

**Babu Vs. State**

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**Court :** Delhi

**Decided On :** May-29-2013

**Judge :** Sunita Gupta

**Appellant :** Babu

**Respondent :** State

**Advocate for Def. :** Ms. Ritu Gauba

**Advocate for Pet/Ap. :** Mr. Imran Ahmed

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 837/2010 BABU Through: ..... Appellant Mr. Imran Ahmed, Advocate. versus STATE Through: % ..... Respondent Ms. Ritu Gauba, APP. Date of Decision: May 29, 2013 CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HONBLE MS. JUSTICE SUNITA GUPTA JUDGMENT : SUNITA GUPTA, J.

1. Subject matter of challenge in this appeal is the judgment dated 15.12.2009 in Sessions Case No.26/2009 arising out of FIR No.170/2004, Police Station Khajuri Khas, Delhi. The appellant has been convicted under Section 302 of the Indian Penal Code (IPC), 1860 and Section 27 of the Arms Act, 1959 and sentenced to rigorous imprisonment for life for the offence under Section 302 IPC and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month. He was further sentenced to 7 years rigorous imprisonment and fine of Rs.500/-, in default

15 days rigorous imprisonment for offence under Section 27 of the Arms Act.

2. The case of the prosecution emanates from the fact that on 30.04.2004, DD No.4A, Exhibit PW6/B was recorded at Police Station Khajuri Khas, Delhi regarding incident of firing at House No.818, Gali No.6, E-Block, Shri Ram Colony. This DD was marked to SI Sri Pal (PW19) for investigation, who along with constable Maharaj Singh reached the aforesaid place and came to know that injured Kohinoor has already been shifted to GTB hospital. After leaving constable Maharaj at the spot, SI Sri Pal went to GTB hospital, collected the MLC of injured Kohinoor. She was having gunshot injuries. The doctor has mentioned the injured unfit for statement and injured was already shifted to operation theatre. Roop Chand, son of injured (PW2) met SI Sri Pal. He recorded his statement, Ex.PW2/A, wherein he stated that he along with his mother and step father Ubed is residing at house No.818 Gali No.6, E-Block, Shri Ram Colony, New Delhi. He is a student of sixth standard in Varun Nursery School, Khajuri Khas. His mother earlier used to reside with Babu. She got married to Ubed about one week ago. Babu quarrelled with his mother on this account several times. On that day, he had not gone to school as it was raining and was present at the house. At about 8:15 a.m., Babu came to their house. At that time, his mother was cooking food and his step father Ubed was lying on takhat. He was also present on the takhat. Babu started quarrelling with his mother Kohinoor and step father Ubed and demanded the articles. His mother declined. Then, Babu grappled with his mother. Babu took out a small gun from pocket of his pant and fired at his mother, a result of which blood started oozing out from her abdomen. In the meantime, he also heard a noise like bursting of cracker. Babu ran away from the spot. On this statement, SI Sri Pal prepared rukka Ex.PW19A and sent the same through Constable Maharaj Singh to police station for registration of FIR. Inspector Vinita Tyagi (PW6) registered FIR No.170/2004 under Section 307 IPC. SI Sri Pal prepared site plan Ex.PW19/B at the instance of complainant. He lifted blood from the spot, empty bullet lying beneath the table, one patila of aluminium with bullet mark, broken red coloured bangles vide seizure memo Ex.PW13/A. In the meanwhile, DD No.12A-Ex.PW6/D was received from Constable Mukesh Kumar of GTB hospital regarding death of injured Kohinoor in the hospital. Thereafter, Section 302 of the Indian Penal Code was added. Investigation was handed over to Additional SHO

Inspector Rajinder Pathania (PW18). Inquest proceedings were conducted. Post-mortem of the dead body was conducted by Dr.S.Lal (PW5) on 01.05.2004. Thereafter, the dead body was handed over to the relatives of the deceased.

3. On 01.05.2004, accused Babu Khan was arrested vide arrest memo Ex.PW18/F. He pointed out the place of incident vide Ex.PW18/G. He had disclosed in his disclosure statement Ex.PW18/F-2 that while fleeing away from the spot he reached at Wazirabad bypass and threw the katta in ganda nala. He pointed out the place where the weapon of offence was thrown. Pointing out memo to that effect Ex.PW18/G-1 was prepared. The weapon of offence could not be recovered. During investigation, the Investigating Officer seized the nikahnama produced by Ubed regarding his marriage with deceased Kohinoor. The scaled site plan Ex. PW9/A was prepared by SI Mukesh Jain (PW9). Exhibits were sent to FSL, Rohini, from where report Ex.PW21/A was received. After completing investigation, charge sheet was submitted.

4. Vide order dated 24.01.2005, charge for the offences under Section 302 of the IPC and Section 27 of the Arms Act was framed to which the accused pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined 23 witnesses. The accused in his stated recorded under Section 313 Cr.P.C. denied the case of prosecution, claimed his innocence and alleged false implication in the case.

5. By the impugned order dated 15.12.2009, the appellant was convicted and sentenced separately, which has been assailed by filing the present appeal.

6. We have heard Mr. Imran Ahmed, learned counsel for the appellant and Ms. Ritu Gauba, learned APP for the State. It was submitted by learned counsel for the appellant that the FIR is ante timed in as much although the same was recorded on the statement of Roop Chand (PW2), however, Roop Chand in his cross examination has deposed that his statement was recorded on the next day in the evening. Moreover, no reliance can be placed on his testimony as he was only a child aged about 11 years. The other prosecution witnesses, namely, Suleman and Ubed have not fully supported the case of prosecution. As such, impugned order deserves to be set aside. Rebutting the submissions of the learned counsel

for the appellant, it was submitted by Ms. Ritu Gauba, Additional Public Prosecutor for the State that the testimony of Roop Chand, who although was a child witness is wholly reliable, prompt, untutored and finds corroboration in material particulars. Reliance was placed on State of M.P. vs. Ramesh and Anr., 2011 (Cri) LJ 2297. Promode Dey vs. State of West Bengal, AIR 201.SC 1598. Dinesh Prajapati vs. State of M.P., 2012 (Cri) LJ 1212. Alagupandi @ Alagupandian vs. State of Tamil Nadu, AIR 201.SC 240. and Raj Kumar @ Guddu vs. The State of Delhi, CrI. A.No.1472/2010 decided on 21.12.2012 by this Court. It was further submitted that ocular testimony of the prosecution witnesses find substantial corroboration from the medical as well as scientific evidence. The impugned order does not suffer from any anomaly which calls for interference. As such, the appeal is liable to be dismissed.

7. As regards the actual incident, prosecution case hinges on the testimony of (PW1) Suleman, (PW2) Roop Chand, (PW4) Uma and (PW22) Ubed. As held in State of U.P. vs. Krishna Master and Ors., AIR 201.SC 3071. before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in

the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take the place of evidence in the court. Small/trivial omissions would not justify a finding by the court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grain in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case.

8. Most material witness, in the instant case, is PW2 Roop Chand, whose testimony was attacked by learned counsel for the appellant on the ground that he is a child witness. It is well settled that the court can place reliance on the solitary testimony of a witness even if it is a child, if the evidence is found to be true and correct version of the case of the prosecution. The court, after careful scrutiny of its evidence is required to be convinced about the quality and reliability of the same (*Ratan Singh Dalukhbai Nayak vs. State of Gujarat*, 2004 (1) SCC 64).

9. In *State of M.P. vs. Ramesh* (supra) it was held that a child would not be a competent witness unless the trial court finds him otherwise and that the court may

rely upon the evidence of such child witness in the event his deposition inspires the confidence of the court and there was no embellishment or improvement. The Court may also reject the testimony of such child witness if it is found that the child has been tutored, which inference can be drawn from the contents of the deposition. In this judicial precedent, the court placed reliance on prior judgments related to child testimony. 10. Reference was made to *Rameshwar vs. State of Rajasthan*, AIR 195.SC 54, where Court examined the provisions of Section 5 of Indian Oaths Act, 1873 and Section 118 of Evidence Act, 1872 and held that: every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the Court considers otherwise. The Court further held as under:..... it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate..... 11. Reference was also made to *Panchhi and Ors. Vs. State of U.P.*, AIR 199.SC 2726, where while placing reliance upon a number of earlier judgments, it was observed that: the testimony of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. 12. In *Krishna Master (supra)*, Honble Apex Court held that: there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In

case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the Court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the Court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature. 13. Substantially, similar view was taken in *Promode Dey (supra)*, *Dinesh Prajapati (supra)*, *Alagupandi (supra)* and *Raj Kumar (supra)*. 14. In view of the legal proposition enunciated above, a child witness is a competent witness provided statement of such witness is reliable and truthful. A conviction can be based on the sole testimony of a child witness. The only precaution, which the Court should bear in mind while assessing evidence of a child witness is that witness must be a reliable one and his demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule of practice that in every case evidence of such a witness be corroborated by other evidence before a conviction could be allowed to stand, but as a rule of prudence, court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. 15. In the instant case, at the very first available opportunity, the witness had given a vivid picture of the entire incident which formed the basis of registration of case FIR. Thereafter, when the witness was produced in the Court, keeping in view his tender age as he was only about 11 years and oath could not be administered to him, several questions were put to him by learned Additional Sessions Judge in order to ascertain his capability to understand the questions. After recording his satisfaction, his statement was recorded, wherein he deposed that his mother Kohinoor was killed by fire shot by accused Babu. At the time of incident, he along with his mother and step father Ubed were present in the house. At about 8 a.m., his step father Ubed was lying on his bed and he was switching off TV and his mother was cooking food. Accused came to the house and demanded articles from his mother, but she declined. Thereafter, accused took out a katta from his pocket and fired shot at his mother. His mother received bullet injuries on her stomach and started bleeding. His uncle Raju went to police station to inform about the incident. He lodged complaint Ex.PW2/A at police station

which bears his signature at point A. After firing shot at his mother, accused ran away. He identified the dead body of his mother in the hospital and signed the statement Ex.PW2/B in this regard. Before living with Ubed, his mother used to reside with accused Babu. Before firing shot at his mother accused had quarrelled with her and manhandled her. Only one shot was fired at his mother. The witness was subjected to crossexamination by learned counsel for the accused. However, nothing material could be elicited to discredit his testimony and he withstood the test of cross-examination. There was no question of tutoring of the witness in as much as the witness was produced from Children Home, Lajpat Nagar. He was son of Kohinoor from her first husband. May be after the incident, he was not kept by Ubed and therefore, he was living at Children Home, Lajpat Nagar from where he was produced in the Court. In crossexamination he deposed that nobody tutored him about the statement given by him in the Court. His mausa and mausi, namely, Reshma used to see him at Children Home at Lajpat Nagar, however, they did not tell him anything about this case and in fact they last met him 5 months ago prior to his deposition in the Court. Under the circumstances, there was no question of tutoring of the witness by anybody and he had given the exact version of the incident. He is a totally truthful and reliable witness, conviction of accused can be based on his sole testimony. 16.As regards the submission that in cross-examination witness stated that his statement was recorded next day, therefore, the FIR was ante timed, same is devoid of substance as being a small child, he may have got confused regarding different statements as on the next day, his statement Ex.PW2/B was recorded regarding identification of dead body. 17.Furthermore, his testimony finds substantial corroboration from other witnesses. PW1 Suleman is the landlord, where deceased Kohinoor was residing along with her son as a tenant. The witness has testified that accused Babu used to visit the house of deceased Kohinoor. 10-15 days prior to the incident, a dispute had taken place between the accused and Kohinoor. In pursuance to a query made by him as to what was her relation with accused, she informed him that Babu was known to her therefore he visits her house. As regards the incident he has deposed that on 30.04.2004, he had left the house at around 7:00 a.m. for Bhajanpura for his work and returned back to his house at around 8/8:15 a.m. He was present near the main gate of his house. Accused Babu came and went

inside the room of Kohinoor. He heard a noise as if a cracker or a cycle tube had burst, from inside the room of Kohinoor. Ubed was sitting in the room of Kohinoor at that time. He saw accused coming out of the room of Kohinoor and he started running. He was chased by Ubed by shouting goli maar di, goli maar di. After one or two minutes one Raju also reached the room of Kohinoor. He saw Raju tying chunni on the stomach of Kohinoor to stop flow of blood. On his inquiry, as to who had fired at her, Kohinoor replied that accused Babu has fired on her. Ubed could not apprehend accused Babu, though he chased him till the halwai shop. When accused fired at Kohinoor at that time one neighbour namely, Uma and son Roop Chand were also present. He brought a three-wheeler scooter and removed Kohinoor to hospital with the help of Raju. Ubed returned back to the room and informed him that he is going to arrange money for the treatment. He informed Police Control Room from nearby STD booth. He further stated to the Police Control Room that he had given information that a tenant had fired a shot to another tenant due to perplexed condition. Since the witness did not support the case of prosecution in regards to some particulars, he was cross-examined by learned APP and in cross-examination, he admitted that Ubed chased accused while shouting that he had fired at Kohinoor. He also admitted that Ashiq Ali, whom he also knows as Raju was also present in the room of Kohinoor and he tied a chunni on the wound of Kohinoor to stop blood. He also admitted that Raju and Roop Chand took Kohinoor to hospital and thereafter Ubed also went to hospital. 18. It has also come in the testimony of PW4 (wrongly numbered as PW3) Uma that in the year 2004 she was residing at Khajuri Khas, Shri Ram Colony near the house of Kohinoor. She used to do household work in the house of Kohinoor. On the date of incident, she had gone to the house of Kohinoor for taking her child Roop Chand to school, however, Roop Chand told her that after finishing his homework he will go to school. She was standing near the door of the house of Kohinoor waiting for Roop Chand, when accused Babu reached there. After some time she heard the noise of gunshot and Kohinoor immediately rushed and told her that she was shot by Babu. She (Uma) went to call her mother from her house and then went to hospital, however, she was not allowed to see Kohinoor as she was shifted to the operation theatre. Later on, she came to know that Kohinoor had died. In cross-examination, she reiterated that at the time of

incident Kohinoor, her husband and her son were present in the house and that when Kohinoor came out of the room, she shouted that she had been shot by accused Babu. 19. It has come in the statement of PW22 Ubed that Babu was known to him as he is of his village Kakrala, Police Station Allapur, District Bidayaun, U.P. According to him, in the year 2004, he had gone to leave his son Roop Chand to his school and when he returned back from the school, he saw his wife Kohinoor having gunshot injuries on her stomach and she was taken out by the landlord from the premises. His wife asked him to call Roop Chand from the school. Ashiq Ali brought back his son Roop Chand from the school. Roop Chand and Ashiq Ali took his wife to hospital, while he went to arrange money and reached hospital after some time. According to him, the incident of firing did not take place in his presence. He handed over the nikahnama Ex.PW3/A of his marriage with deceased Kohinoor to the police. Before his marriage with the deceased, she was residing with accused Babu. He was earlier residing as tenant at the house of accused Babu. Since witness did not support the case of prosecution in all material particulars, as such, he was cross-examined by learned prosecutor and in cross-examination he admitted that accused Babu was residing with his wife Kohinoor in Khajuri Khas. He also stayed in the said house as a tenant for about six months and during this period, he developed a love relationship with deceased and they decided to marry. Thereafter, they got married and deceased Kohinoor along with her son Roop Chand started living with him in E-Block, Shri Ram Colony, Delhi. However, he denied the case of prosecution that in his presence accused had demanded the articles from Kohinoor and on her refusal he fired at her or that he chased Babu, but could not succeed in apprehending him. 20. The law is now well settled that even if a witness does not wholly support the case of the prosecution his testimony is not to be discarded altogether, and that part of the testimony of the witness can be considered and relied upon as supports the case of prosecution. It is the consistent view taken by Apex Court and this Court that the fact that the witness has been declared hostile at the instance of public prosecutor and was allowed to be cross-examined furnishes no justification for rejecting en block the evidence of the witness. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be

dependable on a careful scrutiny thereof, as held in State of Gujarat vs. Anirudh Singh and Anr., (1997) 6 SCC 514. Radha Mohan Singh @ Lal Sahib and Ors. Vs. State of U.P., (2006) 2 SCC 450. Mahesh vs. State of Maharashtra, (2008) 13 SCC 271. Rajender and Anr. Vs. State of U.P., (2009) 13 SCC 480. Govindapa and Anr. Vs. State of Karnataka, (2010) 6 SCC 533. Paramjit Singh @ Pamma vs. State of Uttarakhand, AIR 201. SC 200. Rameshbhai Moahanbhai Koli and Ors. Vs. State of Gujarat, (2011) 3 SCC (Cri) 102. 21. In view of the same, even if Ubed has not supported the case of prosecution in all material particulars and in fact has tried to show that even Roop Chand was not present at the spot, there is other clinching evidence available on record to prove the presence of Roop Chand at the spot. PW1 Suleman and PW4 Uma have deposed in categorical terms that at the time of incident Roop Chand was present at the spot and in fact he had accompanied the injured to hospital and was the first one to give the narration of the incident to the police officials, which stands substantiated by SI Sri Pal, who recorded his statement Ex.Pw2/A and got the case registered. As such, testimony of Roop Chand finds substantial corroboration from the ocular testimony of PW1 Suleman and PW4 Uma. There is no reason to disbelieve their testimonies. A vague suggestion was given to PW1 Suleman that Ubed was running a gang of women from Bangladesh, who used to enter into mock marriages with innocent persons, with a view to loot them and Kohinoor was also a part of the same gang and a person named Suresh, son of Rajender had lodged a complaint to the DCP, North East District naming him and others as part of the gang. Firstly this suggestion had been denied by the witness, moreover, it does not appeal to reason that even if the same has some ring of truth then for that reason why accused would be falsely implicated in this case, particularly when no enmity is alleged against Suleman or Uma or for that matter Roop Chand. He was a child, who was earlier residing with Babu along with his mother and after the mother entered into nikahnama with Ubed, he started living with him in Shri Ram Colony. Therefore, absolutely no animosity or ill will has come on record against any of these witnesses for which reason they would falsely implicate the accused in this case. Rather the motive is apparent even from the testimony of PW22 Ubed that deceased Kohinoor was wife of Babu, who after leaving him entered into nikahnama with Ubed and started residing with him. She had also brought some articles with her. Babu was claiming

return of the articles and wanted her to come to reside with him to which she declined and on the fateful day also the accused came, demanded return of articles. On her refusal, he manhandled her and ultimately fired shot at her in her abdomen, which proved fatal. Even otherwise, since direct evidence regarding assault is worthy of credence, motive assumes secondary role as held in Bhagirath and Ors. vs. State of Haryana, AIR 199.SC 3431. Molu vs. State of Haryana, AIR 199.SC 2499. Mohinder vs. State, 2010 VII AD (Delhi) 645. 22. The ocular testimony of witnesses finds substantial corroboration from medical evidence. On receipt of DD No.4A, SI Sri Pal (PW19) went to the spot, where he came to know that injured has been shifted to GTB hospital. As such he went to GTB hospital and collected MLC of Kohinoor where she was declared unfit for statement. She was having gunshot injuries and was in operation theatre. Ultimately, the injured succumbed to the injuries. Post mortem on the dead body of Kohinoor was conducted by Dr. S.Lal, who found following injuries on the dead body: Firearm entry wound 2.5 x 1.5 cm x cavity deep present on right side of upper abdomen over anterior axillary line. The wound is placed 14 cm from the right to midline, 24 cm below the armpit and 14 cm above the iliac crest. The blackening present around the margins with charred skin. The wound enters the body in abdominal cavity to lacerate the inferior aspect of right lobe of liver and then perforated the bowel and stomach through and through and then comes out from abdominal cavity by making exit wound in size of 1 x 0.5 cm on left side upper abdomen. The wound is placed 10 cm left the midline and 15 cm below the left nipple. The margin on the wound is everted. About 3 lt. of blood present in the abdominal cavity. The missile of firearm again enters the left upper forearm on middle aspect by making an entry wound, size 0.8 x 0.5 cm placed 8.5 cm below the elbow joint and 14 cm above the wrist joint. The wound goes downward and backward direction under the skin and comes out from the dorsum of forearm by making an exit wound in size of 0.6 cm x 0.5 cm placed 8 cm above the wrist joint and 13 cm below the elbow joint. The length of the track is about 6.5 cm. The injury is caused by missile of firearm not by pellets as mentioned in MLC not A 1644/04 made by A.C.M.O. of dated 30th April, 04. 23. The cause of death is haemorrhagic shock due to ante mortem injury to abdominal organs produced by projectile of firearm and sufficient to cause death in ordinary course of nature. The

ocular version given by PW2 Roop Chand that only one fire was shot at his mother finds substantial corroboration from this post mortem report, which reflect that the firearm entered the right side of upper abdomen and came out from abdominal cavity by making an exit wound. The missile of firearm again entered the left upper forearm on middle aspect by making an entry wound and came out from the dorsum of forearm by making an exit wound. It seems that when the missile came out by making an exit wound above the wrist joint, it hit the bhagauna lying in the room as the bhagauna was also having mark of bullet which was seized from inside the room. This corroborates the version of not only Roop Chand that he heard a noise like that of a cracker but also the testimony of PW1 Suleman and PW4 Uma, both of whom have deposed that they heard the noise like bursting of cracker. 24. The testimony of the prosecution witnesses also finds support from scientific evidence. It has come on record that from the spot, broken pieces of red coloured bangles, one aluminium patila having bullet mark, one deformed bullet were seized vide seizure memo Ex.PW13/A. After post mortem, Dr. S.Lal preserved the deceaseds blood soaked in gauze piece and handed over the same to the Investigating Officer. Clothes of the deceased were also taken into possession. During the course of investigation, all the exhibits were sent to Forensic Science Laboratory, from where report Ex.PW23/A was received given by Shri Naresh Kumar, Senior Scientific Assistant. As per report blood was detected on bullet head, blood stained earth, again blood stained earth, blood soaked in gauze and a ladies shirt. As per serological report Exhibit PW23/B, the bullet head, blood stained earth, blood stained earth, bloodstained gauze and ladies shirt were opined to have human blood, however, no reaction could be found on earth control. The bloodstained gauze and the ladies shirt were opined to be of O group. 25. The biology division had referred two parcels bearing Nos.1 and 10 containing one deformed bullet marked Ex.EB1 and one bhagauna marked as Ex.C1. Same were examined by Shri K.C.Varshney (PW21), who gave his report Ex.PW21/A and found that deformed bullet marked EB1 corresponds to the bullet of 8 mm/.315 cartridge. The hole marked H1 on bhagauna marked C1 was caused by a cupro jacketed bullet discharged through a firearm. The deformed bullet marked EB1 was part of ammunition as defined in Arms Act. As such, the case of prosecution finds substantial corroboration from scientific evidence also. 26. The

recovery of weapon of offence, however, could not be effected in as much as it has come on record that on 01.05.2004, accused was arrested from Anand Vihar, ISBT at about 9 p.m. During interrogation, he made a disclosure statement Ex.PW18/F2 disclosing that he had thrown away the country made pistol used in the offence in the ganda nala near Wazirabad bridge. The weapon was searched in the ganda nala with the help of divers but could not be traced out. However, non-recovery of weapon of offence during investigation is not such an important factor to neutralise the direct evidence of complicity of accused in the murder of deceased as held in Mahender vs. State, 2010 (VII) AD (Delhi) 645; Tejender Singh @ Kaka and Anr. Vs. State, 2013 (IV) AD (Delhi) 73. The accused did not give any plausible explanation to the incriminating circumstances proved against him. He did not examine any witness to prove false implication due to any ill will or enmity with any of the prosecution witnesses. 27. In the light of the above discussion, the impugned judgment needs no interference. The appeal filed by the appellant lacks merit and is dismissed. The conviction and sentence of the appellant are sustained. SUNITA GUPTA, J REVA KHETRAPAL, J May 29, 2013 aks

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