

Dharminder @ Dharma and anr. Vs. State

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Court : Delhi

Decided On : Feb-21-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 313

Appeal No. : CRL.A.NO.35/1999; CRL.A.NO.241/1999

Appellant : Dharminder @ Dharma and anr.

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Anurag Jain, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Vide impugned judgment and order dated 20.10.1998, the appellants Dharminder and Mahesh have been convicted for the offence of having murdered Sudhir (herein after referred to as the "deceased"), for which offence they have been sentenced to undergo imprisonment for life and pay a fine in sum of `1,000/-

each; in default to undergo simple imprisonment for one month.

2. Criminal law was set into motion at around 02.45 A.M. on 01.01.1996 when DD entry No.60B, Ex.PW-12/E, was recorded by Const.Jai Narain PW-16, to the effect that Const.Suresh Chand has informed from AIIMS over telephone that Sudhir S/o Ambika R/o I/271 Ansari Nagar who was injured in a fight at AIIMS campus has been admitted in the hospital by his father.

3. On receiving a copy of the afore-noted DD entry, ASI Iqbal Singh PW-17, accompanied by Const.Surender Singh reached AIIMS hospital where the doctor informed him that the deceased is not fit for making a statement, as recorded in the MLC Ex.PW-4/A of the deceased. At around 03.15 A.M. the deceased succumbed to his injuries.

4. At the hospital, ASI Iqbal Singh PW-17, met Ambika Singh PW-3, the father of the deceased, who claimed to have knowledge about the identity of the assailants of the deceased. ASI Iqbal Singh recorded the statement Ex.PW-3/A of Ambika Singh and made an endorsement Ex.PW-17/B thereon, and at around 04.00 A.M. handed over the same to Const.Surender Singh for registration of an FIR. Const.Surender Singh took the endorsement Ex.PW-17/B to the police station where HC Abdul Quam PW-12, registered FIR No.4/96 Ex.PW- 12/A, at about 04.25 A.M. on 01.01.1996 and at about 05.00 A.M. handed over the copy of FIR Ex.PW-12/A to Const.Dharambir PW-14, for delivery of the same to the Magistrate. HC Abdul Quam contemporaneously recorded entry Ex.PW-12/B in the roznamcha register regarding the registration of the FIR Ex.PW-12/A and the delivery of the same to the Magistrate. At around 06.10 A.M. Const. Dharambir PW- 14, returned to the police station after delivering the copy of the FIR Ex.PW-12/A to the Magistrate upon which HC Abdul Quam recorded DD entry Ex.PW-12/C in said regard.

5. In his statement Ex.PW-3/A, Ambika Singh, the father of the deceased, stated that in the intervening night of 31.12.1996 and 01.01.1996 at around 12.30 A.M. Dharminder @ Dharma and Mahesh @ Dhantru who live in the vicinity of his house and are well known to him came to his house and called out for his son i.e. the deceased and said Happy New Year; Come out; We will embrace each other

in New Year. When the deceased was about to leave with the said persons he questioned him as to where he is going, upon which he answered that he would come back in a while and thereafter he went with Dharma and Dhantru. He did not pay much heed to the matter as he thought that they are youngsters and would come back after celebrating New Year. At around 01.30 A.M. he heard shrieking voice of the deceased from outside to the effect I have been attacked; Save me upon which he and his daughter rushed outside where he saw that the deceased was lying injured on the ground at a distance of 20-25 paces from his house and writhing in pain. He saw that there were wounds on the front and back side of the body of the deceased and that blood was oozing out of the said wounds. When he and his daughter Ramita made inquiries from the deceased he told them that Dharma and Dhantru i.e. the appellants had stabbed him with a knife. Thereafter he and his neighbour Balwant Singh removed the deceased to the casualty ward of AIIMS hospital in a car which was being driven by Om Parkash. While on the way to the hospital the deceased was writhing in pain and saying that Dharma and Dhantru said that you have seen our notoriety; you have seen what we can do. Thereafter the deceased became unconscious and was got admitted in the hospital by him and Balwant Singh. At around 3.15 A.M. the deceased succumbed to his injuries.

6. In the meantime, Inspector B.R.Sharma PW-18, arrived at the hospital and took over the investigation of the case. Inspector B.R.Sharma prepared the inquest papers Ex.PW-7/B- 1 to Ex.PW-7/B-7 relating to the death of the deceased including an application Ex.PW-7/B-1 for conduct of the post- mortem of the deceased, which application was forwarded to the concerned doctor at about 2.50 P.M. on 01.01.1996. Relevant would it be to note that Inspector B.R.Sharma made following recording in the application Ex.PW-7/B-1:-

"Short summary of case (not more than 100 words) Sir, deceased Sudhir was stabbed with knives by unknown two boys today i.e. 1-1-96. He was got admitted in AIIMS casualty at 2.30 A.M. on 1/1/96 and died AIIMS Hosp Casualty at around 3.15 A.M. on 1/1/96." (Translated Version) (Emphasis Supplied)

7. Thereafter Inspector B.R.Sharma PW-18, accompanied by ASI Iqbal Singh PW-17, proceeded to the place of occurrence where he saw that earth was stained with blood at two spots namely, the spot where the deceased was found injured on the ground by his family members and the spot which was at a distance of 1369 square yards from the first spot. Inspector B.R.Sharma lifted the blood stained earth and earth control from aforesaid two spots and seized the same vide memos Ex.PW-17/C and Ex.PW-17/D respectively. Inspector B.R. Sharma found a jacket lying on the ground near the spot where the deceased was found lying injured by his family members, which jacket was seized by him vide memo Ex.PW- 6/F. Inspector B.R.Sharma prepared rough site plan Ex.PW- 18/A of the place of occurrence; recording therein, points A, C and D, the spots where the deceased was found lying injured on the ground by his family members; earth was stained with blood at a spot which was at some distance from the spot where the deceased was found lying injured on the ground by his family members and the jacket was found lying on the ground. Be it noted here that the site plan Ex.PW-18/A records that the distance between points A and C is 1369 square yards.

8. Since the father of the deceased had indicted the appellants as the assailants of the deceased, the police set out to apprehend them. On the basis of a secret information, the appellants were arrested at about 02.15 P.M. on 01.01.1996. Inspector B.R.Sharma interrogated the appellants in the presence of ASI Iqbal Singh PW-17 and public person Balwant Singh PW-6. Appellant Dharminder made a disclosure statement Ex.PW-17/B, admitting having committed the crime and using a dagger to stab the deceased; he stated that he had hidden the said dagger and the shirt worn by him at the time of commission of the crime and that he can get recover the said articles. Appellant Mahesh made a disclosure statement Ex.PW-6/A, admitted having committed the crime and using a knife to stab the deceased; he stated that he had hidden the said knife and that he can get recover the same. After making the disclosure statements, appellant Dharminder led the afore-noted police officers to his house and got recovered a dagger and shirt concealed in his house in the presence of Balwant Singh. The aforesaid dagger and shirt were seized vide memos Ex.PW-6/C and Ex.PW-6/G respectively. Appellant Mahesh led the afore-noted police officers to his house and got recovered a knife concealed in the roof of his house in the presence of Balwant

Singh. The said knife was seized vide memo Ex.PW-6/B.

9. Inspector B.R.Sharma PW-18, took appellant Mahesh to AIIMS hospital for his medical examination where MLC Ex.PZ of appellant Mahesh was prepared, the relevant portion whereof reads as under:-

"PARTICULARS OF INJURIES OR SYMPTOMS, IN CASE OF POISONING Old injury Stitched"

10. At the hospital, it transpired that on the same day i.e. 01.01.1996 at about 03.00 A.M. appellant Mahesh had visited AIIMS hospital for treatment of an injury sustained by him and that the MLC Ex.PW-18/G of appellant Mahesh was prepared at that time. The relevant portion of the MLC Ex.PW-18/G of appellant Mahesh reads as under:-

"Allegedly involved in fight.

O/E : Smelling of alcohol + CLW neck." (Emphasis Supplied)

11. On the same day i.e. 01.01.1996 the body of the deceased was sent to the mortuary where at around 03.30 P.M. Dr.S.K.Gupta PW-7, conducted the post-mortem of the deceased and gave his report Ex.PW-7/A which records that following injuries were found on the person of the deceased:-

"1. Stab wound 02 1/2 cm x 3/4 cm on the anterior aspect of right chest situated at 20 cm below right shoulder deep and 05 cm lateral to mid line. On further dissection the track of the wound is towards left chest containing 2 liters of fluid blood.

2. Stab wound 02 1/2 cm x 3/4 cm on the anterior aspect of right chest situated at 2 cm lateral to injury no.1. On further dissection the injury is chest cavity deep.

3. Stab wound 02 1/2 cm x 3/4 cm on the lateral aspect of right chest, 20 cm below the right shoulder deep. The wound was chest cavity deep.

4. Stab wound 02 1/2 cm x 3/4 cm on the lateral aspect of right upper thigh. On further dissection it is hip bone deep. The wound is filled with extra blood and

hemorrhage.

5. Stab wound 02 1/2 cm x 0 1/2 cm on lateral aspect of right thigh (01 cm deep) superficial in nature hemorrhage present.

6. Stab wound 3 cm x 1 cm into muscle deep 01 cm on the external aspect (lateral) of upper left arm.

7. Contusion with swelling on left eye in the lower aspect measuring 3 cm, 2cm"

12. The post-mortem report Ex.PW-7/A of the deceased further records that the death of the deceased was caused due to hemorrhagic shock as a result of multiple injuries sustained by him; that all the injuries found on the person of the deceased were ante-mortem in nature and caused by sharp- edged weapon.

13. After conducting the post-mortem, the doctor handed over the clothes and blood sample of the deceased on a gauze to ASI Iqbal Singh and Const.Sam Dev PW-15, who seized the same vide memos Ex.PW-15/A, 15/B and 15/C respectively.

14. The seized materials; namely, blood stained earth and jacket lifted from the place of occurrence; the clothes and blood sample of the deceased; the dagger and shirt recovered at the instance of appellant Dharminder and the knife recovered at the instance of appellant Mahesh were sent to FSL for serological test. Vide FSL reports Ex.PX and Ex.PY it was opined that the blood group of the deceased was A; that human blood of A group was detected on the blood stained earth and jacket lifted from the place of occurrence; human blood of A group was detected on the shirt and dagger recovered at the instance of appellant Dharminder and human blood of A group was detected on the knife recovered at the instance of appellant Mahesh.

15. Needless to state, the appellants were sent for trial. Charges were framed against them for having committed the offence punishable under Section 302/34 IPC.

16. Apart from examining the police officers associated with the investigation, the prosecution examined Ramita Singh, the sister of the deceased, Ambika Singh, the father of the deceased, R.P.S.Chabbra, Om Prakash and Balwant Singh, the neighbours of the deceased, HC Abdul Quam, Const. Dharambir, ASI Iqbal Singh and Inspector B.R. Sharma as PW- 2, PW-3, PW-4, PW-5, PW-6, PW-12, PW-14, PW-17 and PW-18 respectively.

17. Ambika Singh PW-3, the father of the deceased, deposed in complete harmony with his earlier statement Ex.PW-3/A.

18. Ramita Singh PW-2, the sister of the deceased, deposed that on 01.01.1996 she was present in her parents house and watching television when at about 12.30 A.M. the appellants came there. The appellants called the name of the deceased and said Sudhir come out; we want to give you the greetings of New Year. When the deceased was about to leave with the appellants her father stopped him upon which she said that he would come back in a while after giving greetings of New Year and thereafter he went with the appellants. At around 01.30 A.M. she heard shrieking voice of the deceased from outside to the effect that I have been attacked; Save me upon which she and her father rushed outside and saw that the deceased was lying injured on the ground at a distance of 20-25 paces from his house and writhing in pain. On going closer to the deceased she saw that blood was oozing out from the chest and shoulder of the deceased. When she and her father made inquiries from the deceased he told them that the appellants had stabbed him with knives. In the meantime, their neighbour Om Parkash who is employed as a driver also came there and brought his car for removing the deceased to the hospital. Thereafter she, her father and her neighbour Balwant Singh removed the deceased to the hospital. While on the way to the hospital the deceased was writhing in pain and saying that Dharma and Dhantru said that you have seen our notoriety; you have seen what we can do. Thereafter the deceased became unconscious and was got admitted in AIIMS hospital. At around 3.15 A.M. the deceased succumbed to his injuries. The jacket which was seized vide memo Ex.PW-6/F was worn by appellant Dharminder at the time when he visited their house in the intervening night of 31.01.1996 and 01.01.1996.

19. Dr.R.P.S.Chabbra PW-4, deposed that the MLC Ex.PW-4/A of the deceased was prepared by him. On being questioned about the medical condition of the deceased at the time of preparation of the MLC Ex.PW-4/A, the witness stated that (Quote): Patient was semi conscious disoriented but was speaking.'

20. Om Parkash PW-5, the neighbour of the deceased, deposed that on 01.01.1996 he was watching New Year program on television when at around 01.30 A.M. he heard some noises from outside. When he looked outside he saw that the deceased was lying on the ground and that his father Ambika Singh and sister Ramita Singh were standing by his side. Thereafter he went downstairs and saw that the deceased was lying injured on the ground and writhing in pain. Ramita Singh was making inquiries from the deceased upon which the deceased told him that the appellants had stabbed him with knives. He brought the keys of his car for the purposes of removing the deceased to the hospital. He along with Ambika Singh, Ramita and Balwant removed the deceased to the hospital. The deceased was crying in the car and saying that Dharma and Dhantru said that you have seen our notoriety; you have seen what we can do.

21. Balwant Singh PW-6, the neighbor of the deceased, deposed that on the intervening night of 31.01.1996 and 01.01.1996 he was about to sleep when at about 01.30 A.M. he heard some noises from outside. When he went downstairs he saw gathering of crowd. On going closer towards the crowd he saw that Ramita Singh who was the sister of the deceased was asking from the deceased that who had attacked him upon which the deceased said that the appellants had attacked him. Thereafter he, the father of the deceased and Om Parkash removed the deceased to the hospital in the car of Om Parkash. While on way to the hospital the deceased was saying that Dharma and Dhantru had said that you have seen our notoriety. Appellants Dharminder and Mahesh had got recovered knife, shirt and dagger from their respective houses in his presence.

22. Dr.S.K.Gupta PW-7, deposed that the post-mortem report Ex.PW-7/A of the deceased was prepared by him. The injuries Nos.1 to 6 found on the person of the deceased are possible to have been caused by the knife and dagger recovered from the person of the deceased.

23. HC Abdul Quam PW-12, deposed that the FIR Ex.PW-12/A and DD entries Ex.PW-12/C were registered/recorded by him and that the entry Ex.PW-12/B was recorded by him in the Roznamcha register. It may be noted here that the testimony of the said witness was not controverted on behalf of the appellants.

24. Const.Dharambir PW-14, deposed that on 01.01.1996 at about 05.00 A.M. he left the police station to deliver the copy of the FIR registered in the present case to the Magistrate and returned to the police station at about 06.10 A.M. after delivering the same to the Magistrate. It may be noted here that the testimony of the said witness was controverted on behalf of the appellants.

25. ASI Iqbal Singh PW-17, deposed that he had made the endorsement Ex.PW-17/B on the statement Ex.PW-3/A of Ambika Singh at about 04.00 A.M. on 01.01.1996, which deposition was not controverted on behalf of the appellants.

26. Inspector B.R.Sharma PW-18, deposed that he had conducted the investigation of the present case. On being questioned about the recording contained in the application Ex.PW-7/B-1 that the deceased was stabbed by two unknown boys, the witness stated that (Quote) By the time I prepared the inquest report it was not known to me who was the culprits was. It is correct that in the FIR names of the accused persons were mentioned. Ques. Why did you write in Ex.PW7/B-1 if the FIR was written by that time. The names of the assailants as unknown. Please explain. Ans. It was not established at that time by evidence that the assailants were the accused persons who were named as such I wrote unknown.'

27. In their statements under Section 313 Cr.P.C. the appellants pleaded innocence and false implication. Appellant Mahesh stated that on the intervening night of 31.01.1996 and 01.01.1996 he was present in the house of appellant Dharminder where a quarrel took place between them and appellant Dharminder pushed him due to which he sustained injuries on his neck. At around 03.00 A.M. he went to AIIMS hospital for the treatment of his injury and his MLC Ex.PW-18/G was prepared. He was forcibly lifted by the police from AIIMS hospital and falsely implicated in the present case. Appellant Dharminder stated that on the intervening night of 31.01.1996 and 01.01.1996 appellant Mahesh was present in

his house. He pushed appellant Mahesh due to which he sustained injuries. Appellant Mahesh went to the hospital for the treatment of the injury sustained by him. On 02.01.1996 the police forcibly lifted him and arrested him in the present case.

28. Holding that the evidence of Ramita Singh PW-2, Ambika Singh PW-3, Om Parkash PW-5 and Balwant Singh PW-6 that the deceased made a dying declaration to them that he was stabbed by the appellants is creditworthy and that the contents of the dying declaration of the deceased are corroborated from the facts that:- (i) the deceased was last seen alive in the company of the appellants and that the appellants failed to explain the circumstances in which they parted company from the deceased; (ii) the injuries found on the person of the deceased were possible to have caused by the shirt, dagger and knife recovered at the instance of the appellants; (iii) the blood of same group as that of the deceased was found on the weapons recovered at the instance of the appellants; (iv) appellant Mahesh went to the hospital for treatment of his injury around the time of the occurrence and failed to explain the circumstances in which he sustained the injury on his person and, the learned Trial Judge has convicted the appellants.

29. At the hearing of the appeal, the learned counsel for the appellants submitted as under:-

I The first submission advanced by the learned counsel for the appellants was predicated upon the recording contained in the application Ex.PW-7/B-1 that the deceased was stabbed by two unknown boys. Learned counsel for the appellants drew attention of the court to the fact that the application Ex.PW- 7/B-1 was forwarded to the concerned doctor at about 02.50 P.M. on 01.01.1996, meaning thereby that the application Ex.PW-7/B-1 was prepared by Inspector B.R.Sharma around 02.50 P.M. Counsel further drew attention of the court to the fact that the police claims to have registered the FIR Ex.PW- 12/A at 04.25 A.M. on 01.01.1996, which FIR clearly records that the appellants are the assailants of the deceased. Had the FIR Ex.PW-12/A been registered at 04.25 A.M. on 01.01.1996 as claimed by the prosecution, there was no occasion for Inspector B.R.Sharma PW-18, to record that the deceased was stabbed by two unknown boys. Counsel

urged that the aforesaid discrepancy between the FIR Ex.PW-12/A and the application Ex.PW-7/B-1 when seen in the light of ipse-dixit explanation given by Inspector B.R.Sharma in said regard suggests that the FIR Ex.PW-12/A was ante-timed by the police, which fact leads to a very strong presumption that the police had gained time to contrive evidence against the appellants.

II The second submission advanced by the learned counsel for the appellants was that the facts and circumstances of the case show that the dying declaration made by the deceased is suspect. The first limb of the submission advanced by the learned counsel was predicated upon the post-mortem Ex.PW- 7/A of the deceased and the site plan Ex.PW-18/A. With reference to the site plan counsel highlighted that blood was lifted from spot A and a blood stained jacket, statedly belonging to appellant Dharminder at spot C and the spot where deceased fell and from where blood was lifted has been marked D. The distance from spot B to spot D is about 1300 yards. It was urged that it was impossible for a person who was so grievously injured to have covered so much distance. The second limb of the argument advanced by the learned counsel was predicated upon the testimonies of Ramita Singh PW-2, Ambika Singh PW-3, Om Parkash PW-5 and Balwant Singh PW-6. Counsel pointed that whereas Ramita Singh PW-2 and Ambika Singh PW-3, deposed that Om Parkash PW-5 and Balwant Singh PW-6 came to the spot where the deceased was lying injured on the ground after the deceased told them that he was stabbed by the appellants Om Parkash and Balwant Singh deposed that the deceased told his family members that he was stabbed by the appellants in their presence. According to the counsel, the aforesaid discrepancy between the testimony of Ramita Singh PW-2, Ambika Singh PW-3, Om Parkash PW-5 and Balwant Singh PW-6, raises a big doubt on the veracity of their testimony.

III The third submission advanced by the learned counsel for the appellants pertained to the genuineness of various seizure memos prepared by the police during the investigation of the present case. Counsel pointed out that the seizure memos Ex.PW-18/A to Ex.PW-18/O prepared by the police during the investigation of the present case contain the signatures of Const.Surinder Singh whereas the photocopies Ex.PW18/DA to Ex.PW-18/DO of the said memos handed over to the appellants along with the copy of charge sheet filed by the

police in the present case do not contain the signatures of Const.Surinder Singh, which facts shows that the seizure memos Ex.PW-18/A to Ex.PW-18/O are fabricated documents. According to the counsel, aforesaid glaring discrepancy in the case of the prosecution lends credence to the defence of the appellants that they were falsely implicated by the police in the present case.

IV Without prejudice to the afore-noted submissions, learned counsel for the appellants lastly submitted that the fact that appellant Mahesh sustained an injury on his neck around the time of the incident as recorded in the MLCs Ex.PZ and Ex.PW-18/G of appellant Mahesh when seen in the light of the recording contained in the MLC Ex.PW-18/G of appellant Mahesh that appellant Mahesh had sustained said injury in a fight strongly probablizes that the case of appellant Mahesh falls within fourth exception of Section 300 IPC and thus is guilty of committing offence of culpable homicide not amounting to murder.

30. The first submission advanced by the learned counsel for the appellants can be dealt with reference to the testimonies of ASI Iqbal Singh PW-17, HC Abdul Quam PW-12 and Const.Dharambir Singh PW-14.

31. As already noted herein above, ASI Iqbal Singh PW-17, deposed that he had made endorsement Ex.PW-17/B on the statement Ex.PW-3/A of Ambika Singh at about 04.00 A.M. on 01.01.1996, which deposition was not controverted by the defence. HC Abdul Quam PW-12, deposed that he had registered the FIR Ex.PW-12/A in the present case at about 04.25 A.M. on 01.01.1996 and recorded entry Ex.PW-12/B in Roznamcha register in said regard; he handed over the copy of the FIR Ex.PW-12/A to Const.Dharambir Singh at about 05.00 A.M. for delivery of the same to the Magistrate and recorded the entry Ex.PW-12/B in Roznamcha register in said regard and that Const. Dharambir returned to the police station at about 06.10 A.M. after delivering the copy of the FIR Ex.PW-12/A to the Magistrate and recorded DD entry Ex.PW-12/C in said regard. The testimony of HC Abdul Quam PW-12, has not been controverted by the defence. Const.Dharambir Singh PW-14, deposed that on 01.01.1996 at about 05.00 A.M. he left the police station to deliver the copy of the FIR Ex.PW-12/A to the Magistrate and returned to the police station at about 06.10 A.M. after delivering the same to the Magistrate. The

testimony of Const.Dharambir Singh PW-14, has not been controverted by the defence.

32. From the aforesaid uncontroverted testimonies of ASI Iqbal Singh PW-17, HC Abdul Quam PW-12 and Const.Dharambir Singh PW-14, it is clear beyond any doubt that the FIR was registered at 04.25 A.M. on 01.01.1996 and not ante-timed as claimed by the defence and that the recording contained in the application PW-7/B-1 that the deceased was stabbed by knives with two unknown boys is merely a slip-up on the part of Inspector B.R. Sharma PW-18, the scribe of the application Ex.PW-7/B-1.

33. The second submission advanced by the learned counsel for the appellants presupposes that all the six stab wounds found on the person of the deceased were inflicted upon him at spot B. It is quite possible that only one or two out of six stab wounds found on the person of the deceased were inflicted upon him at spot B upon which the deceased ran to save his life; the appellants chased the deceased and ultimately pinned him down at spot D and inflicted remaining stab wounds on the person of the deceased. In said regards, two facts needs to be noted which lends credence to the theory that the deceased was chased by the appellants between the spots A and D. The first fact which needs to be noted is that two injuries were found on the lateral aspect of the right thigh of the deceased, which is indicative of the circumstance that the deceased was running to save his life and that the appellants were chasing him and inflicted the said injuries on the person of the deceased while trying to pin him down. The second fact which is worth noticing is that a jacket was found lying on the ground at spot C and that Ramita Singh PW-2, the sister of the deceased, identified the said jacket as the one worn by appellant Dharminder at the time when the appellants visited their house in the intervening night of 31.12.1996 and 01.01.1996. Ramita Singh PW-2, was cross- examined at length by the defence but nothing could be elicited therefrom which could cast a doubt on her aforesaid deposition. The fact that the jacket was found lying on the ground at spot C is again indicative of the fact that the jacket of appellant Dharminder fell on the ground while the appellants were chasing the deceased. The site plan shows that the deceased was first injured at spot B evidenced by human blood of the same group as that of the deceased

recovered from the said spot. The deceased ran northwards towards his house and then turned left to move in the western direction to reach his house, obviously the deceased was running for cover. Before he could reach his house, he was overpowered and stabbed at spot D wherefrom human blood of the same group as that of the deceased was recovered. In between spot B and spot D is spot C wherefrom Dharminde's jacket having human blood of the same group as that of the deceased was lifted. It is apparent that Dharminde had chased the deceased and probably for the reason his jacket was restricting his movements, he removed the same to gain freedom for onward movement.

34. As regards the submission that the deceased could not have been in the condition to speak at the time when he was found by his family members, it would be relevant to note the testimony of Dr.R.P.S.Chhabra PW-4, that the deceased was semi-conscious and disoriented but speaking at the time of the preparation of the MLC Ex.PW-4/A of the deceased. If the deceased could speak at the time of his admission in the hospital he could surely speak at the time when he was found by his family members which was sometime before his admission in the hospital.

35. Regarding the discrepancy pointed out by the learned counsel for the appellants between the evidence of Ramita Singh PW-2 and Om Parkash PW-3, on one hand and Om Parkash PW-5 and Balwant Singh PW-6 on the other hand, suffice would it be to state that there was lot of hustle and bustle at the spot where the deceased was lying injured on the ground at the time when Om Parkash PW-5 and Balwant Singh PW-6, came there. In such circumstances, it is possible that the father and the sister of the deceased told Om Parkash and Balwant Singh that the deceased had told them that the appellants stabbed the deceased but Om Parkash and Balwant Singh perceived as if the deceased told the father and the sister of the deceased that the appellants had stabbed him in their presence.

36. Regarding the discrepancy between the seizure memos Ex.PW-18/A to Ex.PW-18/O prepared by the police during the investigation of the present case and the photocopies Ex.PW- 18/DA and Ex.PW-18/DO of the said seizure memos handed over to the appellants along with the copy of the charge sheet, suffice would it be to state that it is quite possible that the appellants put a chit of paper

and applied fluid on the signatures of Const.Surender Singh contained in the photocopies of the said seizure memos handed over to them along with the copy of the charge sheet and thereafter got them photocopied in order to project a discrepancy between the original seizure memos Ex.PW-18/A to Ex.PW-18/O and the photocopies of the said memos handed over to them along with the charge sheet.

37. Whether the learned counsel for the appellant is correct in contending that the case of appellant Mahesh falls within the fourth exception of Section 300 IPC?

38. The settled law is that the burden of proving that his case falls within any of the exceptions of Section 300 IPC is upon the accused. But the mere fact that the accused adopted another defence in his statement under Section 313 Cr.P.C. and did not claim the benefit of any of the exceptions of Section 300 IPC is not enough to deny the accused the benefit of any of the exceptions of Section 300 IPC, if the court can cull out materials from the evidence on record pointing to the existence of the circumstances leading to an exception.

39. To claim benefit of fourth exception of Section 300 IPC, two conditions must be satisfied namely: - (i) there was a sudden fight between the accused and the deceased and (ii) the murder of the deceased was committed without any pre-meditation in a sudden heat of passion.

40. In the instant case, the MLC Ex.PW-18/G of appellant Mahesh records that an injury was sustained by him in a fight. Whether the aforesaid recording establishes that there was a sudden fight between appellant Mahesh and the deceased? In our opinion, the answer to the aforesaid question is no. The aforesaid recording was made on the basis of the information supplied to the doctor by appellant Mahesh. The possibility that appellant Mahesh sustained an injury while murdering the deceased and covered up the same by stating to the doctor that he had sustained said injury in a fight cannot be ruled out. Furthermore, the fact that as many as six stab wounds were found on the person of the deceased negatives the possibility that the murder of the deceased was committed by the appellants without any pre-meditation in a sudden heat of passion. In that view of the matter, we hold that the case of appellant Mahesh does not falls within the fourth

exception of Section 300 IPC.

41. Having repelled the submissions advanced by the learned counsel for the appellants, we proceed to consider whether the learned Trial Judge has correctly come to the conclusion that the appellants are guilty of the murder of the deceased.

42. The witnesses; Ramita Singh PW-2, Ambika Singh PW-3, Om Parkash PW-5 and Balwant Singh PW-6, deposed that the deceased had made a dying declaration to them that he was attacked by the appellants. The aforesaid witnesses were cross-examined at length but nothing could be elicited therefrom which could cast a doubt on the veracity of their evidence. Not only that, no suggestion has been given to the said witnesses on behalf of the appellants that they were inimical or had any motive to falsely implicate the appellants in the present case. In such circumstances, there was no occasion for the appellants to falsely implicate the appellants in the present case. Furthermore, we concur with the reasoning of the learned Trial Judge that the contents of the dying declaration made by the deceased are corroborated from the facts enumerated by the learned Trial Judge. (See paragraph 28 of the instant judgment). Thus, no fault whatsoever could be found with the view of the learned Trial Judge that the appellants are guilty of having committed the offence of murder of the deceased.

43. In view of the above discussion, the above-captioned appeals are dismissed. The appellants are on bail and hence we cancel the bail bond and surety bond furnished by the appellants and direct the appellants to surrender and serve out the remaining sentence.

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