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Maya Chanchal and ors. Vs. State

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Court : Delhi

Decided On : Aug-18-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Sections 452, 307, 392, 397, 302, 34; Code of Criminal Procedure (CrPC) - Section 313; Evidence Act - Section 114

Appeal No. : CRL. A. 20/1998; CRL. A. 43/1998; CRL. A. 237/1998

Appellant : Maya Chanchal and ors.

Respondent : State

Advocate for Def. : Mr. Rajesh Mahajan, Adv.

Advocate for Pet/Ap. : Mr. Sumeet Verma, Adv.

Judgement :

1. These appeals are directed against the judgment dated 22.09.1997 and order on sentence dated 23.09.1997 whereby the Appellants were convicted for the offences punishable under Sections 452/307/392 /397/302/34 of the Indian Penal Code (IPC) and were sentenced to undergo RI for three years and to pay a fine of ` 500/- and in default of payment of fine to further undergo RI for six months for the offence punishable under Section 452 read with Section 34 IPC; RI for seven years and to pay a fine of ` 1,000/- and in default of payment of fine to further undergo RI for one year for the offence punishable under Section 392 read with

Section 34 IPC; RI for seven years and also to pay fine of ` 1,000/- and in default of payment of fine to further undergo RI for one year for the offence punishable under Section 307 read with Section 34 IPC. The Appellants were further awarded RI for life and also to pay a fine of ` 2,000/- and in default of payment of fine to further undergo RI for two years for the offence punishable under Section 302 read with Section 34 IPC.

2. The Complainant, Gulzari Lal Batra used to reside in House No.D-64, Naraina Vihar with his family comprising of his wife Smt. Phool Batra, sons Vikas Batra and Gaurav Batra and daughter Kiran Batra. It was a newly built house and some finishing/electrical work was still going on in the upper floors of the house.

3. On 14.03.1991 Gulzari Lal Batra's family members were present in the house, except him. He used to reach home at about 08:00 P.M. after shutting his shop. At about 07:30 P.M., the door bell rang. Gaurav Batra (Gulzari's son) went to open the door expecting that his father might have returned from the shop. Smt. Phool Batra (Gulzari's wife) heard the cry „bachao- bachao; she immediately came to the lobby to find out the reason for the alarm. It is alleged that when she went there, the Appellants Maya Chanchal and Lal Babu Ram caught hold of her. Thereafter, the Appellants Suresh and Maya Chanchal stabbed her with knives; while they did so she noticed Gaurav Batra (the deceased) lying in an injured condition in the lounge. On hearing the shrieks of Phool Batra, her other son Vikas Batra and her daughter Kiran Batra also reached the lounge. Vikas Batra tried to rescue his mother from the clutches of Lal Babu Ram and Gauri Shankar. It is alleged that one of the assailants caught hold of Vikas Batra and another gave a hammer blow on his head. Kiran Batra was dragged by Suresh into her room and was stabbed with a knife.

4. It is alleged that the assailants removed two gold karas, four gold bangles from Smt. Phool Batra. She was forced to handover two ear rings, one chain and a pendent. The Appellants also took two gold bangles from Kiran Batra. According to the prosecution, Smt. Phool Batra was forced to open the almirah. The Appellants removed cash, some gold ornaments and silver coins. The prosecution alleges that the Appellants Suresh, Maya Chanchal and Lal Babu Ram while inflicting

injuries on Smt. Phool Batra were exclaiming "god do Sali ko, god do." The Appellants then fled with the looted property.

5. At about 8:00/08:15 P.M. Gulzari Lal Batra reached his house and as usual blew the car horn expecting someone to come out. On finding no response, he went inside the house and found that his sons Gaurva Batra and Vikas Batra, wife Smt. Phool Batra and daughter Kiran Batra lying drenched in blood. He noticed that the household goods were scattered and the almirahs opened. The telephone connection was disconnected. Without wasting further time, he rushed to his brother's (Arjun Batra's) and informed his other brother, Ashok Batra about the incident and then returned to his house. Ashok Batra (PW-3) informed the Police Control Room (PCR) about the incident. The injured were taken to the Dr. Ram Manohar Lohia (RML) hospital in different vehicles. It is alleged that on way to the hospital, Gaurav Batra told Ashok Batra that the persons doing electric works in his house had inflicted injuries on him and other family members. He estimated that there were about 3-4 attackers.

6. DD No.20-A, Ex.PW-1/A was recorded in Police Station Naraina Vihar. ASI Brahmjit Singh was assigned the DD entry, who with Constable Subhash Chander reached the spot. Inspector Madan Mohan Kesar, SHO of the Police Station and SI Om Prakash along with other staff members (from the Police Station) also reached the spot. Inspector Madan Mohan Kesar (IO) took over the investigation.

7. The IO came to know that the injured had been removed to RML hospital. He directed ASI Brahmjit Singh to guard the spot and he went to the hospital. The IO collected the MLCs of the four injured (including deceased Gaurav Batra). He could not record the statement of any of the injured as they were declared unfit (to make any statement). The IO recorded statement Ex.PW-1/B of Gulzari Lal Batra and sent rukka to the Police Station for registration of a case.

8. The IO, along with Gulzari Lal Batra returned to the spot, ASI Brahmjit Singh had already got the scene of occurrence photographed. The crime team had also inspected the site. SI A.P. Verma (PW-20) of Finger Print Bureau developed 17 chance prints from the spot and got the same photographed. He (the IO) lifted bloodstained earth, earth control and articles Ex.P1 to P-23 from the spot.

9. The IO joined Sardar Avtar Singh (who was the electrical contractor hired by Gulzari Lal Batra) in the investigation. The Appellant Suresh (already convicted and released, being juvenile) was arrested and his bloodstained vest Ex.P-37 was seized at Avtar Singh's behest.

10. On interrogation, the Appellant Suresh made a disclosure statement Ex.PW-4/D and in pursuance of the disclosure statement, currency notes worth ` 8,000/- (Ex.P-38/1- 72, Ex.P-41, Ex.P-43 and Ex.P-44/1-2), two gold karas Ex.P-39, two gold bangles Ex.P-40/1-2. Suresh (juvenile), a knife Ex.P-5 from the roof of jhuggi near house No.D-65, Naraina Vihar, were recovered. Suresh then led the police party to house No.260, Karkardooma. It resulted in the arrest of co-accused Maya Chanchal, Lal Babu Ram and Gauri Shankar. They were living as tenants of PW-8 Om Prakash. A bloodstained vest (Ex.P-47) of Maya Chanchal was seized; he then produced two wrist watches (Ex.P-1 and Ex.P-2), two gold chains (Ex.P-3 and Ex.P-4), and currency notes for ` 10,000 /- (Ex.P-46) The Appellant Lal Babu Ram produced one gold Kara (Ex.P-24), two gold rings (Ex.P-25 and P-26), currency notes amounting to ` 8,000/- (Ex.P-27), handkerchief (Ex.P-28) and the Appellant Gauri Shankar got recovered two gold bangles (Ex.P-32 and Ex.P-33), three wrist watches (Ex.P-34 to Ex.P-36), nine silver coins and cash of ` 4609/- (Ex.P-31) and a purse (Ex.P-48). The Appellants Maya Chanchal, Lal Babu Ram and Gauri Shankar also made confessional/disclosure statements Ex.PW-17/A, PW-17/B and PW-17/C respectively.

11. Gaurav Batra succumbed to his injuries on 15.03.1991 at 02:00 A.M. A DD No.3-A (Ex.PW-1/F) was recorded in the Police Station. The Inquest proceedings on the dead body of Gaurav Batra were held; the body was sent for postmortem examination. It is the prosecution case that the Appellants were produced in the Court of Metropolitan Magistrate in muffled faces. The Appellants' specimen fingerprints were taken during the course of investigation. The chance prints were found to be identical with the finger impression of the Appellants Lal Babu Ram and Maya Chanchal. The Test Identification Proceedings (TIP) were arranged; Appellant Lal Babu Ram was correctly identified by Smt. Phool Batra in the TIP. The other Appellants refused to participate in the TIP.

12. On Appellants pleading not guilty to the charge, the prosecution examined 29 witnesses. PW-5 Vikas Batra, PW-6 Smt. Phool Batra and PW-28 Kiran Batra are the eye witnesses of the occurrence. PW-14 SI Om Parkash, PW-17 SI Rajveer Singh and PW-29 Inspector Madan Mohan Kesar (IO) are witnesses to the recovery of the looted property from the Appellants. PW-15 Mr. J.R. Aryan organized the judicial TIP for the Appellants in the Central Jail, Tihar. The Appellant Lal Babu Ram was identified in the TIP whereas the Appellants Maya Chanchal and Gauri Shankar refused to participate in the proceeding. PW-20 SI A.P.Verma lifted the chance prints from the scene of the occurrence and developed them. PW-2 Arjun Batra and PW-12 Gulzari Lal Batra deposed about the injured lying in house No.D-64 and their removal to the RML hospital.

13. Before dealing with the respective contentions raised on behalf of the parties, we would refer to the important pieces of evidence produced by the prosecution.

14. PW-5 Vikas Batra deposed that he knew the Appellant Suresh (the juvenile) as he was doing electrical work in their house. He testified that on 14.03.1991 at about 07:30 P.M. he, his mother, his sister and his brother were present at home and he was in the bedroom. He heard his mother cry out from the lobby, at the ground floor. He and his sister (Kiran Batra) came out of their rooms (on the ground floor) and saw their mother being held by Lal Babu Ram and Gauri Shankar. He deposed having tried to rescue her but that one of the assailants held him, and another gave hammer blows on his head. The knife blows were also given to him. One of the assailants stabbed his mother. The witness deposed that one accused had a hammer, two accused had knives and one had an article like a screwdriver. He was frank enough to say in examination-in-chief that he did not recollect who had stabbed him; the witness identified all the Appellants in the Court. To the same effect are the testimonies of PW-6 Smt. Phool Batra and PW-28 Kiran Batra. They were emphatic that Suresh (juvenile) was one of the electricians who had worked at their house and that the electrical contract was given to Sardar Avtar Singh and the Appellant Suresh was his employee.

15. PW-2 Arjun Batra deposed that he found Smt. Phool Batra, Vikas Batra, Gaurav Batra and Kiran Batra in an injured condition. He shifted Smt. Phool Batra

and Vikas Batra to RML hospital in his car. Gaurav Batra and Kiran Batra were shifted to the hospital by PW-3 Ashok Batra.

16. PW-3 Ashok Batra corroborated PW-2 Arjun Batra. He also deposed that while on way to the hospital, Gaurav Batra told him that the assailants were three or four in number and the culprits were the same individuals who were doing electrical work in their house.

17. PW-4 Sardar Avtar Singh is a very crucial witness. He was Suresh's employer. He deposed that Suresh had worked as a labourer for him. He (Suresh) had carried out the work at D-64, Naraina Vihar (belonging to Shri Gulzari Lal Batra) where he (PW- 4) had undertaken a contract for carrying out the electrical fittings at labour rate contract. He deposed that Suresh used to live in a jhuggi in Kibi Palace near the nala. On the night of the incident, the police contacted him and inquired about Suresh; he took the police party to Suresh's jhuggi. Suresh, however, was not present in the jhuggi and instead his brother was available there. This witness was permitted to be cross-examined by the learned APP. He denied that on his pointing out Suresh was arrested and that Suresh had produced two gold karas, two bangles, stained with blood apart from the currency notes of ` 8,000/-; he (PW-4) further declined to identify his vest. The witness denied the suggestion that he had deposed falsely to save the Appellant Suresh (juvenile).

18. PW-14 SI Om Parkash is one of the witnesses to the recovery of the articles i.e, jewellery, wrist watches and cash from the spot (D-64, Naraina Vihar) at the instance of the Appellant Suresh (juvenile), Maya Chanchal, Lal Babu Ram and Gauri Shankar. PW-29 Inspector Madan Mohan Kesar corroborated PW-14 SI Om Parkash and deposed about the recovery of various articles from the spot as well as from the Appellants. PW-15 Shri J.R. Aryan, Metropolitan Magistrate deposed about the identification of the Appellant Lal Babu Ram by Smt. Phool Batra and of various articles during the TIP of the property alleged to be recovered from the Appellants.

19. The Appellants were examined under Section 313 Cr.P.C. to enable them to explain the incriminating evidence appearing on the record against them. The Appellant Suresh admitted to working as a labourer to do the electric fittings with

PW-4 Sardar Avtar Singh and that he worked at house No.D-64, Naraina Vihar. He, however, denied having gone to the complainant's house on 14.03.1991 at 07:30 P.M. along with the Appellants and inflicting injuries upon Smt. Phool Batra, Gaurav Batra, Vikas Batra and Kiran Batra. He denied committing robbery. He also denied the recovery of any stolen property from him. He stated that on the morning of 15.03.1991 he was arrested from his jhuggi, and was brought to the house of Shri Gulzari Lal Batra where he was shown to the witnesses. He alleged that his photographs were taken and he was forced to put his hands on TV, almirah and the knife.

20. The Appellants also denied having committed any robbery along with co-accused Suresh (juvenile). They took up the plea that nothing was recovered from them and that they had been falsely implicated in the case. By the impugned order, the Appellants were convicted for the offences for which they were charged. The Trail Court believed the testimonies of the eye witnesses i.e. PWs 5, 6 and 28, having seen the Appellants at the time of the incident. The Trial Court believed the recovery of various articles from the possession of the Appellants. The Court held that finger prints of the Appellants Maya Chanchal and Lal Babu Ram tallied with the chance prints. Being aggrieved, the Appellants have challenged the judgment and order as stated earlier.

21. We have heard Mr. Sumeet Verma, learned Amicus Curiae for the Appellant Maya Chanchal, Mr. Siddharth Aggarwal, learned Amicus Curiae for the Appellants Lal Babu Ram and Gauri Shankar, Mr. Rajesh Mahajan, learned Additional Standing Counsel for the State and have perused the record.

22. It is argued by the learned Amicus Curiae for the Appellants that there is no evidence to show as to how the IO inquired about Suresh (juvenile) from PW-4 Sardar Avtar Singh. It is urged that it is not clear when the statement of PW-3 was recorded by the police. Even if, his testimony is believed that a dying declaration was made by the deceased Gaurav Batra regarding involvement of the electrician in the incident; admittedly, Gaurav Batra did not give Suresh's name. It is, therefore, very intriguing that the IO accompanied by other police officials straightway reached PW-4 Sardar Avtar Singh and inquired about Suresh. It is

submitted that the very foundation of the case is Suresh's link who allegedly led the police to the Appellants. Since the prosecution has not given any clue as to how the IO inquired about Suresh from PW- 4, its case remains shrouded in mystery and the evidence produced becomes unreliable.

23. It is strenuously urged that the Appellants Maya Chanchal and Gauri Shankar since the very beginning (i.e. at the time of refusing TIP) had informed the Metropolitan Magistrate that they were taken to house No.D-64, Naraina Vihar and were asked to touch various household articles. Thus, it is evident that the chance prints were created by the police to falsely implicate the Appellants.

24. It is argued that the Appellants were arrested on the early morning of 15.03.1991. It has emerged from the prosecution evidence that PWs 5, 6 and 28 were discharged from the hospital after about 15-20 days of the incident. In spite of this, the TIP was arranged in mid May, 1991; because of this delay (in holding the TIP), the very purpose of taking assurance from the witnesses, who had seen the culprits for the first time, stood frustrated. It is emphasized that the refusal to participate in TIP by the Appellants Maya Chanchal and Gauri Shankar and identification of Lal Babu Ram does not help the prosecution as they had informed the Metropolitan Magistrate to being shown to the witnesses and that their photographs were taken. In these circumstances, no adverse inference could be drawn against the Appellants Maya Chanchal and Gauri Shankar for their refusal to participate in the TIP. The identification of Lal Babu Ram in the circumstances was also worthless.

25. On the other hand, it is argued by Mr. Rajesh Mahajan, learned Additional Standing Counsel for the State that the prosecution got a vital lead from the statement of Gaurav Batra made (to PW-3 Ashok Batra) regarding involvement of some electricians in the incident. Even if no specific name was given by Gaurav Batra, the police could find out from PW-12 and PW-4 as to who were the electricians doing the work in the house of Gulzari Lal Batra.

26. The learned Additional Standing Counsel for the State submitted that there is no enmity or ill will between the victims/complainant and the Appellants. Therefore, it is not possible that the victims would falsely identify and implicate the Appellants

and leave out the real assailants. It is canvassed that the specimen finger prints of the Appellants Maya Chanchal and Lal Babu Ram tallied with the chance prints lifted from the spot. The recovery of valuable stolen property immediately after the occurrence by itself was sufficient to nail the Appellants. It is submitted that the delay of about two months in holding the TIP was explained and justified as the witnesses who were the victims of murderous assaults remained in the hospital for about a fortnight and thereafter they (PWs 5, 6, and 28) were recouping from their ill- health. The arrangement of TIP on 17.05.1991, therefore, could be said to have been delayed, particularly when the victims had sufficient time to see the assailants and note their facial impressions in their memories.

27. The Appellants' contention that the IO had no material to inquire about Suresh from PW-4, appears to be attractive, but is unfound. PW-3's statement is that Gaurav Batra (the deceased) had disclosed to him that the electricians doing the job in the house were involved in the incident and that this was told by him (PW-3) to the IO in the hospital. Of course, the Appellant Suresh's name was not given by the deceased Gaurav Batra. Yet, he might have been named during the interrogation of PW-4 Sardar Avtar Singh. PW-4 supported the prosecution version to the extent that inquiries were made by the IO from him about Suresh and that he had led the police party to Suresh's jhuggi in Kirbi Palace. We are convinced that the recoveries effected at Appellants' instance cannot be doubted with which we shall deal a little later. From PW-4's testimony, it is evident that the police proceeded swiftly, arrested the Appellant Suresh (juvenile) in the dead of night leading to the recovery of jewellery and currency notes amounting to ` 8,000/-from him. The three Appellants were arrested at Suresh's instance and again the booty (in the shape of gold jewellery, wrist watches, currency notes, gold/silver coins, etc.) was recovered from them. Thus, in the considered opinion of this Court, the Appellants cannot say that prosecution has not disclosed how the investigation was guided, or what was the source of information leading to Suresh.

28. As far as the TIP is concerned, the Appellant Lal Babu Ram was identified by PW-6 Smt. Phool Batra, whereas the Appellants Maya Chanchal and Gauri Shankar refused to participate in the parade. The Appellants have given reasons for their refusal as well as of Lal Babu Ram's identification i.e. they were shown to

the witnesses and their photographs taken and thus, there was no purpose of holding the TIP. We do not agree with the contention.

29. PW-29 Inspector Madan Mohan Kesar (IO) testified that the Appellants were produced in the Court on 15.03.1991 with their faces muffled. A suggestion was given to him that the accused were taken to the spot and were shown to the witnesses there as well as in the Police Station. It is very important to note that there were four injured in the case. Gaurav Batra suffered four stab injuries and four lacerated wounds and succumbed to the injuries without even regaining consciousness on the next day of the incident. Smt. Phool Batra (PW-6) suffered eleven stab injuries including seven in the abdomen and one in the chest; Kiran Batra suffered multiple clean edged (stab wounds) numbering eight on the back and two clean edged wounds on the right wrist. Similarly, Vikas Batra also suffered multiple stab injuries in the lower chest. All the three victims who survived the murderous assault were battling for their lives in the RML hospital when the Appellants were arrested. Thus, there was no question of the witnesses being present in the house when the Appellants were allegedly taken over there. Obviously, once the Appellants were remanded to the judicial custody after a few days of police remand they were out of the IO's bounds. As far as the investigating agency is concerned, they could neither have been taken to the spot nor to the Police Station. A suggestion given to the IO that the accused persons were taken to the spot and shown to the witnesses at the spot as well as in the Police Station is farfetched and is without any merit.

30. As observed earlier, the TIP was arranged in mid May, 1991. The evidence on record is that the victims were discharged from the hospital after 15-20 days of the incident. They were inflicted multiple stab injuries on vital parts of the body and it cannot be expected that immediately on their discharge from the hospital they would be in a

position to visit the jail for joining the TIP. Even otherwise, the delay in holding the TIP in this case is not of any importance in view of the fact that the case does not rest only on ocular evidence.

31. In Brij Mohan v. State of Rajasthan 1994 (1) SCC 413 the test identification parade was held after three months. The argument was that it was not possible for the witnesses to remember the facial impressions of the accused after lapse of such a long time. It was held that generally with lapse of time memory of witnesses would get dimmer and therefore the earlier the test identification parade is held it inspires more faith. It was observed that no time-limit could be fixed for holding a test identification parade. It was held that sometimes the crime itself is such that it would create a deep impression on the mind of the witnesses who had an occasion to see the culprits. It was held that this would include the facial impression of the culprits. It was emphasized that such a deep impression would not be erased within a period of three months.

32. In Lal Singh v. State of U.P. 2003 (12) SCC 554, the Supreme Court referred to Brij Mohan (supra) and observed that where conviction is based not only on the basis of identification in Court, but on the basis of other corroborative evidence such as recovery of looted articles, the identification stands on a different footing and the Court has to consider evidence in its entirety. In this case there is recovery of gold jewellery, wrist watches, gold and silver coins and currency notes from the Appellants which again is corroborated by the TIP of the stolen property held in presence of PW-15 Shri J.R. Aryan, Metropolitan Magistrate.

33. It is true that the stolen property consisting of currency notes and silver coins, collectively Ex. P-31, two pair of ear rings Ex.P-32 and tops Ex.P-33, three wrist watches Ex.P-34, P-35 and P-36 were not put in TIP as the Metropolitan Magistrate who presided over the proceeding was of the opinion that sufficient similar property to mix with the case property had not been produced by the IO. The fact, however, remains that this property was identified by PW-6 Smt. Phool Batra in the Court which is substantive evidence. In the case of Earabhadrappa @ krishnappa v. State of Karnataka, AIR 1983 SC 446, the Supreme Court held that it was a matter of common knowledge that the ladies have an uncanny sense of identifying their own belongings, particularly articles of personal use in the family.

34. It is important to note that immediately after the incident the injured were admitted in the RML hospital. The police got a lead that some electricians working

in the house were involved in the incident. The police acted fast and arrested Suresh (juvenile) and recovered stolen property consisting of two gold Karas, two bangles apart from the cash of ` 8,000/-. The three Appellants were arrested on the lead provided by Suresh (juvenile) and again a number of jewellery items, wrist watches, silver and gold coins were recovered from the Appellants. As observed by us earlier, the articles were duly identified by PW-6 Phool Batra in the Court. Most of these articles were also identified in the TIP. The articles (except currency notes and watches) were such that they could not change hand easily. Moreover, the time lag between the robbery and recovery of the articles from the Appellants is so narrow that an inference of Appellants' participation in the robbery and murder can be very easily drawn.

35. In Tulsiram Kanu v. The State, AIR 1954 SC 1, the Supreme Court held that the presumption under Section 114 illustration (a) of the Evidence Act has to be read along with the "important time factor". If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But, if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case.

36. Applying the ratio of Tulsiram Kanu case (supra) it can be concluded that the Appellants were involved in the robbery, commission of murder of Gaurav Batra and causing dangerous injuries on vital parts of the body of Smt. Phool Batra, Kiran Batra and Vikas Batra.

37. PW-20 SI A.P.Verma from Finger Prints Bureau, PTS Malviya Nagar was summoned at the spot after the incident. He lifted and developed 17 chance prints marked Q.1 to Q.17. He deposed that the chance print marked Q.6 was divided into three parts which were marked as Q.6A, Q.6B and Q.6C. All the chance prints were photographed by the police photographer Constable Subhash Kumar in his presence and he has submitted his report Ex.PW-20/A. The specimen finger impression of all the three Appellants and Suresh (juvenile) were taken during investigation. The chance prints Q.5, Q.6A, Q.6C, Q.10, Q.11 and Q.12 tallied with the specimen finger/palm prints of the Appellant Maya Chanchal. Similarly, the

chance prints mark Q.14, Q.15, Q.16 and Q.17 were identical with the finger impression of the Appellant Lal Babu Ram.

38. It is contended by the learned counsel that the Appellants had taken a defence from the beginning that after the incident they were taken to the spot i.e. D-64, Naraina Vihar and were asked to touch the door, Palang, TV, glass, knife, etc. etc. The learned counsel for the Appellants took us through the test identification proceedings conducted during investigation. While refusing to participate in the TIP, the Appellant Maya Chanchal stated that he was taken to the house in Naraina and his finger prints were obtained on the door, Palang and knife. However, no suggestion was given to PW-20 SI A.P. Verma, who lifted the chance prints, about this, in cross- examination. In fact, his testimony was left unchallenged. Similarly, no suggestion was given on behalf of the Appellant Maya Chanchal to PW-29 that his finger prints were obtained on any article in house No.D-64 in Naraina Vihar. Even in reply to question No.46, a contradictory stand was taken by the Appellant Maya Chanchal vis- à-vis the plea at the time of TIP. He stated that many articles were brought to the Police Station from the house of the deceased and his thumb and palm impression were taken on them in the Police Station. It is true that the prosecution case has to stand on its own leg and even if an explanation or a suggestion given by an accused is contradictory, no adverse inference can be drawn against him. But, the contradictory explanation has to be excluded from the consideration as being false. In view of there being no challenge to testimonies of PWs 20 and 29, we conclude that finger prints impression of the Appellant Maya Chanchal and Lal Babu Ram were found on the articles in house No.D-64, Naraina Vihar.

39. Thus from the ocular evidence of PWs 5, 6 and 28, it is established that the Appellants had committed lurking house trespass by night in house No.D-64, Naraina Vihar, New Delhi; had committed robbery of the various articles mentioned earlier (from the said house) in furtherance of their common intention and had voluntarily caused dangerous hurt to Smt. Phool Batra, Kiran Batra and Vikas Batra with the intention and knowledge that had they died, the Appellants would have been guilty of murder. It is also established that in furtherance of their common intention, the Appellants committed murder of deceased Gaurav Batra.

40. As stated earlier, the ocular evidence was corroborated by recovery of gold jewellery and other articles from the Appellants. There is further corroboration of the prosecution version by identification of the finger prints of the Appellants Maya Chanchal and Lal Babu Ram on the articles removed from house No.D-64, Naraina Vihar, New Delhi.

41. In view of the foregoing discussion, we are of the opinion that there is no error or infirmity in the impugned judgment and order. The Appeals have, therefore, to fail. The same are hereby dismissed.

42. The Appellants shall surrender before the Trial Court on 30th August, 2011 to serve the remainder of their sentence. The Registry shall transmit the Trial Court records and this judgment, forthwith, to ensure compliance.

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