

Vinod Vs. State

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Court : Delhi

Decided On : Apr-26-2013

Judge : Siddharth Mridul

Appellant : Vinod

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

10. 04.2013 Judgment pronounced on:

26. 04.2013 CRL.A. 1470/2011 VINOD Through: Appellant Mr. Ajay Verma, Advocate Through: Respondent Ms. Richa Kapoor, APP versus STATE CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL JUDGMENT SIDDHARTH MRIDUL, J.

1. The present appeal is directed against the judgment dated 13.07.2011 whereby the appellant has been convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short IPC) for committing the murder of deceased Sanjay on 30.07.2007 by inflicting multiple stabs injuries. By order of sentence dated 15.07.2011, the appellant is sentenced to undergo rigorous imprisonment for life and a fine of `2000/- has also been imposed. In default of payment of fine, the appellant is to undergo Simple Imprisonment for a period of one month.

2. We note that co-accused Kushal was declared juvenile by the Sessions Court vide order dated 04.12.2007 and was sent to Juvenile Justice Board for further proceedings.

3. On 30.07.2007, at about 10:13/10:15 p.m., a PCR information (Ex.PW-17/A) was received about a stabbing incident near Saishankar School, Illrd, 60 Foota Road, Molarband Extension, Badarpur. On receipt of the said information, DD No.38A (Ex.PW-31/A) was registered at about 10:20 p.m. Sub Inspector Hiralal (PW-16) proceeded to the spot and found that the injured was already taken to AIIMS Hospital. Blood was lying at the spot. Informal inquiries were made from eye witness Rajpal Bhatti (PW-1) and other persons present at the spot. Thereafter, SI Hiralal along with Constable Kaptan Singh (PW-5) went to AIIMS Hospital wherein it was found that injured Sanjay was admitted and was declared brought dead at 1:10 a.m. The MLC report, Ex.PW-24/A of the deceased Sanjay was collected which revealed presence of multiple stab wounds over the chest, lumbar region and gluteal region. SI Hiralal (PW-16) came back to the spot and recorded the statement (Ex.PW-1/A) of the eye witness PW-1 Rajpal Bhatti. In his statement Ex.PW-1/A, Rajpal Bhatti stated that he was a regular medical practitioner and had been running his clinic in a shop located at F Block, Illrd, 60 Foota Road, Molarbandh Extension, Badarpur, Delhi for the last five years. He was well aware of the people in the locality. On 30.07.2007, he opened his clinic at about 5:00 p.m. in the evening. He knew deceased Sanjay from before as they were neighbours. Sanjay being his regular customer came to his shop on a motor cycle at about 9:15 p.m. to purchase medicines and both of them started talking to each other. At 9:30 p.m., two boys namely, Kushal (declared juvenile) and Vinod (appellant) came to his shop and started conversing with Sanjay. A quarrel ensued between Sanjay and the two boys. Kushal and Vinod took Sanjay outside the shop and started beating him. Rajpal Bhatti tried to intervene and rescue Sanjay but both Kushal and Vinod did not listen or stop. The accused pushed Rajpal Bhatti aside. In the meanwhile, shopkeeper from the nearby kerosene oil shop called the Telwala chacha also reached the spot. Telwala chacha also tried to pacify the assailants but in vain. Vinod and Kushal took out knives and started giving knife blows to Sanjay on various part of his body. Both Kushal and Vinod brutally assaulted Sanjay with knives. On seeing this, Rajpal Bhatti went to his friend Vijay

asking for help. When he along with Vijay returned to the spot, he saw that Sanjay was lying in a pool of blood at some distance from his shop. Crowd had gathered on the spot. Vinod (appellant) and Kushal had ran away from the spot. The assailants attacked Sanjay because of some past enmity and it was a planned assault to commit murder of Sanjay. On the basis of the said statement, rukka, Ex.PW16/A, was prepared on 31.07.2007 at around 1:30 a.m. which led to the registration of FIR No. 586/07, Ex.PW-2/A, under Section 302 read with Section 34 IPC.

4. Inspector K.L. Yadav (PW-31) was handed over the investigation of the instant FIR. Spot inspection and photographs were taken by the Crime Team. Crime Team Report, Ex.PW-26/A was prepared. Site plan without scale Ex.PW-16/C was made at the instance of Rajpal Bhatti (PW-1). The appellant was arrested on 09.08.2007 vide arrest memo Ex.PW-16/D.

5. The homicidal death of Sanjay is not under dispute. The post-mortem on the dead body of Sanjay was conducted by PW-25 Dr. B. L. Chaudhary on 31.07.2007. PW-25 by his testimony before court proved the post-mortem report Ex.PW-25/A. According to PW-25, when he started the post-mortem there was no sign of decomposition on the dead body and both the eyes were open. The following injuries were delineated in the post-mortem report:- Ante-mortem injuries:

1. CRL.A.1470/2011 A stab wound of size 2.5 X 1 cm X cavity deep was present on right side of the chest obliquely placed medial end was upper and out end was lower. The medical end of the wound was 1 cm lateral to the midline. The upper margin of wound was 17 cm below from medial end of right clavicle. Both the angles of wound were acute. The margins were regular and clean established passing through chest wall, peritoneal cavity and then entering into the liver at anterior surface of left lobe which was measuring 1 X 0.2 X 3 cm.

2.

3. A stab wound of size 3 X 1.5 cm X cavity deep was present on the abdomen on the right at lateral aspect. The wound was horizontally placed. The medial end of the wound was 29 cm lateral to the midline, 20 cm below from anterior axillary fold.

Outer angle of the wound was more acute than inner angle. On the dissection of the wound, a track of wound was established passing through abdominal wall peritoneum and entering into the lateral surface of right lobe of liver with size 2.5 X 0.2 X 2 cm.

4. A stab wound of size 3 X 1.4 X 7 cm is present on the right side of abdomen. The medial end of the wound was 14 cm lateral to the midline, 10 cm above to anterior superior iliac spine. The wound was obliquely placed with medial end was upper and lateral end was lower. The outer angle was more acute than inner end. On dissection, the track of wound was running medially and upward in the abdominal wall.

5. CRL.A.1470/2011 A stab wound of size 3.3 X 1.5 cm with maximum depth 7 cm was placed on the right chest wall. The wound was obliquely placed outer end was lower and medial end was upper. The medial end was 11 cm lateral from midline. Upper margin was 13 cm below to right nipple and lower margin was 18 cm above to anterior superior iliac spine. On dissection of wound, a track was established passing into the chest wall running medially in chest wall muscle. Later angle was acute. A stab wound of size 3 X 1 cm X cavity deep was present on the lateral aspect of the abdomen on the right. The wound was horizontally placed and 21 cm lateral to the midline, 7 cm below to injury number 3. On dissection, a track of wound was established passing through abdominal wall, peritoneum and entering into 6. A stab wound of size 3 X 1 X 9 cm was present on right gluteal region on outer portion. The wound was obliquely placed medial end was lower and outer end was upper. Both the angles were acute. Medial end was 20 cm lateral to midline. The upper margin of wound was 5 cm below to injury no.5.

7. A stab wound of size 4 X 1.5 X 6 cm was present on interior aspect of right thigh. The wound was placed vertically. The upper end of the wound was 19 cm below to anterior superior iliac spine and lower end was 25 cm above to right knee joint. Outer margin was exposed and inner margin was under-mind. On dissection the track was running inward and medially.

8. A stab wound of size 2.5 X 0.5 X 3 cm was present on dorsal aspect of left forearm vertically placed. The lower end of wound was 5 cm above to radial styloid

process. Both the angles were acute.

9. A stab wound of size 8 X 2 X 1.cm was present on the back in the midline. The wound was horizontally placed, upper margin was 41 cm below the occipital protuberance and lower margin was 106 cm above to right heel. The right angle was acute with tailing of wound and left end was rounded. On the dissection, the track of wound was running upward lateral on the left into the chest wall.

10. A horizontally placed stab wound of size 4.5 X 1.5 cm X cavity deep was present on the back in the midline. The upper margin of the wound was 14 cm below to external occipital protuberance and lower margin of the wound was 101 cm above the right heel. The left side angle of the wound was more acute than right angle. On the dissection, a track of wound was established passing through posterior abdominal wall, entering into the right kidney and passing through and through at lower part of kidney. Perineal area containing haematoma.

11. A stab wound of size 1.5 X 0.5 X 7 cm was present on the back in the right of abdomen. The wound was obliquely placed outer and was lower and medial end was upper. The outer angle of the wound was more acute than inner angle. The medial end of the wound was 5 cm from midline. The upper margin of the wound was 45 cm below to right acromion process. On the dissection of wound, the track of wound was established which was running medially into the posterior abdominal wall.

12. A stab wound of size 2 X 0.4 X 7 cm was present on the posterior aspect of right gluteal region. The medial end of the wound was 10 cm lateral to the midline. Upper margin of the wound was 7 cm below to posterior superior iliac spine. The wound was obliquely placed, outer end was lower and medial end of the wound was upper side. The outer angle of the wound was more acute than inner angle.

6. PW-25 found that the peritoneal cavity was filled with two liters of blood. The cause of death was opined to be shock as a result of haemorrhage due to injuries mentioned above and injuries No.1, 3 & 10 were sufficient to cause death in ordinary course of nature individually or collectively. All the injuries were produced by sharp pointed weapon. Injuries were ante-mortem in nature and fresh in

duration. The time of death was calculated to be 12-16 hours before conducting the post mortem.

7. The only question which subsists is whether the appellant is responsible for causing death of Sanjay by inflicting stab injuries on his person. In his statement under Section 313 of the Code of Criminal Procedure, 1973 (for short Cr.P.C), the appellant abjured his guilt and pleaded that he was falsely implicated. OCULAR TESTIMONIES 8 In support of its case, the prosecution examined 31 witnesses. The prosecution story rests on the ocular evidence of PW-1 Rajpal Bhatti who is the complainant. PW-30 Sheoraj Singh (Telwala Chacha) was examined by the prosecution as another eye witness but he resiled from his earlier statement made to the police and was declared hostile.

9. PW-1 in examination-in-chief has made the following deposition: I am a RMP Doctor by profession and my clinic/shop is situated at F-Block, 60 Fota Road, Molarband Colony Extension, Badarpur. I opened this shop in the year 2002. I used to know nearby shopkeepers. On 30.07.2007 I opened my shop at about 5 p.m. At about 9.15 p.m. deceased Sanjay came to my clinic who earlier used to reside in my neighbourhood. At about 9.30 p.m. two persons namely Kushal (who is facing trial in Juvenile Justice Board) and other accused Vinod present in court (correctly identified) came to my clinic and both the accused persons started talking with Sanjay and shouted at Sanjay and both the accused persons took Sanjay outside my shop and thereafter started beating. I intervened into the matter but both the accused persons did not stop. Accused persons pushed me and again started bearing Sanjay. Meanwhile one person from the shop adjacent to my shop who is called Telwala Chacha also reached at the spot, he also intervened into the matter but of no avail. Accused Vinod present in court today and other accused Kushal took out knives and started giving knife blows on the person of Sanjay many times. I became nervous and ran towards my friend Vijay who resides just opposite the place of occurrence. I along with Vijay came at the spot and saw deceased Sanjay was lying in a pool of blood about a distance of about 10 yards from my clinic. Both the accused persons had ran away from the spot. I called at 100 number. Police reached at the spot. I also informed the family members of Sanjay. My statement was recorded by the IO same is Ex.PW-1/A

which bears my signatures at point A. Sanjay had expired at the spot due to injuries caused by the accused persons. Deceased Sanjay was taken to hospital. After about one month, one Sardar police officer along with Insp. K.L. Yadav came to me and I had shown the place of incident to them. In the cross examination, PW-1 has admitted that he knew appellant from the last 5-6 years as he used to purchase medicines from his shop. PW-1 has stated that his statement, Ex.PW-1/A was recorded by the police officials in the police station on the day of the incident at about 10/10:15 p.m. but he could remember the name of person who recorded his statement. The incident lasted for about 5-7 minutes. Deceased Sanjay had come to his shop on Hero Honda Splendor motorcycle but he did not remember the registration number. PW-1 stated that he was taken to the police station in the PCR Van and remained in the police station for the whole night. PW-1 denied the suggestion that he was not present at the spot when the incident occurred.

10. The Counsel for the Appellant has contended that testimony of PW-1 Rajpal Bhatti is not reliable or trustworthy and the same deserves to be rejected. We do not agree with the said contention and the same merits rejection. We have gone through the testimony of PW-1 Rajpal Bhatti. PW-1 is a natural and normal witness. His presence at the spot cannot be doubted as the incident occurred in front of his shop. On the question of involvement of the appellant Vinod, PW-1s statement is clear and categorical which has not been demolished in cross examination. The appellant, as per PW-1, was involved and had actually caused stab injuries to Sanjay. PW-1 has deposed on the similar lines as was contemporaneously recorded in Ex.PW-1/A by the police soon after the incident.

11. It is submitted that the rukka (Ex.PW-16/A) was prepared on the statement of PW-1 at about 1:30 a.m. on 31.07.2007 whereas PW-1 has stated in his cross examination that his statement under Section 161Cr.P.C. was recorded by the police at about 10/10:15 p.m. It is further contended that PW-1 in his cross examination has stated that his statement (Ex.PW-1/A) was recorded at the police station whereas as per PW-16 SI Hiralal and PW-5 Constable Kaptan Singh in their testimony have stated that the PW-1s statement was recorded at the spot.

12. PW-16 SI Hiralal has stated that after collecting the MLC, Ex.PW- 24/A of the deceased, he went back to the spot along Constable Kaptan Singh (PW-5). At the spot, he recorded the statement of eye witness Rajpal Bhatti (PW-1) and prepared the rukka, Ex.PW-16/A. He, thereafter, sent the rukka through Constable Kaptan Singh at around 1:30 a.m. for registration of FIR. In his cross-examination, PW-16 has stated that he returned to spot from the hospital at about 12:15 a.m.

13. Similarly, PW-5 HC Kaptan Singh has deposed that he went to the AIIMS Hospital along with SI Hiralal and obtained the MLC of the deceased. Subsequently, he came back to the spot. Pursuant thereto, statement of PW-1 Rajpal Bhatti was recorded in his presence by SI Hiralal (PW-16). There is nothing in the cross examination to dent his testimony.

14. Ex.PW-16/A rukka clearly records that statement of PW-1 was recorded by the police at about 1:30 a.m. on the night intervening 30/31.07.2007 at the place where the incident took place. Thereupon, FIR No. 586/2007 (Ex.PW-2/A) was promptly registered on the basis of said rukka at about 1:50 a.m. vide DD No.19/A.

15. From the testimonies of official witnesses, it is clear that the statement of PW-1 Rajpal Bhatti which Ex.PW-1/A was recorded by the police officials on the spot soon after the incident. This is corroborated from official documents in form of FIR and DD entries wherein time is mentioned.

16. It appears that there is a minor discrepancy as to the time and place of recording the statement (Ex.PW-1/A) of PW-1 by the police under Section 161 Cr.P.C. In this regard, we note that the cross examination of PW-1 was conducted nearly two year after the incident. It is possible that PW-1 may not have remembered the exact time and place as to when and where his statement was recorded by the police. Human memory tends to fade away with time. Even if for the sake of argument, we accept that the statement, Ex.PW-1/A was recorded at the police station and not at the spot, the same does not in any manner create a doubt or nullify the contents of the statement by PW-1. It is noteworthy that in Ex.PW-1/A, PW-1 has in clear and categorical terms deposed that the appellant Vinod along with co-accused Kushal attacked the deceased Sanjay and inflicted multiple knife blows on his person. Before the court as well, PW-1 has

categorically named the appellant as the perpetrator of the crime. The place of offence/incident was outside PW-1s clinic.

17. It is next submitted that the conviction cannot be based on the sole testimony of PW-1 Rajpal Bhatti as the other alleged eye witness namely PW-30 Sheoraj Singh (telwala chacha) has turned hostile and not supported the prosecution case.

18. In *Sunil Kumar vs. State (Govt. of NCT of Delhi)*, (2003) 11 SCC 36. Supreme Court repelled a similar submission observing:

9. as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration. In *Namdeo vs. State of Maharashtra*, (2007) 14 SCC 150. this Court reiterated the similar view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. In *Bipin Kumar Mondal vs. State of West Bengal*, 2010 (12) SCC 91. the Supreme Court held: In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

19. Thus, in view of the law laid down above, the contention of the appellant that no conviction can be made on the basis of sole testimony of an eye witness cannot be accepted and accordingly the same is rejected. We also note that there is nothing in the cross examination of PW-1 to suggest that he bore animosity or ill will towards the appellant so as to falsely implicate him. In fact, PW-1 is a credible and truthful witness. His testimony reveals that he knew both the appellant and the deceased from before as he was running his clinic in the same locality for the last five years. The factum of PW-30 Sheoraj Singh turning hostile does not any

manner creates suspicion on the testimony of PW-1. PW-1s testimony can stand on its own and does not require a crutch. It is also relevant that PW-10 Vijay to whom the PW-1 rushed for help at the time of the incident has supported the said fact. PW-10 Vijay has deposed that on the night of the incident he was present in his home. At about 9:30 p.m., Dr. Bhatti (PW-1) came to his house and informed him that stab wounds by knives were caused to deceased Sanjay by appellant Vinod and Kushal. He immediately proceeded to the spot along with PW-1. PW-10 saw that Sanjay had died on the spot and crowd had gathered there. He stated that he knew the appellant from before. In cross examination, PW-10 has stated that the place of occurrence was 5 minutes walking distance from his house. Nothing significant has emerged in the cross-examination which casts a doubt on PW-10s testimony. Thus, the testimony of PW-10 further corroborates the fact that PW-1 on witnessing the incident had approached him at night. RECOVERIES PURSUANT TO DISCLOSURE STATEMENT 20 It is the case of the prosecution that after the appellant Vinod was arrested, he made a disclosure statement, Ex.PW-16/H, before Inspector K.L. Yadav (PW-31), the Investigating Officer. Pursuant to the said disclosure, one of the weapons of offence i.e., a blood stained knife (Ex. P-1) and blood stained shirt (Ex.P-2) of appellant Vinod were recovered.

21. In order to prove recoveries, the prosecution examined PW-16 SI Hiralal, PW-31 Insp. K.L Yadav and PW-23 HC Mahesh Kumar as official witnesses whereas PW-3 Ram Singh and PW-4 Pradeep were produced as independent witnesses.

22. PW-16 SI Hiralal has deposed that the disclosure statement, Ex.PW- 16/H of the appellant Vinod was recorded in his presence and said disclosure bears his signature at point A. The appellant was wearing the same shirt which he was wearing at the time of incident and the same was seized vide Ex.PW-16/J.

Both the accused Vinod and Kushal disclosed that they could get the weapon of offence recovered. Thereafter, he along with the IO and HC Mahesh Kumar (PW-23) reached Gali No. 22, Plot No. 420-B, F Block, Molarbandh where one knife was recovered under the bricks at the said plot. The said knife was recovered at the instance of Appellant Vinod. Two public witnesses namely Ram Singh (PW-3) and Pradeep (PW-4) were witnesses to the recovery. One photographer Brajesh

(PW-15) was also called by the IO who took the photographs of the knife. In cross examination, PW-16 has stated that the IO gave another shirt to appellant Vinod after seizing his shirt but he could not remember from where the IO got the shirt which he gave to the appellant. PW-16 reached the recovery spot at 5:30 p.m. where around 15-20 people were gathered there. Pradeep (PW-4) and Ram Singh (PW-3) came forward to join the investigation. The knife was recovered beneath 100-150 bricks from the south east direction of the plot.

23. Similarly, PW-31 Inspector K.L Yadav, the Investigating Officer has deposed that appellant Vinod vide his disclosure, Ex.PW-16/H stated that he could get the weapon of offence recovered. The appellant at the time arrest was wearing the same shirt as he was wearing on the date of incident. The shirt of the appellant on which blood stains were present were seized vide Ex.PW-16/J.

Accused Kushal made a statement that he had thrown the knife in Agra Canal, Sector 37, Faridabad and could get the same recovered. Thereafter, the appellant Vinod took PW-31 to Gali No. 22, Plot No. 420-B, Molarband Extension in a vacant plot and a churri (Ex.P-1) was recovered from inside the bricks. Two public witnesses namely Pradeep (PW-4) and Ram Singh (PW-3) were witnesses to the recovery. The knife was blood stained and was seized vide seizure memo Ex.PW-3/A. The other weapon of offence could not be recovered despite conducting search in Agra Canal. In cross examination, PW-31 denied the suggestion that no knife was recovered at the instance Appellant Vinod. He admitted that no opinion from the doctor regarding the weapon of offence was obtained.

24. PW-23 HC Mahesh deposed that knife, Ex.P-1 and shirt Ex.P-2 were recovered at the instance of appellant Vinod. In cross examination, PW-23 stated the shirt which the appellant was wearing was seized at the police station. The shirt had blood stains as can be noticed after washing. The knife was recovered from plot ad measuring 75 sq. yards from the south east direction. There were approximately 150 bricks lying there but PW-31 did not remember the numbers of bricks which were removed to recover the knife.

25. PW-3 Ram Singh in examination-in-chief did not support the recovery of knife at the instance of appellant Vinod. In cross examination, he admitted that Plot

bearing No. 420 B, Gali No.22, F Block, Molarbandh Extension was a vacant plot. However, he denied that appellant Vinod got recovered the old iron knife after removing the bricks lying at the South East corner of the said plot. He denied that the knife was smeared with soil, blood and rust. He voluntarily admitted that he had seen the knife at the police station and that seizure memo, Ex.PW-3/A, of the knife bears his signature at point A. Similarly, PW-4 Pradeep did not support the prosecution regarding the recovery.

26. From the testimonies of the police witnesses, it emerges that the appellant at the time of arrest was wearing the same shirt he was wearing when the incident took place. It is highly unlikely and improbable that a person involved in a brutal crime on the date of arrest would wear the same shirt as he was wearing on the date of occurrence. The depositions of the police officials show that the shirt (Ex.P-2) was washed and there were efforts to wash away the blood stains. It is implausible and unbelievable that the appellant after the incident would not have destroyed/washed the shirt/clothes which he was wearing at the time the incident occurred and reuse the same shirt with blood stains. The incident took place on 30.07.2007 and the appellant was arrested on 09.08.2007, nearly 10 days after the incident. It is not that the appellant was arrested immediately after the incident. The appellant had sufficient time to get rid of the blood stains on the clothes. Therefore, the circumstance of recovery of the shirt at the instance of the appellant is rejected. As regards recovery of knife (Ex.P-1) at the instance of the accused, we note that as per the prosecution version, the other co-accused had thrown the knife in the Agra Canal. Now as per the testimony of PW-1 Rajpal Bhatti both the accused ran away from the spot together. It is highly doubtful and questionable that one accused (Kushal) would throw the knife in the water and other accused, the appellant herein would carry the knife to a vacant plot near the place of incident and hide it underneath 100-150 bricks. What is also noticeable that both PW-3 Ram Singh and PW-4 Pradeep, the so called independent witnesses joined by the police at the time of effecting recovery, have not supported that prosecution version that the knife was recovered at the instance of the appellant Vinod from the said plot. Therefore, in these circumstances, the probability of knife being planted cannot be eliminated and the said recovery is disbelieved and rejected.

MOTIVE 27 As per the prosecution, the motive behind the commission of the

crime was that deceased Sanjay had developed friendship with one girl namely Drishti Jain (PW-12) with whom the appellant also wanted to establish a relationship. PW-12 refused proposal by the appellant Vinod. On account of PW-12, quarrel took place between the deceased and the appellant. In order to establish motive, prosecution produced PW-12 Drishti Jain and PW-9 Sanjay Kamath. It is contended by the Counsel for the Appellant that both PW-12 and PW-9 did not support the prosecution case and therefore, the prosecution has failed to establish motive against the appellant. PW-12 Drishti and PW-22 Sanjay Kamath have both stated that they were neither aware about the incident or existence of any enmity between the appellant and the deceased. However, PW-22 Rambir in his cross examination by the Public Prosecutor admitted that there was enmity between the appellant and the deceased. He stated that one week prior to the incident, a quarrel took place between the groups of the deceased and the appellant. Before the police, PW-22 had revealed the cause of quarrel to be a girl named Drishti who used to sell vegetables. He had complained about the incident to the brother of Drishti. In cross examination by the counsel for the accused Vinod, PW-22 admitted that he knew both the deceased and the Appellant for the last 15 years and a verbal altercation had taken place between them prior to the incident. PW-10 Vijay who arrived at the spot on calling of PW-1 Rajpal Bhatti also deposed in his cross examination that he had informed the police about the altercation that took place between the deceased and the appellant over the love affair with PW-12 Drishti. PW-10 further admitted that Appellant Vinod had extended threat to Sanjay.

28. It is evident that PW-12 Dhristi who was primarily produced by the prosecution to establish motive has denied the prosecution case. PW-12 Dhristi was a young girl. Her deposition in the Court is debatable, in view of the testimonies of other witnesses. However, it is trite law that the issue of motive becomes totally irrelevant when there is direct evidence of a trustworthy witness regarding the commission of the crime. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. Even if the absence of motive as alleged is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there

is direct trustworthy evidence of PW-1 Rajpal Bhatti as to commission of an offence, the motive part loses its significance. Therefore, even if the genesis of the motive of the occurrence is not fully established, the ocular testimony of the witness as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance.[See Bipin Kumar Mondal vs. State of W.B., (2010) 12 SCC 91.29. In the instant case, though the prosecution has been unable to prove the recovery of knife at the instance of the appellant Vinod, the guilt of the appellant stands established beyond reasonable doubt by virtue of the testimony of PW-1 Rajpal Bhatti. PW-1 as discussed above is a credible, trustworthy and reliable witness. He has unequivocally pointed out towards the fact that the appellant Vinod had inflicted stab injuries on the deceased pursuant to which the latter died.

30. The last contention raised by the counsel for the appellant is regarding quantum of sentence. It is submitted that the appellants conviction should be converted from under Section 302 IPC to Section 304 IPC. The appellant did not attack the deceased with premeditation and as per the testimony of PW-1 Rajpal Bhatti, appellants inflicted knife injuries after a quarrel erupted between the deceased and the appellant and co-accused Kushal on the spot. We cannot agree with said contention. From the post mortem report Ex.PW25/A, it is evident that 12 stab injuries were found on the entire body of the deceased. The medical record clearly demonstrates that the deceased was attacked and stabbed repeatedly. The injuries as confirmed from the autopsy report were on the vital parts and Sanjay had died on the spot itself. The attack was premeditated in as much as the appellant and Kushal both had knives in their possession. The deceased was unarmed and the appellant along with Kushal attacked him with knives. There is nothing on record to show that the appellant had received any grave or sudden provocation from the appellant or that the appellant had lost his power of self-control from any action of the deceased Sanjay. All these circumstances manifestly point that the appellant had intended to cause death of Sanjay and not bodily injuries. The Appellant possessed the requisite intention and the knowledge and consequent thereto, attacked Sanjay in a brutal manner and caused his death.

31. In view of aforesaid discussion, the appeal is dismissed. The conviction and sentence is maintained and upheld. SIDDHARTH MRIDUL (JUDGE) SANJIV KHANNA (JUDGE) APRIL 26 2013 dn

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