness to that recovery was PW-1 Shariq Datt Khan but he has not supported the prosecution case. As far as the evidence of police officials is concerned, learned Counsel submitted, the same is also of no help for the prosecution since all of them have given contradictory statements not only about the recovery of the 'kirpan' but also in respect of the very arrest of the appellant-accused and those contradictions render the evidence of all of them highly doubtful. It was also the contention that even if it is accepted

that the appellant-accused had got recovered the 'kirpan' Ex. P-1 that recovery would not establish the guilt of the accused. The further submission was that the 'kirpan' in question was not shown to the autopsy surgeon when he was examined in Court to get it confirmed from him if he had given his earlier opinion in respect of the same weapon or not and further that even to the accused it was not put during his statement under Section 313 Cr.P.C. that he had got recovered the 'kirpan' Ex. P-1.

18. After carefully examining the evidence of the police witnesses regarding the recovery of 'kirpan' Ex. P-1 we find ourselves in full agreement with the aforesaid submissions made on behalf of the appellant and we do not find any force in the submission of the learned APP that all these infirmities pointed out by the learned Counsel for the appellant are insignificant and we also do not subscribe to the half-hearted submission made that even on the basis of solitary circumstance of recovery of the 'kirpan' the conviction of the appellant-accused can be sustained.

We find from the impugned judgment that the learned trial judge had himself found the evidence on the aspect of the arrest of the accused to be contradictory and it was also observed that the witnesses to the arrest, namely, PWs 7, 8 and 14 had made certain embellishments also. However, the learned trial judge brushed aside the contradictions and embellishments noticed by him in the evidence of these three witnesses, all of whom were police officials, by observing that since the factum of arrest was not being disputed by the accused the fact that one witness said one thing about his arrest and the other one said something else was of no consequence. However, we do not subscribe to this reasoning also of the learned trial judge since the witnesses to the arrest of the accused as well as the recovery of the so-called weapon of offence were same and the contradictions in their evidence were not insignificant and were quite material. PW-8 Const. Jugal Kishore in his chief-examination had deposed that the accused was arrested in his presence but he did not say anything as to from where the accused was arrested. In cross-examination, however, he claimed that the accused was apprehended from his house at 10.00 a.m. when he (the accused) had come to his house on 10.11.91. PW-14, S.I. Rameshwar Dutt, the investigating officer of this case, however, deposed that the accused was arrested from Urdu Bazar Road where

the accused was entrapped by the police. In cross-examination he had also stated that while he himself had remained at the scene of occurrence he had sent one head constable and two constables alongwith the complainant to the place of arrest of the accused to have it confirmed whether the accused was present there or not and thereafter he accompanied by PW-8 Const. Jugal Kishore had gone to the place of arrest of the accused and then the accused was arrested from Urdu Bazar Road. These statements of two police officials are contradictory to each other and this contradiction in their statements renders their further statements to the effect that the accused had made a disclosure statement after his arrest and pursuant thereto had also got recovered one 'kirpan' quite doubtful.

The making of disclosure statement by the accused and recovery of the weapon of offence pursuant thereto becomes doubtful also for the reason that the complainant has not supported the case of the prosecution on this aspect. Thus, even this circumstance relied upon by the prosecution cannot be said to have been established beyond reasonable doubt. In view of this, the CFSL report regarding the detection of 'A' group blood on the aforesaid 'kirpan' also becomes irrelevant and of no help to the prosecution case. In this regard there is another significant flaw in the prosecution case and that flaw is that even though the autopsy surgeon (PW-15) had deposed that he had given his opinion in respect of one 'kirpan' produced before him by the police but when he was examined in Court the 'kirpan' Ex. P-1 was not even shown to him to find out if the opinion given by him that the weapon shown to him could have caused the fatal injury noticed by him on the body of the deceased was the 'kirpan' Ex. P-1. So, it also becomes doubtful whether the 'kirpan' Ex. P-l, if at all it was got recovered by the appellant-accused, was the weapon of offence used for causing injuries to the deceased.

19. Having thus found that none of the circumstances relied upon by the prosecution has been established beyond reasonable doubt the complete chain of circumstances relied upon by the prosecution gets broken into pieces. So, the appellant deserves to be acquitted by giving him the benefit of doubt. Accordingly, we allow this appeal and the impugned judgment of conviction as well as the order of sentence are set aside and consequently the appellant stands acquitted of the charges for which he was convicted by the trial Court.

During the pendency of the appeal, the sentences of imprisonment awarded to the appellant were suspended and now as a result of his acquittal the bail bond furnished by him stands cancelled and his surety discharged.