

Hargiyan Singh Vs. State

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Court : Delhi

Decided On : Jan-04-2013

Judge : Badar Durrez Ahmed

Appellant : Hargiyan Singh

Respondent : State

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

04. 01.2013 CRL. A. 388/1997 HARGIYAN SINGH ... Appellant ... Respondent versus STATE Advocates who appeared in this case: For the Appellant For the Respondent /State : Mr Avadh Bihari Kaushik, Amicus Curiae with Mr Pankaj Kumar and Mr Prakash Chandra : Ms Richa Kapur CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MS JUSTICE VEENA BIRBAL JUDGMENT BADAR DURREZ AHMED, J 1.This appeal is directed against the judgment dated 09.04.1997 delivered by the learned Additional Sessions Judge, Shahdara, Delhi in Sessions Case No.105/1996 arising out of FIR No.232/1990 under Section 302 IPC registered at police station Nand Nagri. By virtue of the said judgment, the appellant Hargiyan has been convicted for the murders of Smt. Rukmani and Mohd Sharif and the appellant has been held guilty of the offence punishable under Section 302 IPC. He was also convicted for the offence punishable under Section 27 of the Arms Act, 1959. This appeal is also directed against the order on the point of sentence dated 10.04.1997 passed by the said learned Additional Sessions Judge, whereby the appellant was sentenced under

Section 302 IPC to undergo rigorous imprisonment for life and also to pay a fine of ` 1,000 and, in default of the payment of fine, he was to further undergo rigorous imprisonment for one month. Insofar as the offence under Section 27 of the Arms Act, 1959 is concerned, the appellant was directed to undergo rigorous imprisonment for two years and to pay a fine of ` 250 and, in default of payment of the fine, he was required to further undergo rigorous imprisonment for 15 days. Both the sentences were directed to run concurrently.

2. The appellant was charged as under on 21.01.1992: Firstly. That on 28-08-1990 at about 11 a.m., in the Gali opposite Houses Nos. I-456, 457, 458 and I-3/343, Sunder Nagari, Delhi, you committed the murder of Smt. Rukmani and Mohd. Sharif by inflicting fatal injuries on their persons with iron rod and dagger respectively, and thereby committed the offence punishable under Section 302 I.P.C., and within my cognizance. Secondly. That you on the aforesaid date, time and place, were in possession of the dagger which you used for the unlawful purpose of committing murder of Mohd. Sherif, and thereby committed the offence punishable under Section 27 of the Arms Act, 1959, and within my cognizance. The appellant pleaded not guilty and claimed trial. The prosecution examined 17 witnesses, whereas one witness was examined in defence.

3. The case for the prosecution is that on 28.08.1990, PW-17 [Inspector Prem Singh] was posted at police station Nand Nagri as the Station House Officer. He was present in the area of the said police station and was looking after the law and order arrangements. He received a wireless message regarding a quarrel at I Block Nand Nagri. He immediately rushed to the spot and found ASI Ganga Ram, ASI Chhote Lal alongwith the staff at the spot. The injured persons had already been removed to GTB Hospital leaving behind the other staff members for preservation of the crime scene. The said PW-17 [Inspector Prem Singh] is alleged to have gone to GTB Hospital where he collected the MLCs [Exhibit PW-16/A and Exhibit PW-16/B] in respect of Smt. Rukmani and Mohd Sharif, respectively, both of whom had been declared as having been brought dead to the hospital by the doctor concerned. It is the case for the prosecution that PW-15 [Mohd Shahzad], who was the son of the deceased Mohd Sharif, was present at the hospital and gave his statement which was reduced to writing [Exhibit PW-

15/A]. As per the said statement, Mohd Shahzad had stated that on 28.08.1998 at about 10.30 a.m. he had gone to meet his father [Mohd Sharif] at Sunder Nagri. He came to know that his father had gone to Rukmanis house at I-458, Sunder Nagri. It is further alleged that Mohd Shahzad reached there at about 11.00 a.m. and he allegedly saw the appellant Hargiyan, Rukmani and his father [Mohd Sharif] outside Rukmanis house. He allegedly heard Hargiyan telling Rukmani and his father [Mohd Sharif] that they had killed his mother [Hargiyans mother] on 24.08.1990 by administering poison alongwith Gangajal and that he would kill them. It is further alleged that as per Mohd Shahzad, his father [Mohd Sharif] and Rukmani tried to pacify Hargiyan by telling him that his mother had died due to natural causes and that nobody had given poison to her. But, it is further alleged that Hargiyan would have nothing of this. He told them that they were telling lies and lifted an iron rod which was lying nearby and gave several blows on the head of Rukmani due to which she fell down and her head started bleeding profusely. It is further alleged by the prosecution that Mohd Shahzads father [Mohd Sharif] got frightened and started running from the spot. But, Hargiyan brought a dagger from his house and thrust his dagger into the chest of his father [Mohd Sharif] on the road as a result of which Mohd Sharif fell down on the road and blood started flowing from his chest. According to the prosecution, several persons witnessed this alleged incident. It is further alleged that in the meantime police arrived at the spot and took Rukmani and Mohd Sharif in the police vehicle to GTB Hospital where both the victims were declared as having been brought dead.

4. It is also the case of the prosecution that after the alleged statement of PW-15 (Mohd Shahzad) was recorded, the ruqqa was forwarded for registration of the case through Constable Hodal Singh who came back after registration of FIR No.232/1990. It is further the case of the prosecution that PW-17 [Inspector Prem Singh] prepared the site plan [Exhibit PW-17/C] at the spot on the pointing out of Mohd Shahzad with marginal notes. He also seized the blood stained earth through memo [Exhibit PW-13/A] after sealing it with the seal of P.S. from outside House not I-458 and controlled earth vide memo [Exhibit PW-13/B] after sealing the same in a parcel with the seal of P.S. The said PW-17 [Inspector Prem Singh] is also alleged to have lifted the controlled earth from outside House not I-3/343, Sunder Nagri, Delhi vide memo [Exhibit PW-13/C] after sealing it with the seal of

P.S. He also lifted the blood stained earth from outside the said House not I-3/343, Sunder Nagri vide memo [Exhibit PW13/D] after sealing the same with the seal of P.S.

5. It is further the case of the prosecution that the said PW-17 [Inspector Prem Singh] also examined some witnesses at the spot and thereafter he left in search of Hargiyan at his known places of residence and other areas and ultimately on 28.08.1990, he allegedly arrested Hargiyan at Shahdara Chowk and conducted his personal search vide memo [Exhibit PW-13/E]. It is alleged that the disclosure statement [Exhibit PW-4/D] of Hargiyan was recorded by him and was also signed by the witnesses PW-15 [Mohd Shahzad] and PW-14 [Mohd Sultan Khan]. Pursuant thereto, Hargiyan allegedly led them to his house at I-456/457, Sunder Nagri and produced an iron rod [Exhibit P-2] after taking it out from a room of the said house. The same was seized vide memo [Exhibit PW-4/C] and was sealed with the seal of P.S. The seal after use was handed over to Mohd Shahzad. It is further alleged that thereafter Hargiyan led the party to the MCD Primary School, M-Block, Sunder Nagri and got the dagger [Exhibit P-1] recovered from there. The sketch [Exhibit PW-14/A] of the said dagger was drawn and thereafter the dagger was taken into possession vide memo [Exhibit PW-4\E] and was sealed with the seal of P.S. whereupon the seal was handed over to the witness Mohd Shahzad. The case property was deposited with the malkhana of police station Nand Nagri.

6. Thereafter, the dead bodies were sent for post mortem examination and were later on handed over to the relatives of the deceased. Certain parcels containing clothes, control earth, dagger, iron rod, etc. were sent for examination to the Central Forensic Science Laboratory. After concluding the investigation, the challan was filed in the court and, as mentioned above, charges were framed under Section 302 IPC and Section 27 of the Arms Act, 1959. The appellant Hargiyan pleaded not guilty and claimed trial in which 17 witnesses were examined on behalf of the prosecution and one witness on behalf of the defence. Prior to recording the defence evidence, the statement of the appellant Hargiyan under Section 313 Cr PC was also recorded.

7. Although there were several witnesses in this case, we may point out, at the outset, that the prosecution had produced four witnesses, who were stated to be eye witnesses. Those witnesses were PW-3 [Juma Khan], PW-4 [Aminuddin], PW-14 [Mohd Sultan Khan] and PW-15 [Mohd Shahzad]. Out of these four so-called eye witnesses, PW-3 [Juma Khan] and PW-4 [Aminuddin] turned hostile. The learned Additional Sessions Judge has convicted the appellant Hargiyan essentially on the testimonies of PW-14 (Mohd Sultan) and PW-15 [Mohd Shahzad]. Apart from these witnesses, PW-10 [Dr L.K. Baruah], who conducted the post mortem examination on the dead bodies of the victims Smt. Rukmani and Mohd Sharif, is also of great importance. We would also need to examine in some detail the testimony of PW-10A [Head Constable Hukam Chand], who is the person who took the victims to hospital from the spot. PW-11 [Constable Devinder Singh] is the person who prepared the scaled map and PW-17 [Inspector Prem Singh] is the investigating officer.

8. We begin the examination of the testimonies of these important witnesses by, first of all, considering the testimony of PW-3 [Juma Khan]. According to him, he was carrying gatta and going on the road when he heard a noise and he went to I-343 where he heard a loud voice and noise. He stated that he heard that Sharif had been given a chhuri (knife) blow and the accused was the person who was present in court. He stated that he saw the accused Hargiyan going towards Gagan Cinema and then he returned home and came to know that the police had taken Rukmani and Sharif. He stated that besides this, he did not know anything. Since this testimony in examination-in-chief was at variance with the prosecution case, he was cross-examined by the learned APP after declaring him hostile. It is apparent that this witness PW-3 [Juma Khan] does not support the prosecution case at all and we need not spend any more time on his testimony.

9. PW-4 [Aminuddin] stated in his examination-in-chief that about 3 or 3 years ago at about 11.00 or 12.00 noon he had reached the tea stall at the corner of the street after leaving his house. He further stated that he knew the appellant Hargiyan who was present in court and who used to reside in the fourth street from his house. He further stated in his examination-in-chief that Sharif was sitting in the tea shop and that the appellant Hargiyan hit Sharif with an iron rod on his

head. He stated that he knew Sharif also, but did not know what was the matter between them and why Hargiyan had hit Sharif with an iron rod. He stated that he did not hear any conversation between them and that thereafter the appellant Hargiyan threw away the iron rod and took out a chhuri (knife) from his pocket and inserted the same into Sharif's abdomen. He further stated that the appellant Hargiyan had taken out the knife from the right pocket of his pants and Juma Khan and Sultan Mian were also present there. It was further stated by this witness in his examination-in-chief that after stabbing, Hargiyan ran away towards Gagan Cinema with the knife. Thereafter, the police arrived at the scene and took the injured Sharif to GTB Hospital in their vehicle. Other police officers also came and brought the accused Hargiyan to the spot and where some writing work was done and he [PW-4 Aminuddin] signed 5/6 documents.

10. This witness further stated that the police officers had also brought the injured Rukmani from her house and she was also taken to hospital along with Sharif. He stated that he did not know as to how and who caused the injuries to Rukmani. He further stated that in his presence, the appellant Hargiyan did not get anything recovered and that he did not know anything more about this case. It is at this stage that the learned APP submitted that the witness was resiling from his earlier statement and that he would have to cross-examine him. The cross-examination was allowed. Thereafter, the learned APP cross-examined PW-4 [Aminuddin].

11. It is material to note that although this witness has been declared hostile, the learned APP had allowed him to make several statements in his examination-in-chief before he was declared hostile. CrI. A No.388.97 have been referred to by us above. What is material in those statements is that he had not witnessed anything with regard to the assault on Rukmani and that Mohd Sharif was assaulted both by an iron rod as also by a knife. These statements clearly contradict the prosecution case and are of no use to the prosecution.

12. PW-10 [Dr L.K. Bruah] is the person who conducted the post mortem examination on the bodies of the victims Rukmani and Mohd Sharif. His reports in respect of Smt. Rukmani and Mohd Sharif are Exhibit PW-10/A and Exhibit PW-10/B respectively. The following external injuries were found by the said PW-10

[Dr L.K. Bruah] on the person of Smt. Rukmani:1. Lacerated brain matter mixed with blood and fractured bone pieces were seen over scalp hair in the parito-occipital region. The parito-occipital part of the skull and also both temporal bones over the head involving an area of 7 x 6 " were seen missing. The borders of regular bone pieces were seen from outside. On further examination of the skull, the fractured lines were seen to be radiating to frontal, temporal and occipital region. The base of skull was fractured in different directions. There were only 30% of the brain matter in the cranial cavity.

2. One lacerated wound size 2 cm into 0.5 cm. muscle deep was seen on left eye brow.

3. Abrasion size 3 inches into 2 inches was seen on left cheek area.

4. One contused area size 1 x 1 on left side chin with a small lacerated wound of size 1 cm x 1 cm through which one broken tooth was seen.

13. On internal examination, the said doctor found that the skull bones had been completely broken into multiple pieces and the scalp muscles around the wound were also found to be lacerated mixed with clotted blood and several other injuries and fractures were noted by the said doctor in his post mortem report. In his opinion, injury to head was caused by hard heavy material and, death was immediate due to extensive craniocerebral damage. The witness was also shown the saria (iron rod) [Exhibit P-2] and he had in his examination-in-chief indicated that the injuries on the head of Rukmani could be possible with the said saria (iron rod). However, in his cross-examination, a different picture unfolded wherein he stated as under: It is also possible that the injury on the person of deceased Rukmani could be caused with the double width of the saria P.2.

14. At this juncture, it would be pertinent to observe that initially, the doctor had opined that the injury to the head was caused by some hard heavy material. Then, in examination-in-chief, he had indicated that it could be possible by the saria [Exhibit P-2]. Subsequently, in his crossexamination, he stated that it could be possible by an object having double the width of the saria also. In other words, the possibility of the injury on the head of Rukmani having been caused by the saria

[Exhibit P-2] was one amongst other possibilities and was not definitive. It would be relevant to refer to the CFSL report at this stage itself with regard to the iron rod. The serological report [Exhibit PW-17/N] indicates that the iron rod that was sent to the Forensic Science Laboratory did contain blood, but the same was too small in quantity for any serological analysis. Therefore, the saria cannot be conclusively linked with the death of Rukmani. It is also pertinent to note that the police investigation has been seriously wanting inasmuch as neither the saria nor the dagger, which were the alleged murder weapons, were subjected to any finger printing. We shall also refer to the serological report once again after we have dealt with the post mortem examination in respect of the deceased Mohd Sharif.

15. PW-10 [Dr L.K. Baruah] also conducted the post mortem examination of the dead body of Mohd Sharif. According to him, the following external injury was found on the dead body:- 1. One incised wound left front of chest on its lower part 5.5 cm below and medial to the left nipple and 5 cm left to the midline. The injury was placed horizontally and the incised injury was 3.5 c.m. x 1 c.m. with both ends acutely cut and margins were clearly cut. No other external injury seen on the body. Furthermore, on internal examination, the following was revealed: On internal examination, the scalp was intact and normal. The cranial vault were intact and normal. Brain was pale. Base of skull normal. Soft tissues of the neck normal. Hyoid bone intact. Other neck structures normal. The external injury mentioned above in the external injury column were seen to be continuing into the left chest cavity through the sixth inter costal spate. During its course, it had cut the lower bordered of the 6th rib. The injury continued dip into the chest cavity and the cut the anterior medial border of the left lung of size 1". The injury then cut the left Ventricle of the heart through and through and then it had cut the hilar region of the left lung of about 1.5 cm deep. The size of the cut in the hilar region was about 1.5 cm. The total depth of this injury was approximately 14 c.m. The left chest cavity was full of liquid and clotted blood. The stomach contained about 2/3 ounces of digested food with no abnormal smell."

16. The opinion of the doctor was that the injury mentioned in the report was ante mortem in nature and was caused by one double edged sharp weapon. According to the said doctor, death was due to haemorrhagic shock resulting from the said

injury. The dagger [Exhibit P-1] was shown to PW-10 [Dr L.K. Bruah] and he stated that the injury in question was possible with the dagger [Exhibit P-1]. Crl. A No.388.97 Rukmani, so also in the case of Mohd Sharif, a different picture emerges when one considers the cross-examination of PW-10 [Dr L.K. Baruah]. In cross-examination, he stated that it is correct that the injury on the person of Sharif deceased is possible with the single edged weapon. However, the injury mentioned in the report was suggestive of being caused by double edged weapon as mentioned in my report. It is also correct that the injury could be caused by other weapon of bigger length in causing injury on the person of Sharif. The injury on the person of Sharif could also be possible by a single edged weapon but these were more suggestive of having been caused by a double edged weapon.

17. At this point, it would be instructive to reflect upon the testimony of PW-10 [Dr L.K. Baruah] with regard to the murder weapon insofar as the deceased Mohd Sharif is concerned. According to the said witness, the injury could be caused even by a single edged weapon. Though, there were suggestions that it could be caused by a double edged weapon also. It must also be recalled that while describing the internal injuries, PW-10 [Dr L.K. Baruah] in his examination-in-chief indicated that the total depth of the injury was about 14 cm or 5.5 inches. At this point, it would be necessary to examine the sketch of the dagger [Exhibit PW-14/A]. In the said sketch [Exhibit PW-14/A], the total length of the dagger has been shown to be of 9 inches. The length of the handle has been indicated as 4 inches and the length of the blade has been indicated as 5 inches. When the length of the blade itself is 5 inches, how is it possible to have caused an injury, the total depth of which was 5.5 inches. This casts serious doubts as to whether the dagger [Exhibit P-1] was at all the murder weapon insofar as Mod Sharif is concerned. The doubt is further aggravated by the fact that PW-10 [Dr L.K. Baruah] in his cross-examination has stated that the injury could be caused even by a single edged weapon and that too with a bigger blade.

18. We now examine the serological report [Exhibit PW-17/N] of the Central Forensic Science Laboratory. Exhibit numbers 3a, 3b, 3c and 3d are the sari, petticoat, blouse and brassier which allegedly belonged to Smt. Rukmani. Blood was detected on these articles and the blood was of human origin and of AB

Group. Interestingly, Exhibit 4a, which is the banian (vest) said to be belonging to Mohd Sharif, also indicated the presence of blood of human origin of AB Group. Exhibit No.7, which was the dagger [Exhibit P-1], also showed presence of human blood of blood group AB. These facts indicate that the blood group of both Rukmani and Mohd Sharif was AB. This in itself is unusual inasmuch as the blood group AB is quite rare. Apart from that, it does not indicate as to whether the blood found on the dagger was of Rukmani or was of Mohd Sharif or of somebody else. This fact also creates a great deal of doubt with regard to the dagger having been used in the murder of Mohd Sharif.

19. PW-10A [Head Constable Hukam Chand] is the person who took the victims to the hospital. He has stated in his examination-in-chief that on 28.08.1990, he was posted as Head Constable in the Police Control Room and that his duty was on vehicle No. R-40 from 8.00 a.m. to 8.00 p.m. at the chungli (check post) of Nand Nagri-Sunder Nagri. At 11.25 a.m., some person informed him that an incident of stabbing had taken place at Sunder Nagri and consequently he reached I Block Sunder Nagri along with his staff where Rukmani and Mohd Sharif were allegedly found in an injured condition. He stated that he removed them to the GTB Hospital where the doctor declared them as having been brought dead. During cross-examination, this witness stated that both the injured were lying in the same place and that his clothes had not become blood stained in the process of lifting the injured. We shall also examine the MLCs Exhibit PW-16/A and Exhibit PW-16/B in respect of Smt. Rukmani and Mohd Sharif. The MLC Exhibit PW-16/A in respect of Smt. Rukmani indicates that she had been brought by Head Constable Hukam Chand (PW-10A). The MLC indicates the history as having been beaten by some person and that she had been brought dead on 28.08.1990 at 11.45 a.m. The injuries noticed on her person were a fractured skull and contused lacerated wound over the left eye. Similarly, the MLC of Mohd Sharif [Exhibit PW-16/B] also indicates that he was brought by Head Constable Hukam Singh (sic) (Chand) and that he had also been brought dead on 28.08.1990 at 11.45 a.m. The MLC recorded the history as having been beaten by some person. The injury recorded on the MLC was a contused lacerated wound on the front left side of the chest. From the testimony of PW-10A [Head Constable Hukam Chand] and the MLCs, it is clear that the two victims were taken to hospital by Head Constable Hukam

Chand, who had indicated that the victims had been beaten by some person. What is interesting to note in the testimony of PW-10A [Head Constable Hukam Chand] is that he found both Smt. Rukmani and Mohd Sharif lying injured in the same place. He has, however, not indicated the location of that place whether it was in front of the tea shop or whether it was in front of Rukmanis house No.458 at I Block It is also a mystery as to how the two persons were lying injured at the same spot because as per the prosecution, the assault on the said two persons was at different places.

20. We now come to PW-11 [Inspector Davinder Singh], Draftsman, Crime Branch, Police Headquarters. This witness has stated that on 23.10.1990, at the request of the Investigating Officer, he visited the alleged place of occurrence and he took rough notes and measurements on the pointing out of PW-14 [Mohd Sultan]. And, on the basis of those rough notes and measurements, he prepared a site plan to scale [Exhibit PW11/A] on 13.11.1990 in his office. If we examine the scaled site plan [Exhibit PW-11/A], we find that the incident of assault on Smt. Rukmani is outside her house No. I-458, Sunder Nagri and the place of assault on Mohd Sharif has been indicated to be in front of House No. I-368 and shop No. 343 near the hand pump. The two spots are separated by three galis (streets) in between. However, if one were to look at the site plan [Exhibit PW-17/C] prepared by PW-17, as indicated earlier, it shows that the two incidents of assault took place outside House No. 458 and House No.

443. In the rough site plan [Exhibit PW-17/C], the point of assault on Mohd Sharif outside House No. 443 is only one gali away from the point of assault on Rukmani outside House No.

458. While the rough site plan [Exhibit PW-17/C] was prepared by PW-17 [Inspector Prem Singh] on the pointing out of PW-15 [Mohd Shahzad], the scaled site plan [Exhibit PW11/A] was prepared by PW-11 [Davinder Singh] on the pointing out of Mohd Sultan. There is, therefore, clearly a variance between the two site plans and, consequently, it can be inferred that the two witnesses PW-14 and PW-15 have contradicted themselves while pointing out the place at which Mohd Sharif was allegedly assaulted by Hargiyan with a dagger. While one site

plan shows that he was assaulted outside House No. 443, the other site plan shows that he was assaulted outside Shop No. 343 and House No. 368 near the hand pump.

21. PW-14 [Mohd Sultan Khan], who is an alleged eye witness, stated that he knew the appellant Hargiyan as he had been residing opposite to his house. He stated that he also knew Rukmani and Sharif as they were also his neighbours. He stated that about six years ago, in the morning hours, Hargiyan was quarrelling with Sharif. Hargiyan was telling Sharif that he and Rukmani had killed his mother by administering poison on the pretext of giving Gangajal to her. He further stated that the quarrel took place in a gali outside the house of Hargiyan [I-456/457] and that Rukmani and Sharif were telling Hargiyan that this was false and he did not give poison to his mother. The witness further stated that the quarrelling persons were pacified and the parties went to their respective houses.

22. PW-14 [Mohd Sultan] further stated that after about one hour, on the same day, he heard a noise in the gali and he came out from his house and found Rukmani dead and blood was coming out from her body and that the persons present there were saying that she had been hit with a saria on her head by Hargiyan. He then stated that Sharif was standing near the tea vendors shop and Hargiyan went to him and stabbed a chhuri on his chest. He further stated that he had seen the accused Hargiyan stabbing the chhuri (knife) on the person of Sharif. He further stated that the public present there chased the accused Hargiyan who ran towards Bhopura P.P. He further stated that the police came there and apprehended Hargiyan and thereafter a dagger was got recovered by Hargiyan from a park. In his cross-examination, he stated that the dead body of Sharif was lying opposite the tea shop and that the tea shop is at a distance of 150 to 200 paces from his house. In his statement recorded by the police, he had stated that he heard a noise while he was taking tea at the tea stall and thereafter he rushed to I-458, but in cross-examination, he denied having made such a statement and he was confronted with his earlier statement. He also stated that at the time when the accused had stabbed Mohd Sharif in front of the tea stall, Juma Khan and 3-4 more persons were present at the tea stall. He stated that Hargiyan had stabbed Sharif only once in his presence, but he did not know with which hand he had

given the stab blow and he also stated that as far as he could remember the weapon was a double edged weapon. He further stated that Hargiyan, after hitting Rukmani, came running and stabbed Sharif and no altercation took place between them at that time, however, he had not seen Hargiyan hitting Rukmani. He further stated that he had never seen the house of Hargiyan, but it was in the third gali from the tea stall and that Hargiyan was not known to him prior to the occurrence and that he came to know of Hargiyan for the first time from the date of occurrence. This is in clear contradiction from his earlier statement in his examination-in-chief where he said that he knew Hargiyan. He further stated that the persons who had gathered there were calling the appellant by the name of Hargiyan and that is how he came to know about his name. He further stated that Sharifs house is situated at a distance of 250-300 steps from the tea stall, but he did not know his house number, block number or the street number. Nor did he know as to who was residing adjacent to his house. He further stated that Shahzad [PW-15] is the son of deceased Mohd Sharif and was known to him prior to the occurrence and he used to visit his father once in 2-3 months. He also admitted that he had not gone to the spot where Rukmani was lying in an injured condition. He stated that the police, first of all, came near the body of Rukmani, but he had not accompanied them over there. Within 5-10 minutes, the police came near the body of Sharif. He stated that Sharif was no longer alive when the police lifted his body. He further stated that some persons had told him that Rukmani had also died at the spot. He also stated that he did not know if the police had conducted any proceedings near the place where the dead body of Rukmani was removed.

23. From the testimony of PW-14, it is evident that he did not witness the assault on Rukmani. It is also evident that he did not go to the spot where Rukmani was lying in an injured condition. It is abundantly clear that Sharif was lying injured at a different spot from that where Rukmani was lying injured and the distance between the two spots was quite substantial. This is in contradiction to the testimony of PW-10A [Head Constable Hukam Chand], who is the person who took the victims to hospital. The said PW-10A [Head Constable Hukam Chand] had clearly stated that when he arrived at the scene, both the injured were lying at the same place. Since the presence of Hukam Chand at the spot is not to be doubted inasmuch as his

name figures in the MLCs and he is the person who took the victims to hospital, there is a great doubt cast on the testimony of PW-14 [Mohd Sultan]. It is also pertinent to note that, according to this witness, after the assault on Mohd Sharif, the appellant Hargiyan ran away towards Bhopura P.P. This, as we shall see, is at variance with what the other so-called eye witness PW-15 [Mohd Shahzad] has stated.

24. We are now left to examine the testimony of PW-15 [Mohd Shahzad], who is the son of deceased Mohd Sharif. According to the learned counsel for the appellant, this witness ought not to be believed at all because he is an interested witness. However, we do not agree with this statement of the learned counsel for the appellant because even a related witness may be a truthful and genuine witness and the facts of each case have to be examined. We will have to examine as to whether the testimony of PW-15 qualifies as a truthful testimony and whether there is corroboration from the other evidence on record.

25. PW-15 [Mohd Shahzad] stated in his examination-in-chief that on 28.08.1990, his father Mohd Sharif was living at House not F-2/647, Sunder Nagri. On that day, at about 10.30 a.m., he had gone to visit his father where his step mother told him that his father had gone to see Rukmani at House No. I-458, Sunder Nagri. Mohd Shahzad stated that he reached there at about 11.00 a.m. and found that his father and Rukmani and Hargiyan were outside Rukmanis house. Hargiyan was telling Rukmani that she had killed his mother by giving poison in place of Gangajal and that he would likewise kill them. He further stated that his father tried to pacify Hargiyan by saying that there was some misunderstanding and that his mother had actually died of natural causes and nobody had given poison to her. Thereupon, according to the said witness, Hargiyan told Mohd Sharif that he was telling a lie and on saying this, he lifted an iron bar which was lying nearby and gave blows on the head of Rukmani several times with force. PW-15 [Mohd Shahzad] further stated that he and his father got frightened and both started running. Thereupon, Hargiyan brought a dagger from his house not I-457, which was nearby, and he thrust the said dagger into the chest of his father Mohd Sharif who started bleeding profusely. He stated that several persons had witnessed this incident. Rukmani had fallen on the ground after receiving the saria blow at the

hands of Hargiyan. He further stated that his father had also fallen down on the ground after sustaining the dagger blow and the accused Hargiyan fled away with the dagger from the spot. He submitted that police came to the spot immediately and removed his father and Rukmani to GTB Hospital where they were both declared dead by the doctor. He stated that he had also gone to the hospital immediately and that the police had recorded his statement Exhibit PW-15/A about which we have already mentioned earlier.

26. In his cross-examination, PW-15 [Mohd Shahzad] stated that his father used to live for about two days in a week with Smt. Anju and the rest of the days, he used to live with them. He further stated that his father had his name in both the ration cards at Sunder Nagri as well as at Darya Ganj. He further stated that since his father had not been to their house, he had gone to inform him about the fact that his nephew Mukarram was ill. He further stated that Aminuddin, Juma and Sultan were not related to him and that these persons were not present at the time when his father was talking to Hargiyan and Rukmani. He stated that Hargiyan gave 2-3 saria blows on the head of Rukmani and that neither he nor his father could intervene because it all happened very suddenly and that he and his father immediately went away from the spot. He further stated that they started going towards their house and they reached near the tea shop which is situated in between the house of Rukmani and that of his father and is on the way to their house. He further stated that the name of the tea vendor was Juma and that four or five persons were sitting at the tea shop. He stated that after Rukmani was hit, he and his father started running from the spot and found that Hargiyan was chasing them. He further stated that when Hargiyan hit his father with a knife, he was standing at a distance of 4-5 steps and that he had no occasion to intervene because the accused suddenly gave a knife blow to his father. He stated that he picked up his father in such a way that his clothes did not become blood stained. He further stated that Juma, Sultan and Aminuddin, who were already present at the tea stall, also saw the incident, but he could not say whether their clothes became blood stained or not. He further stated that the accused ran towards Gagan Cinema.

27. From the testimony of PW-15 [Mohd Shahzad], it does not appear to us that he is telling the truth. First of all, his presence on the scene is quite improbable. He is not a resident of that area and he has stated that his father used to reside with them for five days of the week. So, there was no occasion for him to go to Sunder Nagri where his father was residing with one Smt. Anju. His statement that he had gone to inform him about the ailment of their nephew Mukarram appears to be a very feeble attempt at trying to give substance to his claim that he had actually gone to see his father. Secondly, while PW-14 [Mohd Sultan] stated that an hour prior to the assault on Rukmani, an altercation had taken place which was settled, PW-15 [Mohd Shahzad] has not mentioned anything about any prior altercation. In fact, he states that the altercation and assault took place at the same time. Thirdly, there are serious deficiencies in the testimony of PW-15 [Mohd Shahzad]. This is so because, on the one hand, he says that after Rukmani was assaulted by Hargiyan, both he and his father ran away from the spot and, on the other, he says that Hargiyan went to his house and brought out a dagger. How could he have seen what Hargiyan did if he alongwith his father ran away from the spot. Moreover, when he and his father reached the tea stall, he stated that he noticed that Hargiyan was chasing them with a dagger in his hand. Then, where is the question of there being a sudden assault and him not being able to do anything to protect his father. The intentions of Hargiyan were absolutely clear, if he had indeed assaulted Rukmani. They were running away and they knew that Hargiyan was chasing them and this time he was armed with a dagger, then why did PW-15 [Mohd Shahzad], who is the son of deceased Mohd Sharif, not raise any alarm or cry for help, particularly when, according to him, there were several persons present at the tea shop. Fourthly, if Mohd Sharif and Mohd Shahzad were running away and Hargiyan was chasing them, then, how is it that Hargiyan stabbed Mohd Sharif in the front and not in the back? Fifthly, there are contradictions between the testimonies of PW-15 [Mohd Shahzad] and that of PW-14 [Mohd Sultan]. One contradiction is that, according to Mohd Sultan, after the assault, Hargiyan ran away towards Bhopura P.P., whereas according to Mohd Shahzad, Hargiyan ran away towards Gagan Cinema.

28. For these reasons, we feel that neither PW-14 [Mohd Sultan], nor PW-15 [Mohd Shahzad], are actual eye witnesses of the occurrence. Their testimonies

cannot be relied upon for basing a conviction against the appellant. We do not agree with the learned Additional Sessions Judge where he discarded the contradictions between the testimonies of these two witnesses as being minor and on immaterial issues. The contradictions are major and on material issues. We also do not find any credible evidence with regard to the recovery of the saria and the dagger. Coupled with the fact that there is a serious doubt as to the Exhibits P-1[Dagger] and P-2 Saria [Iron Rod] being the murder weapons. As mentioned above, there is also serious doubt as to from where the two victims were lifted by the police. According to PW-10A [Head Constable Hukam Chand], both the victims were lying in the same place, whereas, according to PW-14 and PW-15, the victims were lying at different places. We would tend to believe PW-10A [Head Constable Hukam Chand], who is the person who had taken the victims to the hospital and it is his name which figures in the MLCs as the person who had brought the victims to the hospital. We also noticed the differences and variances between the site plans with regard to the place of occurrence insofar as the assault on Mohd Sharif was concerned. Finally, the conduct of PW-15 is also quite unnatural. He is, after all, Mohd Sharif's son and he would, in normal circumstances, do everything in his command to try and save his father. He did nothing of this sort and was a mere bystander, both to the assault on Rukmani as well as on Mohd Sharif. Even his clothes did not get blood stained and he did not accompany the police who took his father to hospital.

29. For all these reasons, there is grave doubt as to whether the appellant Hargiyan is the author of the crime. Consequently, giving him the benefit of doubt, he is acquitted of all charges. The appellant is on bail and, therefore, his bail bonds stand cancelled and the sureties stand discharged. The appeal is allowed. BADAR DURREZ AHMED, J VEENA BIRBAL, J JANUARY 04 2013 dutt

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