

1. Anil Singh Vs. 1. State of Jandk.;

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Court : Jammu and Kashmir

Decided On : Apr-26-2013

Judge : Hon'ble Mr. Justice Virender Singh

Appellant : 1. Anil Singh

Respondent : 1. State of Jandk.;

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. Cr Appeal No. 10 OF 199.AND Cr MA No. 218 OF 199.AND Cr MA NO. 24 OF 199.1. Anil Singh 2. State of J&K. Petitioners 1. State of J&K. 2.Anil Singh Respondent !Mr. Sunil Sethi, Sr. Advocate with Mr. Waheed Choudhary, Advocate ^Mr. Gagan Basotra, Sr. AAG Mr. L. K. Sharma, Advocate Honble Mr. Justice Virender Singh, Judge Honble Mr. Justice Bansi Lal Bhat, Judge Date:

26. 04.2013 :

JUDGMENT

: Cr. Appeal No. 10/1994 & Cr MA Nos. 218/1995 & 24/1999 C/w Confirm No. 35/1994 Per Bansi Lal Bhat- Per Bansi Lal Bhat---J 1.This appeal has been preferred against judgment dated 23.07.1994 formulated by learned Sessions Judge Jammu in File No. 62/Sessions titled State v Anil Singh by virtue whereof appellant Anil Singh (hereinafter referred to as accused) was convicted of offence u/s 302 R.P.C. and sentenced to life imprisonment plus fine of Rs. 1000/- (Rupees

One Thousand) with three months simple imprisonment proposed in default of 2 payment of fine. Confirmation Reference made by Learned Sessions Judge under the provisions of Section 374 Cr.P.C has been clubbed with this appeal for hearing and consideration.

2. Facts germane to the disposal of this appeal and confirmation proceedings may briefly be noticed.

3. The informant Banarsi Dass, on 7th August 1991, reported at Police Station Gandhi Nagar laying information that on the same day in the evening his son Rajesh Gupta alias Bittu had left for his home situated at Shastri Nagar after closing down his business establishment while he himself had gone to enquire about the health of a relative admitted in Saddar Hospital, Jammu. When he reached Nai Basti at about quarter to 9 P.M., he came across his younger brother Ravinder Kumar who told him that his son Rajesh Gupta had been assaulted by the accused Anil Singh alias Babloo son of Sandal Singh resident of Shastri Nagar with a sharp edged weapon inflicting serious injuries upon his body. He further told the informant that PW Narinder Kumar has shifted the victim to Hospital in a Car. He immediately set out for the Hospital in the company of Ravinder Kumar. When they arrived at the Hospital, they found that the victim had succumbed to his injuries. This information emanating from informant Banarsi Dass led to recording of FIR No. 586/1991 and registration of case for offences under Section 302 RPC. The investigation was taken up by Sub-inspector R. K. Chalotra SHO Police Station Gandhi Nagar. He proceeded to the scene of offence, prepared site-plan, seized blood-stained as also plain clay from the place of occurrence and sealed the same. He rushed to the Hospital, seized the dead-body of deceased, prepared the seizure-memo and 3 arranged for postmortem of the dead-body. Police also seized the blood-stained clothes of the deceased as also the sample of his blood provided by the Chief Medical Officer. He obtained the postmortem- examination report, got the seized items re-sealed before submitting the same to FSL for chemical examination. He also recorded the statements of the witnesses.

4. The investigation revealed that the deceased-Rajesh Gupta apprehended harm as the accused, who used to indulge in eve-teasing in the lane adjacent to his

home, had threatened to eliminate him when he objected to the indecent acts on the part of the accused. It was found that due to the enmity the accused on finding an opportunity stabbed the deceased with a Kirch thereby inflicting injuries which proved fatal. The Kirch used as a weapon of offence was recovered at the instance of the accused who made a disclosure statement during investigation. After obtaining medical opinion, charge sheet was laid before the competent Court for judicial determination.

5. The record of Trial Court reveals that in terms of order dated 12.08.1992 charges for offences under Section 302 RPC and 4/27 of the Arms Act were framed against the accused-appellant, who pleaded not guilty and claimed to be tried.

6. Prosecution examined Banarsi Dass, Narender Kumar Gupta, Chaman Lal Gupta, Vijay Kumar, Rajhan Singh, Shesh Pal, Raman Kumar, Gulam Nabi Tehsildar Executive Magistrate, Mohd Shafiq Bhatt, Dr. S. D. Thakur, Inspector-Seva Singh and Ravinder Kumar Chalotra as witnesses. The accused-appellant has not produced any witness in defence

7. Prosecution evidence is reproduced as follows:- PW Banarsi Dass Gupta : is the father of deceased. He deposed that two days before occurrence accused-appellant had threatened to liquidate the deceased when he had objected to eve-teasing on the part of the accused-appellant. He visited Saddar Hospital to enquire about the health of his relative who was admitted in the Hospital. Before leaving for Hospital he had instructed the deceased to close down the shop and go to his residence. While he was returning from Hospital and he reached Nai Basti at quarter to 9.00 pm, his younger brother Virender Kumar informed him that his son Rajesh Gupta had been stabbed by the accused-appellant. He immediately ran to the scene of occurrence where he learnt that the injured had been shifted by Baljeet Singh along with Narinder Kumar to Hospital in a car. He rushed to Hospital where he came to know that the injured had succumbed to injuries. Thereafter he went Gandhi Nagar Police Station and lodged a report against the accused-appellant for committing murder of his son. The witness testified to the correctness of the report marked as EX-PWBD. Sub Inspector R. K. Chalotra went

on spot, prepared site-plan, seized blood stained and plain clay. The witness supported the contents of seizure-memos marked as EX-PWBD-/1 and EX-PWBD/2. He also supported Supurdnama in respect of seal used in sealing these items. It was marked as EX-PWBD/3. Then he went to Hospital where body of the deceased was seized vide EX-PWBD/4. Another seal was placed on Supurdnama vide EX-PWBD/5. On cross examination he deposed that his shop was situated at Panjbakhtar Road. The occurrence had taken place on Shastri Nagar-Nai Basti Road. 5 Shops of Bansilal, Baljeet Singh and one tailor-master were adjacent to the place of occurrence. The deceased used to work with him in the shop. His son-in-law had told the deceased that his mother was admitted in the Hospital. He learnt about it from his wife, who had been told by the deceased. He had left the shop about an hour before closing the shop. He repelled suggestion to the effect that he had left the shop after the same was closed. His wife had already reached the Hospital when he reached there. He stayed there for an hour. When confronted with FIR, he did not support the statement therein to the effect that he and deceased had left after closing down the shop. He learnt about the occurrence while passing through the lane in Nai Basti. His brother informed him about the occurrence as he stopped his Scooter on noticing his brother coming from Nai Basti side. He directly rushed to the spot where he found 3-4 people standing. Then he left for the Hospital and Bansilal shopkeeper told him on spot that deceased had been shifted to Hospital. His brother Virender Kumar told him that he had learnt that the deceased had been stabbed. Virender Kumar had met him at a distance of 50- 60 yards from the place of occurrence. He did not talk to anybody other than Bansilal. Though Police Station Gandhi Nagar was situated nearby, he rushed to Hospital to save the life of his son. He reached the Police Station at 9.30 P.M or slightly above such time. Previously he had learnt about the occurrence from Narinder Kumar, Virender Kumar and Bansilal. He had gone to Police Station all alone. He had nominated Narinder Kumar and Rajan Singh as the persons who had informed him about the stabbing of his son at the hands of accused-appellant. He supported the statement in FIR to the effect that other persons too 6 had witnessed the occurrence. Some ladies had watched the occurrence. Rajan Singh was his neighbor when he lived at Nai Basti. Rajan Singh was friend of the deceased-appellant and they had business transactions.

Virender Kumar had told him that the deceased was moving towards Shastri Nagar. After receiving the information about threat given to deceased by the accused, he did not approach the Police, as he wanted to raise the issue with the father of the accused. Police had drawn Site Plan in his presence. Virender Kumar and Chaman Lal were also present at that time. Narinder Kumar had informed him in the Hospital that the accused-appellant had stabbed his son with a Kirch. However, the FIR was silent about the weapon of offence used in the assault. PW Narinder Kumar: deposed that on 7th August, 1991 at 8.30 P.M he was going to the shop of a Chemist to fetch medicines for his ailing daughter. As he reached in front of the Shop of Baljeet Singh, he noticed the accused- appellant stabbing the deceased with a Kirch. Accused-appellant had struck the deceased with a Kirch 3 /4 times and the deceased sat down holding his belly with his hands. Thereafter the accused stabbed him in his back. The deceased fell down on the ground. Meanwhile, the accusedappellant ran away with his Kirch. The witness claimed that he had tried to catch hold of the accused-appellant, but he failed in his attempt as he was holding his infant daughter in his fold. Then he approached the deceased who was seriously injured. He passed on the infant to Rajan Singh whom he found on spot and asked him to take the infant home. Meanwhile, a Maruti Car arrived there. The witness alongwith Baljeet Singh shifted the deceased, who was lying in injured condition, to Hospital where doctor 7 declared him brought dead. Within 15 minutes informant also arrived there. He narrated the occurrence to the informant. The informant told him to visit the place of occurrence and he himself left for Police Station Gandhi Nagar. When the witness reached on spot, he found Gurbachan Singh, Bansi Lal, Chaman Lal and Puran Chand Gupta on spot. They were not known to him. After a brief pause of 15 minutes informant arrived there with the Police. Police personnel prepared the Site Plan, seized the blood stained clay and sealed the same on the spot. Seal was placed on Supurdnama of the informant vide EX-PWBD/3. The witness supported the contents of Supurdnama. The witness alongwith the informant boarded the Police vehicle which carried them to Hospital where body of the deceased was seized. He supported the contents of the seizure memo marked as EXPWBD/4. Body of the deceased was removed to Mortuary. Since it was too late, he left for his home with Raman Kumar and Ashok Kumar accompanying him. The post- mortem on

the body of the deceased was conducted and wearing apparels of the deceased were seized with seal placed on Supurdnama of Raman Kumar. The witness supported the Supurdnama which bears his signatures. On cross examination the witness admitted that in 1975, he was facing charges of murder of brother of the deceased. Shop of Bansi lal, Baljeet Singh and one Raji were lying open at the time of occurrence. The occurrence took place about 10 feet away from the shop of Baljeet Singh. Customers were in the shop at that time. The witness claimed that he was at a distance of 30 feet from the place of occurrence when he noticed the accused-appellant for the first time. People were moving at that time. The accused-appellant was facing him while he could see only back of the deceased. The deceased and the accused-appellant had scuffle at that time. There was exchange of blows between them. The accused-appellant had slapped the deceased in his face. What happened before that was not known to him because he had not reached the spot? He identified the deceased from his back. The deceased inquired from the accused-appellant the cause of assault. However the witness claimed not to have rushed to intervene. He noticed the accused-appellant bringing out the Kirch stabbing the deceased 2 or 3 times. The witness claimed that he was apprehensive that if he intervenes, the infant may be harmed. He did not move as he did not find anybody that could take care of the infant. The deceased on sustaining injuries in his belly held it with his hands and sat on his feet. Before witness could reach there to intervene, the accused-appellant stabbed the deceased in his back on his left side. He was standing at a distance of 20 feet at that time. The deceased was struck in his back only and, thereafter accused-appellant fled away. He claimed that he ran after the accused-appellant for a distance of 10/15 feet but he failed to nab the accused-appellant. Since none of the shopkeepers had watched the occurrence, they did not rush to the spot. When the witness abandoned his exercise of chasing the accused-appellant, he went back to the place of occurrence. The deceased was lying on the ground with face downwards. Rajan Singh, Baljeet Singh, Bansi Lal and others were standing there. They inquired from the witness about the incident and he told them that the accused-appellant had stabbed the deceased. The whole incident was over within 10 minutes. Informant reached the Hospital within 15 minutes after his arrival. He narrated the incident to the informant and told him that he had watched the

occurrence. He did not disclose before the Police that the accused-appellant had slapped the deceased. He did not tell the Police that others had also watched the occurrence. Gurbachan Singh and Bansilal had pointed out the place of occurrence to him and he told them that this fact was known to him. Police did not inquire from Gurbachan Singh and Bansilal about the manner in which the occurrence took place. Police did not inquire from him and others while drawing up the site plan. He boarded the Police vehicle along with the informant which brought them to Hospital. He did not visit the spot again. When he handed over the infant to Rajan Singh, the deceased had sustained injuries at that time. Rajan Singh had arrived at the same time. When he reached on the spot after chasing the accused-appellant, he did not find the knife which had a blade of 6/7 inches. Nothing was seized in his presence except the cloth which was sealed on spot. His statement was recorded at about midnight in the Hospital. Informant was with him at that time. His signatures were taken on the statement. Informant was with him up to midnight. Nobody from his home visited the spot when he was there. Deceased lived at a distance of about 600 yards from the place of occurrence. He had visited the medicine store for treatment of the infant. This chemist shop was at a distance of about 60 yards from the shop of Baljeet Singh. He had told the Police about the location of shops. He did not remember the registration number of the Car used in carrying the body of the deceased, in injured state, to Hospital. The Car owner was himself driving the Car. He was not known to the witness. Deceased did not talk to him while he was being taken to Hospital. Only Baljeet Singh had helped him in shifting the deceased to the Car. The witness claimed that he too assisted in shifting the injured to the vehicle. At that time he was bleeding from the injuries sustained in his body and the back. No effort was made to plug the wounds of the deceased. The deceased was moved to Hospital as the injuries were serious. Baljeet Singh had accompanied him to Hospital. He claimed that his hands as also his wearing apparel had been soiled with blood. He washed his hands at the Hospital. However, he did not produce blood-stained pant before the Police. Car arrived on spot within 2 minutes of the deceased receiving wounds in his back. He had stopped the Car. The witness rebuffed the suggestion that he was not present on spot and that his cloths were not stained with blood. He washed his hands at the fountain in Hospital. He was not aware at that time that

the deceased was dead, as he had left the deceased in the emergency ward and came out to wash his hands. Baljeet Singh was taking care of the deceased at that time. Doctor had taken signatures of Baljeet Singh in his register. When he returned to emergency ward after washing his hands, he went to see the doctor to inquire about the condition of the deceased. Meanwhile, another doctor reached there and he declared the deceased brought dead. Body of the deceased was removed to Mortuary at about 12.30 O'clock. The deceased had a weak eyesight and he used to wear spectacles on some occasions. However, he was not wearing glasses at the time of occurrence. PW Chaman Lal: deposed that on 7th August, 1991 at about 9.45 PM he was standing at Nai Basti Bazar. He found some people coming from Shastri Nagar talking about the murder of deceased at the hands of accused-appellant. He went on spot where some people were standing and were talking about the incident. Police 11 reached there within 10 minutes and prepared the Site Plan, seized plain and blood-stained clay and sealed the same. The witness supported the seizure-memos marked EXPW-BD/1, EXPW-BD/2 bearing his signatures. He identified the accused-appellant who was known to him. On cross-examination he stated that PW Narinder Kumar was his friend since 15 years. He admitted that he was facing murder charges alongwith PW Narinder Kumar and both had spent four years in the same jail. He had picked up friendship with Narinder Kumar much earlier. He did not know the persons talking about the incident and he heard them from a distance of 5 feet. He had not inquired from them about the incident. The shops located near the scene of occurrence were closed. He left his home at 9.35 P.M. He was loitering in the street. People were moving at that time. Nobody from his Mohalla had informed about the occurrence of murder. On cross-examination he further deposed that when he reached on spot. he found Sardar Gurcharan Singh, Bansilal and Puran Gupta standing there among others. He had inquired from Puran Gupta about the occurrence. Nobody from the house of deceased was on spot at that time. Bansilal was running his shop near the place of occurrence. These persons had told him that they heard about the murder of deceased at the hands of the accused-appellant. Meanwhile, Police arrived there. The informant was also accompanying the Police. PW Narinder Kumar reached shortly thereafter. He told that accused-appellant had committed murder of the deceased. Nobody else from the home of deceased

had arrived there. The witness claimed that he had left his home at 9.30 PM and at that time nobody from his Mohallah had informed him about the occurrence of murder. His statement was 12 not recorded at that time or thereafter. His signatures were taken on some paper. He has not seen articles being sealed. PW-Baljeet Singh: was given up by learned Public Prosecutor, in terms of his statement recorded on 27.11.1993, on the ground that the witness had been won over. PW- Virender Kumar: has been given up by the learned Public Prosecutor as being unnecessary. PW-Vijay Kumar: deposed that on 10.08.1991 at 9.30 pm there was a commotion in Nai Basti Bazar. People were murmuring that the assassin of son of Banarsi Dass has been apprehended. The witness claimed that he went in the company of Shesh Pal to Police Station Gandhi Nagar. They found the accused in the room of Inspector Chalotra who was unknown to the witness. Inspector was inquiring from the accused about the occurrence. The accused informed the inspector that a blood stained Kirch stands concealed under a tree on right side of the Samadhi Morh on Nagrota Heights at Bantalab. Inspector recorded the statement of accused. The witness testified to the contents of Disclosure Statement marked as EXPW-VK which bears his signatures. At the insistence of Inspector the witness and his companion Shesh Pal accompanied Police to the site. It was 12.30pm. The vehicle was stopped at the instance of accused when they reached Samadhi Morh. The accused was leading the team and he produced the Kirch which he brought out from bushes near the tree about 7 ft. below the road. The Kirch was seized. The witness testified to contents of Seizure Memo bearing his signatures. It was marked EXPW-VK/1. It was sealed on spot and the same was 13 placed on Supurdnama of Banarsi Dass vide EXPW-BD/5. The witness identified the Kirch recovered at the instance of accused. It was marked EXP-1. On cross examination stated that the team comprised of Inspector Chalotra, two constables and accused besides witness and his companion Shesh Pal. Banarsi Dass had already reached there when the witness arrived at Police Station. His vehicle was parked in the Police Station. He did not talk to Banarsi Dass. Banarsi Dass had also left for the spot in his own vehicle when Police Team set out for recovery of the weapon of offence. The witness and his companion waited for 1= hours in Police Station after the accused had made Disclosure Statement as the Inspector had asked them to accompany

the Police Team .Meanwhile Banarsi Dass had left the Police Station. His vehicle was parked outside the Police Station building but within the compound of Police Station. Banarsi Dass was standing outside the Police Station building when the Police team alongwith witness left for the site. When the witness and his companion had reached the Police Station, they found the Inspector inquiring from the accused about the Kirch used in committing murder of deceased. The accused had confessed in ordinary language which was a mixed dialect. The note appended by Court recorded that the witness was speaking in Punjabi. According to the witness the accused had stated that he had concealed the blood stained Kirch in bushes under the tree near Samadhi Morh at Bantalab Heights. The tree was about 6 ft. in height while the bushes were about 5 inches tall. The Kirch was concealed, i.e., covered by bushes. The place of recovery of weapon of offence was at a distance of about 8 ft. from the road. It was not easily accessible and the team reached there with great difficulty. Banarsi Dass did not go there. 14 He was standing on the road. The Kirch was blood-stained at that time. The blood stains were partially red and black. The Seizure Memo was prepared on the road. He was loitering about the Bazar when he had heard that accused had murdered son of Banarsi Dass. He and his companion returned in a bus from the place of recovery. The Police team was still there. He did not know when the Police team and Banarsi Dass had left the place. Kirch was measured on spot. It was also laced with clay on the handle. PW-Rajan Singh: deposed that on 07.08.1991 at 8.30 pm he was going towards the temple. When he reached Shastri Nagar Road, he found the accused stabbing the deceased in his belly twice in front of the shop of Baljeet Singh. Rajesh Kumar sat on the ground and the accused struck him with Kirch in his back. Rajesh Kumar fell down on the ground with his face towards the ground. The accused escaped from the spot. Narinder Kumar chased the accused for about 20 ft. but came back as he was holding a baby girl who was handed over to witness. Meanwhile, a white coloured Maruti Car came from Gandhi Nagar side. It was stopped by Narinder Kumar. Baljeet Singh and Narinder Kumar lifted Rajesh Kumar injured and carried him to Hospital in that car. The witness claimed that Narinder Kumar had handed over the infant girl to him for taking her to his home; he had also instructed him to inform the father of deceased about the occurrence. The witness claimed to have left the infant in her home and informed

the father of deceased. He told the father of deceased that the accused had stabbed the deceased who was removed to Hospital in injured condition. On the following day he learnt about the death of deceased. On cross examination stated 15 that he belonged to Himachal Pradesh but he was born in Jammu. Earlier he lived as tenant at Ashok Nagar, Satwari. He picked up acquaintance with Banarsi Dass when the witness was running a Karyana shop at Nai Basti. All shops including his shop were raised unauthorizedly in 1984. He was a member of RSS and had affiliation with BJP. Banarsi Dass was also a member of BJP. The witness claimed that he lived in Nai Basti Mohalla. He is not a permanent resident of the State. Shop of Baljeet Singh is not visible from his shop. He closes his shop between 8-9 pm. His three younger brothers also work in the shop. His residence is located at a distance of 5-6 minutes journey from his shop but he foots the distance within three minutes when he is in hurry. The cash is counted in the evening but kept in the shop. After closing shop he either visits his debtors for recovery of debt or visits the temple of which he is Manager. Prayers are held in temple at 7.30 pm and it closes at 8.15 pm. He does not make effort to attend the Arti in temple. The witness claimed that he conducts Puja at home but visits the temple of Sheetla Mata only to supervise the arrangements. He takes a round of the temple usually after 2-3 days. In August 91 he made rounds to the temple on 1st, 4th and 11th. He does not remember other dates when he visited the temple in 1991 and 1992. He attends the meeting of temple committee for about 15 minutes. Shop of Baljeet Singh is in the midst of 8/9 shops. The adjacent shop was closed on the date of occurrence. Shop of Tailor Master KamalJeet Singh and Banarsi Dass also lie adjacent to his shop. The shops of temple are located across the road. However, there is no rush of traffic on that road. People were thronging the road where occurrence took place. He was running two shops on the date of occurrence. He 16 had closed the cloth shop but karyana shop was still lying open. The sale proceeds collected at the cloth shop amounted to Rs. 250/- only on that day which he had already counted. There was no meeting in the temple on that day. After closing the shop he was standing for about 10 minutes in front of his shop talking to his friends Vijay Kumar, Rajesh Kumar and Kashap Rajput. Then he left for Ram Darbar temple after depositing the keys at the Karyana Shop. He had not visited his home before going to the temple. He reached his home at

about 9.30 pm. When he reached Shastri Nagar Road turn at Nai Basti, he was not looking towards shop of Baljeet Singh. He did not hear any noise emanating from Shastri Nagar Road. The plots were lying open at that time and it was dark. He could see some buffalos on the right side. He had heard a cry which drew his attention. At that time he was at a distance of about 50 ft. from the shop of Baljeet Singh. He walked towards the side from where he heard the scream. He noticed that the accused was stabbing the deceased. Accused was facing towards him while he could see the back of deceased. At the first instance he did not realize who the victim was. He noticed the accused striking the victim twice. Nobody tried to rescue the injured. He also did not find anybody around. When the accused struck the injured in his back, nobody came to his rescue even at that time. He was silently advancing towards the scene of offence. He had noticed the victim being stabbed in his back from a distance of about 35 ft. He saw the accused striking the injured in the back only once. Nobody reached there when the injured fell down on the ground. The witness claimed that as he was scared of the accused holding dagger in his hand, he did not venture to rescue the victim. The accused escaped towards the Ram Darbar 17 Mandir leading towards Shastri Nagar. He had a glimpse of the accused from one side of the face as he noticed the accused escaping from a distance of about 25 ft. He also noticed Narinder Kumar Chasing the accused. He had not previously seen Narinder Kumar on spot. Narinder Kumar came from right side but he had not seen him coming. Narinder Kumar was on the way when he noticed the accused escaping. He started chasing the accused. Baljeet Singh had reached the spot at that time and he was at a distance of about 3 ft from the injured. The witness claimed that before gaining access to deceased, he did not know who the victim was. Nobody touched the injured until Narinder Kumar abandoned the exercise of chasing the accused. The occurrence lasted for about two minutes. The witness denied the suggestion that he had visited his home after closing his shop. He did not visit the place of occurrence again on the same day. On the following day in the morning he visited the house of deceased where he learnt about his death. His statement was recorded by Police at that time. The witness did not support the statement attributed to him under Section 161 Cr.P.C. to the extent that he was to proceed towards temple at the time of occurrence from his home. He insisted that after

closing his shop he was going towards Shastri Nagar temple at that time. He admitted that his Police statement did not make mention of the fact that he was talking to his friends for about ten minutes after he had closed down his shop. He rushed towards the deceased when he noticed the accused escaping from the spot. It was only when Baljeet Singh and Narinder Kumar lifted the deceased that he came to know that the injured was Rajesh Kumar. He was bleeding at that time. None except Narinder Kumar, Baljeet Singh and the witness 18 were present on spot at that time. The witness denied having told Police that many other persons had also reached on spot at that time. The place of occurrence was properly lit and the shops were lying open. He had not talked about the occurrence to anybody except the family of deceased before his statement was recorded. The deceased would occasionally attend the Shakha of RSS. He would also deliver goods at his shop. The witness also visited his house whenever there was a function. He stayed at the place of occurrence for about three minutes after Narinder Kumar handed over the infant girl to him. By that time the injured was removed to Hospital. He left the infant in her home and again visited the spot as he had to pass through the said place for reaching the house of deceased. Narinder Kumar used to live in a separate house in Shastri Nagar at that time. The said house was located at a distance of about 150 ft from the shop of Baljeet Singh. On the following day his statement was recorded at 5.30 pm but the SubInspector had not taken him to the place of occurrence. PW-Shesh Pal: deposed that on 10.8.1991 he was with PW Vijay Kumar at Nai Basti when he learnt that the murderer has been arrested by the Police. Both of them went to Gandhi Nagar Police Station, where they found the accused handcuffed by S.I Chalotra who was interrogating the accused. The accused disclosed before the Police that he had concealed the Kirch in bushes at Nagrota near Bantalab Samadhi Morh. The witness testified to the contents of Disclosure Memo marked as EXPW-VK which bears his signature. The witness further claimed that he and Vijay Kumar were asked to stay in the Police station for accompanying the Police party to the site of recovery. They were taken along 19 with the accused in a Police jeep to the site. The accused led them to the place which was about 8/10 feet away from the National Highway. He brought out the Kirch from the bushes and handed over the same to the Police. Site plan was prepared and the Kirch

was sealed on spot. Meanwhile, Banarsi Dass reached there. The witness supported the recovery memo marked as EXPW-VK/1 bearing his signature. He also identified the Kirch. It was marked as EX-P1. On cross examination he stated that he is a contractor by profession, leaving his house at 7 A.M and returning home at 8 PM. He learnt about the arrest of accused at about 9.30 A.M. Banasri Dass was known to him. Previously, he did not know anything about the identification of murderer. On that day he had reached home at about 9 A.M for having breakfast. They arrived at Police Station at about 10.30 A.M and stayed there for about two hours. They left for the site of recovery of Kirch at about 1.30 PM. Banarsi Dass was standing outside the Police station building. He did not know whether Banarsi Dass was following them to the site of recovery. Banarsi Dass had not reached there before their arrival. Sub Inspector Chalotra was enquiring from the accused about the place where he had concealed the Kirch. The accused was standing and he had replied in his local dialect. The accused disclosed that he had concealed the Kirch used as weapon of offence at Bantalab near Smadhi Morh. He was prepared to affect its recovery. There was a gorge near Samadhi, but the same was located down the slope of hill adjacent to the road. The bushes were not more than 5 feet tall and 3 feet in width. At the time of recovery rust was not on the Kirch. It had brown marks of blood. It was black in color and spread over the blade. The Kirch was not buried in the soil, but was hidden in the 20 bushes. It took around 10/15 minutes to reach the site of recovery from the road. The Kirch was sealed on the road and the seal was kept on the Supurdnama of Banarsi Dass. PW Raman Kumar: deposed that deceased Rajesh Kumar was his younger brother. He visited the Hospital on 08.08.1991 to take delivery of the body of deceased which had been subjected to post mortem examination. The witness testified to the contents of Seizure Memo marked as EXPW-RK, in terms whereof wearing apparel of the deceased, which were blood-stained, were seized on spot and seal was placed on his Supurdnama vide EXPWRK/1. The witness identified the clothes of the deceased which were recovered from a sealed packet in open Court. He also supported EXPW-RK/2 which is the Memo in respect of blood sample of the deceased which was sealed in his presence. The memo bears his signature. On cross examination he deposed that he and deceased worked in the shop at Shivalay Mandir before occurrence.

The deceased had left the shop at 7.15 P.M on the date of occurrence. He was heading for his home. The witness claimed that he was left behind at the shop, as his father had left for Hospital at 5.30 P.M to enquire about the health of mother-in-law of his daughter. The deceased had to recover money at Shastri Nagar. However he could not say whether the deceased had to go to home in the first instance. The witness had reached at home at 10.30 P.M after closing down his shop. He had adopted Shastri Nagar road. He did not learn about the occurrence. On reaching home he was told by his mother and sister that the accused had stabbed his brother Bittu alias Rajesh Kumar and he had been taken to Hospital. His uncle and friends visited him to inform that 21 Rajesh Kumar has succumbed to his injuries. His father reached his home at about midnight. He was not at home when the witness had reached there at about 10 P.M. Police reached there. His father stayed in home and he did not go to Hospital for taking delivery of body of the deceased. Police again visited his home on the following day in the evening and enquired about the occurrence from his friends and Baljeet Singh whose shop was located near the place of occurrence. Police also enquired about the occurrence from Narinder Kumar. PW-Ghulam Nabi: the then Naib Tehsildar exercising powers of Executive Magistrate deposed that Head Constable Ramesh Kumar of Police Station Gandhi Nagar produced five sealed packets before him and the same were resealed. He proved the certificate dated 27.8.1991 bearing his Seal and Signatures. It was marked EXPW-GN. On cross examination stated that he does not remember anything about the impression of seals used in sealing the packets before the same were resealed. He conducted proceedings on application of Police. PW-Assistant Director FSL Jammu: cited as prosecution witness has not been examined at the trial. However learned Public Prosecutor, in terms of his statement recorded on 07.02.1994, tendered the report of Assistant Director FSL Jammu dated 30.09.1991 in evidence which is admissible under Section 510 of Cr PC. In terms of the opinion tendered, the shirt, under- shirt, pant of the deceased, Kirch used as weapon of offence and sample of clay taken from the site of occurrence were found stained with human blood of A-Group. 22 PW-Dr. S. D. Thakur: the then head of department of Forensic Medicines GMC, Jammu deposed that he had conducted post mortem examination on the dead-body of Rajesh Gupta S/o Banarsi Dass R/o Shastri Nagar, Jammu. It happened

on 08.08.1991. The dead-body was identified by brother of deceased namely Raman Kumar and one Ashok Kumar. The Post Mortem Examination revealed:

1. Stab wound over back of left shoulder 5 from top of shoulder and 3 from lateral border oval = x = entering into chest. Ante mortem.

2. Stab wound over right back 9 from top of shoulder and 1= from mid line = x =" X1 not entering chest. Ante Mortem.

3. Stab wound over left costal region 4 below nipple and 3 from midline 1x = x . Ante mortem.

4. Linear 3 x x incised wound 2 medial to wound No.

3.

5. Abraded abrasion behind left ear, ante mortem.

6. Stab wound = x 1/3 x 1 = lateral to wound No.3. Not entering chest. Ante mortem. In his opinion the deceased had died due to hemorrhagic shock as a result of injury to left lung. This injury was sufficient in the ordinary course of nature to cause death. Time since death was about 12 hours. He removed 10 cc blood from cavity (chest) of deceased, deposited the same in a vial, sealed the same and handed it over to Investigating Officer. Shirt, Banyan and Pant of the deceased which were stained with blood were also handed over to Investigating Officer. He testified to the contents of Post- Mortem Examination Report which has been marked EXPW-SD. On 12.08.1991 weapon of offence sealed in a packet was produced before him for seeking his opinion. The seals were removed and a Kirich having double-edged blade and stained with blood was found in the packet. Its outline was drawn. After examination he opined that weapon could cause the injuries described in the Post Mortem Report. He sealed the weapon and handed over the same to Investigating Officer. He proved the certificate marked EXP-SD/1 in respect of Kirich marked EXP-1. He identified the same in open Court. On cross examination stated that he was told that the deceased had been attacked by some persons on 07.08.1991 at 8.30 pm at Shastri Nagar which implied that more than one person was the assailant. There

were three injuries on the back of deceased. Injury no. 1 and 2 were found on back of the trunk and injury no.5 was behind left ear. Such injuries were produced by the assailants facing back of the deceased. Such injuries could be caused in standing as well as lying down position of the deceased. Injuries Nos. 1, 2, 3 and 6 were stab wounds and not incised wounds. Injury no.5 was an abrasion caused by a blunt object. It could be caused by a stone also. Indigested food material was found in stomach of deceased. In his opinion the deceased had taken food within six hours. Solid food normally passes from stomach to small intestines between 4-6 hours. Notes taken at the time of Post Mortem Examination were destroyed after completion of the report. Result of Post Mortem Examination was recorded in a Register which was only a copy of the report on the file. Weapon of even = width or less than that could cause stab wound of the width =. Breadth of stab wound depends upon thickness of the blade. Width of the wound would be equal to width of the blade till the time weapon is inside the wound. When the weapon is taken out, the width of the wound decreases. Thickness of the blade has not been specified in EXPW-SD/1. Nothing has been mentioned about edges of the wounds in EXPW-SD. Inquest report was shown to him at the time of conducting Post Mortem Examination on the body of the deceased. He had signed the same. However on being confronted with Inquest report, he found that same did not bear his signatures. Duration of injury is determined by color of injury, condition of edges etc. Factors for determining the time since death are mainly Post Mortem changes like muscle changes, post mortem staining and decomposition changes. In month of December, decomposition changes can be seen after 6-12 hours. In the instant case death was due to injury no. 1 resulting in injury to left lung. He could not say which of the injuries were inflicted at first or at last. On re-examination by prosecution, the witness stated that injury no.1 and 2 at the back of deceased could be inflicted with the deceased being face to face with assailant and sitting with his knees bent. On further cross examination by learned defence counsel stated that in case of injuries no. 1 and 2, position of assailant qua deceased could have been face to face or face to back. Depending upon the direction of attack such injuries could be from above downwards or even horizontal. Most probably injuries nos. 1 and 2 were inflicted by the assailant from back side of the deceased. Questioned by the Court stated that requisition letter

from Police with identification of deceased and describing history of alleged cause of death are the formalities to be observed before conducting Post Mortem Examination. He had not prepared the diagram showing the receipt of injury and its dimension. He had measured injuries and probed the dead body for any concealed injury. He had not noted the rectal temperature of the body. The weapon of offence was shown to him on fourth day of the Post Mortem Examination. Blade of weapon was stained with blood. The color of blood stains could have been dark brown at that time. PW-Mohd. Munshi Bhat: posted as Sub Inspector at Police Station Gandhi Nagar at the relevant time deposed that he arranged the Post Mortem Examination of deceased, seized the sample of blood taken from the body of deceased vide EXPWRK/2, seized wearing apparel of deceased vide EXPW-RK, placed the seal used in sealing of the wearing apparel on Supurdnama of Raman Gupta vide EXPW-RK/1 and delivered the body of deceased to Raman Gupta vide EXPW-MB. He also prepared Fard Surthal marked EXPW-MB/1. On cross examination stated that Dy SP Gandhi Nagar had directed him to arrange Post Mortem on the body of the deceased as the Investigating Officer was out of station in connection with arrest of accused. After he completed above noted formalities, investigation was again handed over to Investigating Officer the same evening after he returned to Police Station. The Doctor has written in alleged Cause of Death Column:- Alleged to have been attacked by some persons on 07.08.1991 at 8.30 p .m. The Post Mortem Report marked EXPW-SD also bears his signatures. However, he has not described the details of incident in Fard Surthal which was due to inadvertence. 26 PW-Inspector R. K. Chalotra: then posted as Sub Inspector at Police Station Gandhi Nagar deposed that on the basis of information given by Banarsi Dass Gupta on 07.08.1991 at 9.30 pm case for offence under Section 302 RPC was registered under FIR No. 586/1991. He identified his signatures on FIR marked EXP-BD. He left for the scene of offence, prepared site plan marked EXPW-14, seized blood stained clay vide EXPW-Bd/1 and sealed the same. He also seized sample of clay lifted from the place of occurrence vide EXPW-BD/1. Then he visited the Hospital and seized body of deceased vide EXPW-BD/4 which was given on Supurdnama vide EXPW-BD/3. He recorded statement of witnesses present there. Then he set out for the arrest of accused who had absconded. This was done on the

instructions of SDPO who directed Mohd. Munshi Bhat to arrange for Post Mortem Examination of deceased. He examined the witnesses present in the house of informant in the evening on 08.08.1991. The accused was arrested on 10.08.1991. The accused made disclosure statement on the same day giving information that he had concealed Kirch in bushes at Bantalab Nagrota near Samadhi Morh. The witness proved the Disclosure Statement of accused marked EXPW-VK. Accused was taken to place of recovery and the Kirch was recovered at his instance. He proved the Recovery Memo marked EXPW-VK/1. The accused was leading the Police Team and the vehicle was stopped near the place of occurrence at his instance. The accused led Police Team to the spot from where he recovered the Kirch himself. The witness proved the site plan of place of recovery of Kirch marked EXPW-14/1. He identified the Kirch marked EXP-1. After recovery of Kirch it was sealed on 27 spot and the seal was placed on Supurdnama of Banarsi Dass vide EXP-BD/5. He had taken outline of seized Kirch on the Memo which has been marked EXPW-14/2. He examined the witnesses and obtained opinion from Doctor in respect of weapon of offence vide Docket marked EXPW-14/3. He found accused involved in commission of offence under Section 302 of RPC. Thereafter he was transferred from the Station. On cross examination stated that he reached the place of occurrence at 9.40 pm. He was there for about two hours. He prepared the Site Plan but he had not examined Narinder Kumar, Rajan Singh and Baljeet Singh at that time. The eye-witness had not been nominated in the report. He found that Narinder Kumar was an eye-witness. He drew this conclusion only when he examined Narinder Kumar on 07.08.1991. Narinder Kumar had pointed out the place from where he had watched the occurrence. He had indicated the place when the witness had prepared Site Plan. Other witnesses had not revealed anything at that time. Item No. 16 in Site Plan found in CD Files was neither incorporated subsequently nor over-written. It was an oversight which had crept in while preparing the copy which is placed on CD File. The note appended by Court says that point No. 16 has been written immediately after Item No. 15 but later part of it appears to have been inserted afterwards. Rajan Singh has been listed as PW-7. His name has been inserted by the compiler of Challan subsequently. Narinder Kumar had not nominated any other eye-witness. Rajan Singh was examined on 08.08.1991 at 8.45 pm. As per FIR accused had called the deceased

while he was walking on the road. He found that only 2/3 shops were lying open at the time of occurrence. Since the shopkeepers had stated that they were busy in their shops, they 28 had no knowledge about the occurrence. The occurrence had taken place in front of the shops of Rattan Chand and Baljeet Singh which were lying open at that time. There were customers in both the shops at that time. Baljeet Singh and Narinder had removed the deceased to Hospital in a car. Narinder had accompanied him to Hospital from the place of occurrence. He did not ascertain particulars of the owner of the car used for taking the deceased to Hospital. Clothes worn by Baljeet Singh and Narinder were not blood stained. The note at Item No. 11 in the Site Plan describes a fight which reflected the attack by the assailant. There was a street light at the place of occurrence but the same has not been reflected in the Site Plan. The shops were lit but this has also not been described in the Site Plan. Rajan Singh was on his way to the place of occurrence from home. He resided in Nai Basti Mohallah. He was going towards the Temple. PW(s) Shesh Pal and Vijay Kumar were with him at the Police Station from 9.30 am to 4.30 pm. Informant Banarsi Dass had accompanied him to the place of recovery of weapon of offence. He had traveled with him in Police Jeep and had not traveled separately. Place of occurrence was situated 3-4 Kms short of Nagrota. The place of recovery was situated about 30 ft away from main road. It was a slope. There was no pathway leading to the bushes but the place was accessible. CD Files did not contain particulars about the dispatch of FIR to Magistrate. Copy of FIR had been sent to SDPO on 08.08.1991 and SDPO had informed his superior officers on 09.08.1991 as revealed by the letter of the same date, copy whereof had been endorsed to the witness. Office of SDO was situated on the upper story of the Police Station building. Copy of FIR was submitted to SDPO by Moharar of the 29 Police Station and not by witness. There was no mention of dispatch of copy of FIR to Magistrate in Register Rahdari. The CD Files were scribed by a Head Constable who also recorded the statements of witnesses and prepared the Site Plan. He visited the place of occurrence before SDPO reached there. It was about 10 pm. He conducted investigation from 7th August to 13th August 1991. However, investigation was partly conducted by Mohd. Munshi Bhat on 08.08.1991 as he arranged Post Mortem of deceased. Witness further stated that he had obtained Post Mortem Report from Hospital on 12.08.1991 but

he could not say as to when same had been prepared. He did not enquire from any girl about the allegations of eve-teasing. He had examined PWChaman Lal at 11.45 pm in Hospital. According to Chaman Lal he learnt about the occurrence at about 8.30 pm. PW-Sewa Singh: the then SHO Police Station Gandhi Nagar deposed that the investigation in the case had been conducted by Sub-Inspector R. K. Chalotra and after his transfer, witness was entrusted investigation. He got the seized articles resealed by Executive Magistrate and sent the same for chemical examination to FSL Jammu. SDPO Gandhi Nagar had provided authority letter addressed to FSL. He identified signatures of SDPO on letter dated 31.08.1991. He had compiled the report under Section 173 of Cr PC which bore his signatures. It was marked EXPW-SS. On cross examination stated HC-Khajoor Singh had scribed the final report. He had omitted to record the name of PW-Rajan Singh in list of witnesses examined under Section 161 Cr PC. The witness stated that he noted the error and entered the name of Rajan Singh at Serial No.

7. Same was done according to the date of 30 examination of said witness. This fact was not reflected in CD Files as the final report had been prepared on the same day. The investigation was entrusted to him on 25.08.1991. The seized articles and blood samples were lying in the custody of Moharer Thana till that date. He obtained the letter from SDPO on 31.08.1992 and sent the blood samples and seized articles to FSL on 02.09.1991 as reflected in CD File No.10.

8. On 14.02.1994 learned Public Prosecutor closed the prosecution evidence. Accused was examined under Section 342 Cr PC to explain the incriminating circumstances emanating from prosecution evidence recorded at the trial. He denied the allegations in toto and pleaded that he had been falsely implicated by witnesses who were related to deceased. He also denied having made any Disclosure Statement leading to recovery of blood stained Kirch at his instance. No evidence was adduced by accused in defence.

9. On consideration of evidence tendered by prosecution at the trial learned Trial Judge found the accused guilty of offence under Section 302 of RPC holding that the prosecution had established the complicity of accused by Direct Evidence and the Disclosure Statement made by accused which led to recovery of blood stained

Kirch used as weapon of offence. Learned Trial Judge has elaborately dealt with evidence adduced at the trial and arrived at the conclusions after meticulously marshalling the evidence.

10. Mr. Sethi Senior arguing counsel for the accused has criticized the impugned Judgment on the ground that the learned Trial Court has mis- appreciated the evidence adduced by 31 prosecution at the trial by placing reliance upon testimony of the informant who was not an eye witness of the occurrence and had introduced Virender Kumar and Narinder Kumar as eye witnesses. He pointed out that while Virender Kumar has not been examined at the trial, Narinder Kumar has not been nominated as eye witness in the FIR. It is further pointed out that PW-Baljeet has also been introduced by informant but he too has not been examined at the trial. With regard to testimony of informant it is submitted that he also claimed to have learnt from one Bansi Lal about the occurrence but he has not been cited and produced as a witness at the trial. It is further pointed out that the informant also claimed to have learnt about the occurrence from PW(s) Narinder Kumar and Rajan Singh when he had gone to Hospital but the name of Rajan Singh does not find mention in FIR. It is further submitted that testimony of informant does not fall in the category of direct evidence. Testimony of PW-Narinder Kumar has been assailed on the ground that he was a chance witness who did not stand the scrutiny of cross-examination. It is submitted that his presence on spot was highly improbable and no significance could be attached to his account regarding the circumstances in which the deceased sustained injuries. It is pointed out that his statement was not recorded before drawing up of Site Plan. Testimony of Rajan Singh has been assailed on the ground that he had not witnessed material part of the occurrence. In regard to Post Mortem Report it is submitted that the case history and the location of the injuries on the person of deceased noted therein suggest that the assailants were more than one in number. Injury no. 2 was not attributable to accused. The injury no.1 was oval while other injuries were not so which also 32 suggested that more than one weapon was used in inflicting injuries on the person of deceased. Lastly it is submitted that the ocular testimony of so called eye- witnesses does not fit in the Post Mortem findings and such witnesses have been brought in subsequently to fill in the lacuna. It is further submitted that the evidence in regard to Disclosure Statement as well as the Recovery of Kirch

allegedly at the instance of accused is highly doubtful. The findings recorded by learned Trial Court are erroneous and based on mis-appreciation of the prosecution evidence.

11. Per contra learned Senior Additional Advocate General submitted that in the instant case report was lodged by father of deceased within shortest possible time. He nominated the eyewitnesses from whom he derived knowledge about the occurrence. The eye-witnesses resided in the locality or conducted business at the place of occurrence and their presence on spot was natural. It is further submitted that the testimony of two eye-witnesses examined at the trial and proof about the recovery of weapon of offence at the instance of accused has been properly analyzed and appreciated by the learned Trial Court to base conviction of the accused on charge of murder. Learned Senior Additional Advocate General supported the impugned judgment.

12. Having noticed the findings recorded by learned Trial Court and after giving anxious consideration to the arguments advanced at the Bar we proceed to re-appreciate the evidence to determine the culpability or innocence of accused irrespective of the findings of guilt recorded by learned Trial Court. It is apt to mention that 33 in view of the Post-Mortem findings, the factum of death of deceased being unnatural and homicidal in character is not in controversy. Only authorship of crime is the subject of determination. For reappraisal of evidence it is relevant to notice that prosecution sought to saddle accused with penal liability by resorting to two modes of proof: a) Direct evidence; b) Disclosure Statement attributed to accused followed by recovery of Kirch as weapon of offence at the instance of accused.

13. Other evidence brought on record by prosecution is merely corroborative in nature which includes the opinion of medical and forensic experts and the contemporaneous record.

14. a) Direct Evidence:- PW- Banarsi Dass is the informant who, on 07.08.1991 at 9.30 pm, appeared at Police Station Gandhi Nagar and made a verbal statement that his son Rajesh Gupta alias Bittu, who had left for home after closing down his shop located at Nai Basti at 8 pm, was accosted by accused Anil Singh enroute

who inflicted serious injuries on his person with a sharp edged object. The assault was attributed to previous enmity. The informant claimed that he too was attending at the shop and had left it at the same time. He had thereafter gone to State Hospital to enquire about the health of a relative. He learnt about the stabbing incident from his brother Virender Kumar at about 8.45 pm. The informant also told the Police that Narinder Kumar S/o Ram Dass R/o Nai Basti had removed the injured to State Hospital in a vehicle. He further told Police that he immediately rushed to Hospital while being accompanied by Virender Kumar 34 but on reaching the Hospital he learnt that the injured had succumbed to his injuries. He claimed that some other persons too had witnessed the stabbing incident. The information given by the informant was incorporated in FIR No:

586. 1991 recorded at the Police Station on 07.08.1991 at 9.30 pm. A close look at the FIR, proved by informant and exhibited as EXPW-BD at the trial, brings it to fore that the informant was not an eye-witness of the alleged occurrence. His younger brother-Virender Kumar was the source of knowledge for him whom he came across at 8.45 pm at Nai Basti while the informant had gone to State Hospital to enquire about the health of a relative. It is PW- Virender Kumar who not only nominated accused as an assailant having stabbed the deceased with a sharp-edged weapon but also spelt out the name of PW-Narinder Kumar as the person who had removed the victim to Hospital. Unfortunately, PW-Virender Kumar has been given up at the trial as being an unnecessary witness little realizing that, in the context of said witness being the first person to disclose the identity of assailant, description of weapon used in inflicting injuries and the manner and circumstances in which the deceased sustained fatal injuries, he was a material witness. Alas, the malaise afflicting the criminal justice system has not spared even the Prosecution Wing. Be that as it may, the manner and circumstances in which FIR was lodged and identity of assailant was disclosed assumes importance. Testimony of informant reveals that he was also attending to this shop on the date of alleged occurrence. He left the shop at 7.30 pm as he had to go to State Hospital to enquire about the health of Smt. Kamla mother of his son-in-law who was admitted in State Hospital for treatment. His testimony 35 reveals that he learnt about admission of Smt. Kamla in Intensive Care Unit of Hospital on 6th August late at night from his wife who was informed by the

deceased about the same. It is in his testimony that his elder son Raman Kumar too had visited Kamla Devi in Hospital on 07.08.1991. The informant claims to have told his wife in the morning of 7th August that he would visit Kamla Devi in Hospital in the evening. His wife had also expressed her intention to visit the patient in Hospital. The informant deposed that when he left his shop at 7.30 pm, it was lying open and he had instructed the deceased to close down the shop. The informant has been confronted with his statement in FIR to the effect that the deceased had closed down his shop at 8.00 pm and left for home situated at Shastri Nagar while the witness himself headed for Hospital to enquire about the health of his relative. He did not support the statement to the extent that he himself and the deceased had left the shop at the same time after closing down the business establishment.

15. The variation between testimony of informant before the Trial Court and the stipulation in FIR on this aspect cannot be termed a significant contradiction justifying discarding of his testimony. Stipulation in FIR to the effect that the deceased had set out for home after closing the shop when the informant left for Hospital to enquire about the health of a relative can be explained as being based upon assumption that the deceased should have left for his home after the informant set out for Hospital instructing the deceased to close down the business establishment and make it to his home. Much significance cannot be attached to this variation which does not otherwise affect the credibility of his 36 version disclosed in the FIR. There is no attempt on the part of informant to claim that he had personal knowledge of the alleged occurrence. He has been forthright in disclosing that he had learnt about the incident of stabbing of deceased from his younger brother-Virender Kumar at Nai Basti as he reached there at quarter to 9 pm. The FIR has been registered on the verbal information emanating from informant at 9.30 pm. The informant was also told that Narinder Kumar had removed the deceased with stab injuries to State Hospital in a vehicle and when informant rushed there along with Virender Kumar, the tragic news of succumbing of deceased to injuries stared him in his face. These facts have been incorporated in FIR lodged within an hour of the incident leaving no scope for manipulation. This apart, no father would spare the real perpetrator of murder of his son and rope in an innocent person. The importance and significance of FIR and its evidentiary

value has been considered in a catena of authorities by the Honble Apex Court, the latest pronouncement being the reiteration of oft-repeated significance of prompt lodging of FIR in case titled Jai Parkash vs. State of Bihar and anr reported in AIR 201.SC 167.which reads as under: .12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity; danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question 16. As noticed hereinabove, FIR has been lodged within an hour of occurrence in the instant case. The FIR, based upon verbal information attributed to the informant, details the circumstances in which the crime was committed, stipulates the name of assailant together with the nature of injuries inflicted by him upon the victim with a sharp edged weapon and also discloses the name of the witness who removed the seriously injured victim in a vehicle to Hospital. Prompt lodging of FIR in the instant case rules out the introduction of a colored version, a concocted story or an exaggerated account which may have crept in if delay had been caused in lodging of FIR and the informant could avail of time to go for consultations and deliberation with others. The promptitude in lodging of FIR by the father of deceased instills confidence in the version emanating from informant that the same is truthful. It is the earliest version of what had happened and how and on whose hands deceased had sustained fatal injuries.

17. Testimony of informant brings it to fore that the informant left his business establishment well before the deceased closed down the same. He learnt about the stabbing incident at Nai Basti while he was coming back from Hospital on his scooter when he noticed his brother Virender Kumar coming from Nai Basti side.

He immediately rushed to the place of occurrence. Some people had assembled there. Bansi Lal Shopkeeper informed him that the 38 victim had been removed to Hospital. He had also pointed out the place where the victim was stabbed. His bother Virender Kumar too had told him that the victim had been stabbed at a distance of 50/60 yards away from the place he was standing. None except Bansi Lal Shopkeeper had talked to him about the occurrence on spot. He immediately rushed to Hospital. He learnt about the occurrence from Narinder Kumar, Virender Kumar and Bansi Lal. Thereafter he went to Police Station Gandhi Nagar. Nobody accompanied him to Police Station. He claimed to have nominated Narinder Kumar and Rajan Singh as witnesses before Police. The informant supported the statement in FIR to the effect that some more persons had witnessed the occurrence which included some women. Rajan Singh was his neighbour when he lived in Nai Basti. He was also a friend of deceased with whom he had business relations. The informant has explained how he learnt about the factum of deceased having left for Shastri Nagar. It is in his account that he learnt about the same from Virender Kumar when they were in Hospital. It was there that he learnt from Narinder Kumar that the accused had stabbed the deceased with a Kirch. However, the description of weapon does not find mention in FIR. It is significant to notice that no enmity or motive for false implication of accused has been attributed to the informant who is otherwise also not expected to spare the real culprit and rope in an innocent person. Informant is the father of deceased and being related as such he would be interested that the real perpetrator of crime is brought to book and the murderer of his son does not go Scot free. His testimony cannot be said to be tainted on account of his being interested in the outcome of prosecution of accused. Given the nature of relationship with 39 deceased, his version cannot be discarded on the ground of being related and interested.

18. PW-Narinder Kumar has been examined at the trial. FIR specifically mentions PW-Narinder Kumar as the person who lifted the victim in an injured condition and carried him to Hospital in a vehicle. Learned Defense Counsel vehemently assailed his testimony as being tainted on the ground that he is an interested witness being closely related to the informant and the deceased. It is true that PW-Narinder Kumar is the real brother of informant. He resided at Shastri Nagar. It emerges from testimony of PW- Narinder Kumar that he was taking his ailing

infant daughter for treatment to the chemists shop and no sooner did he reach near the shop of Baljeet that he noticed the accused assaulting deceased with a Kirch. According to his account as the deceased was stabbed in abdomen, he knelt down in a sitting posture and the accused stabbed him in the back. As the witness saw the accused making good his escape, he set out in pursuit of the accused and gave him a hot chase. However he had to abandon this exercise as he was holding the ailing baby girl. He entrusted the infant to PW-Rajan Singh, whom he found present on spot, to drop her at home. PW-Baljeet arranged a vehicle and the witness along with Baljeet carried the victim to Hospital where Doctors declared him dead. The witness, at the first glance, found accused and the victim locked in a scuffle. He saw the accused slapping in the face of victim who did not retaliate. The witness thought that since the two were friends, they may be having a fun. The factum of the two being friends has not been assailed in cross-examination of the witness who was standing at a distance of about 30 ft. from the place where the deceased was assaulted. The witness has nominated Rajan Singh, Baljeet and Bansi Lal who had arrived on spot besides others. The witness stated in unambiguous terms that the accused had assaulted the deceased repeatedly 2/3 times in the abdomen before the deceased knelt down when he was again stabbed in the back. The witness maintained that informant had reached the Hospital by the time the deceased was declared dead by the Doctors. It is significant to note that the name of this witness does figure in FIR though his role has been limited only to carrying of victim to Hospital. On appreciation of testimony of informant it has been found that the informant had no personal knowledge about the incident of stabbing of deceased at the hands of accused and he learnt about the same at Nai Basti while returning from the Hospital when PW-Narinder Kumar came across him. It is attributed to Virender Kumar that he informed the informant about removal of victim to Hospital in an injured state by PW-Narinder Kumar. Regarding his presence on spot he has come up with an explanation that he was going to the chemists shop for treatment of his infant child whom he was holding under his arm at the moment. The witness has been cross examined at length but the explanation about the presence of witness near the scene of offence has not been discredited. What renders his version probable is that the shop of Baljeet shown as Shop No. 8 in the Site Plan

marked EXPW-14 is located close to the place of occurrence. Further corroboration about the factum of his presence comes from testimony of PW-Rajan Singh. The fact that the witness is uncle of deceased, that he lived in Shastri Nagar which is close to the place of occurrence, that he noticed the accused and the deceased having a 41 scuffle near the shop of Baljeet which is not far away from Verma Medical Shop where he was going for the treatment of infant and the fact that he tried to catch hold of the accused but had to abandon exercise as he was holding the infant baby girl are the factors that render his presence on spot probable. The witness handed over the infant to Rajan Singh whom he found present as he returned after abandoning the exercise of chasing of accused. He removed the victim to Hospital with the assistance of Baljeet Singh and upon reaching Hospital Doctors declared the victim dead. These facts emanating from his testimony are corroborated in material particulars by the evidence of informant, Rajan Singh and other evidence on record including the FIR. In the circumstances spelt out hereinabove it was not unnatural for the witness to reach the place of occurrence at the relevant time. The witness has withstood the test of cross-examination and his credibility has not been shaken in the least. Improbability about the presence of the witness on spot is totally ruled out and the arguments in this regard are rejected.

19. PW-Rajan is the only other eye-witness examined at the trial. He corroborated the testimony of PW- Narinder Kumar in respect of the place and time of occurrence and the identity of assailant and the victim. He also corroborated the version emanating from PW- Narinder Kumar regarding the manner of assault, chase of accused and entrustment of the infant child by Narinder Kumar to him, whom he dropped at her home. He also corroborated testimony of Narinder Kumar in regard to removal of victim by him to Hospital with the assistance of Baljeet Singh. The witness was on his way to Mandir after closing down his 42 business establishment at 8.30 pm. He used to visit Mandir in the evening as he was a member of its Managing Committee. He saw the accused assaulting the deceased when he was at a distance of about 50 ft. Giving a graphic account of the manner in which the deceased was assaulted, he claimed that the assailant had stabbed the deceased in abdomen twice before the deceased knelt down providing opportunity for the accused to stab him in the back. The witness saw PW-

Narinder Kumar chasing accused for a short distance as he was holding the baby girl whom he entrusted to the witness for dropping her at home. The witness has been branded as a partisan witness and his testimony has been challenged by the accused primarily on the ground that he had links with a political party of which informant was an active member. His testimony has also been assailed on the ground that his presence on spot was highly improbable. The witness has admitted that he belonged to BJP while the informant was an active worker of that political party. It is in evidence that the deceased and the accused were friends and this fact has not been disputed by the accused. Admittedly there was no political rivalry between families of accused and deceased. Viewed thus, the factum of PW-Rajan Singh and the informant belonging to same political party does not justify rejection of the testimony of PW-Rajan Singh. PwRajan Singh lived at Nai Basti which is in the vicinity of Shastri Nagar. The deceased and the accused were known to him. Except for his political association with the informant, nothing has been brought on record to demonstrate that he was inimical towards the accused and had a motive in implicating him falsely in the case. The residence and shop of witness were equidistant from the place of occurrence and the fact that this witness could reach the 43 Mandir only by adopting the road spoken by him is not disputed. Thus, his presence on spot cannot be termed unusual. Once it is so, it is immaterial whether he started for Mandir from his shop or from his residence. The argument that there is a major contradiction in his testimony is accordingly rejected.

20. Upon re-evaluation of the testimonies of eye-witnesses noticed hereinabove it can be stated without any fear of contradiction that the explanations of the two eye-witnesses Narinder Kumar and Rajan Singh regarding their presence at the place of occurrence at the relevant time are acceptable and there is nothing in their evidence rendering their versions unreliable or improbable. They lived close to place of occurrence and they have come up with convincing explanations for their presence on the scene of offence. Their testimonies are accordingly found reliable and credit worthy. b) Disclosure Statement attributed to accused followed by recovery of Kirch as weapon of offence at the instance of accused:

21. The second mode relied upon by the prosecution to saddle the accused with penal liability is the Disclosure Statement attributed to accused which is said to have led to recovery of blood stained Kirch from bushes near Samadhi Morh Bantalab at his instance. PW- Vijay Kumar and Shesh Pal are witnesses to the Disclosure Memo marked EXPW- VK/1. Both the witnesses claim to have been attracted to Police Station Gandhi Nagar out of curiosity to know who was the author of the crime in this case. According to their accounts the accused was interrogated in their presence. They claimed that the accused had provided 44 information about the place where he had concealed the Kirch. These witnesses accompanied the Police Party to the site of recovery of Kirch. They have deposed in unambiguous terms that the accused led them to the place adjacent to the road on the slope and he brought out the Kirch marked EXP-1 which was seized and sealed on spot. The seal was placed on Supurdnama of informant who too was present on spot. A discrepancy with regard to travel of Police Party together with informant and the accused to the site of recovery has been pointed out by learned counsel for accused which relates to mode of transportation. However, there is overwhelming evidence to arrive at a finding that complainant was present at the Police Station at the time when the Police Team together with the accused and witnesses left for the place of recovery of Kirch. It is also established that the informant was present at the place of recovery of blood stained Kirch. Therefore, it is not of much significance whether the informant traveled along with Police Party in Police Jeep or that he made to the spot by using his own vehicle. These witnesses have established sealing of the blood stained Kirch marked EXP-1 after the same was recovered. The seal used in sealing the Kirch was placed on Supurdnama of informant which establishes beyond doubt the presence of informant on spot. The testimony of investigating Officer in regard to extra judicial confession of accused leading to recovery of blood stained Kirch at his instance is amply corroborated by the evidence of Vijay Kumar and Shesh Pal in addition to testimony of informant.

39. Section 27 of the Evidence Act is in the nature of an exception to the rule that prohibits admissibility of confessions made before the Police. The provision engrafted in this Section 45 is based on the principle of confirmation by the subsequent event. It is now well settled that an information emanating from a

person accused of commission of offence, while in custody, is admissible in evidence if the same leads to the discovery of a fact distinctly discovered in consequence of the information given, irrespective of the fact whether such information amounts to a confession or not.

40. In the instant case it is established beyond doubt that the blood stained Kirch was lying concealed in bushes near road at Samadhi Morh, Bantalab, a hitherto unknown fact, which was discovered exclusively on the basis of information given by the accused while in custody of Police and that the said Kirch was recovered from the place of recovery at the instance of accused. Thus, discovery of EXP-1 is proved beyond reasonable doubt. Medical and Forensic evidence:

22. Testimony of Dr. S. D. Thakur who proved the Post Mortem Report marked EXPW-SD reveals that the deceased had sustained following injuries:

1. Stab wound over back of left shoulder 5 from top of shoulder and 3 from lateral border oval = x = entering into chest. Ante mortem.

2. Stab wound over right back 9 from top of shoulder and 1= from mid line = x =" X1 not entering chest. Ante Mortem.

3. Stab wound over left costal region 4 below nipple and 3 from midline 1x = x . Ante mortem.

4. Linear 3 x x incised wound 2 medial to wound No.

3.

5. Abraded abrasion behind left ear, ante mortem.

6. Stab wound = x 1/3 x 1 = lateral to wound No.3. Not entering chest. Ante mortem

23. In his opinion the deceased had died due to haemorrhagic shock as a result of injury to the left lung which was sufficient in the ordinary course of nature to cause death. Witness noticed two injuries on the back of deceased. While it is true that PW- Narinder Kumar and Rajan Singh spoke of only one injury being inflicted on

the back of deceased, Post Mortem Examination reveals that there were two stab wounds, one on the left side of the back and the other on right side of back. Both were of almost equal dimension. The discrepancy between ocular testimony and the Post Mortem findings can be attributed to the position of witnesses and the distance from which they were watching the occurrence. Deposition of Doctor is to the effect that the deceased and the assailant could have been face to face at the time of inflicting of injuries found on the back of deceased and that the deceased had knelt down after being stabbed. Thus the eye- witnesses may not have been able to witness the actual number of stab wounds being inflicted. Insofar as contention of learned counsel for accused in regard to number of assailants is concerned, the term persons used in the alleged case history recorded in the Post Mortem Report is not of much significance. It could be attributed to inadvertence, oversight or human error. The fact that the identity of the solitary assailant was clearly incorporated in FIR supports such conclusion. Merely because the Doctor used the plural form of word person due to whatever reason, does not justify throwing out of the prosecution case when accused was nominated as the only assailant within one hour of the occurrence

24. Sub-Inspector Mohd. Munshi Bhat posted at Gandhi Nagar was deputed by SDPO to look after the investigation in absence of SHO who had gone out in search of the accused. SI Munshi Bhat has appeared in the witness box testifying that he got the Post Mortem Examination conducted on the body of deceased. He has proved the Seizure Memo(s) relating to sample of blood of deceased, wearing apparel of deceased, sealing thereof and placing of seal on Supurdnama of Raman Gupta. He also proved drawing of Fard Surthal (Inquest Report) which does not incorporate the alleged case history. Since SI Munshi Bhat was entrusted investigation for a very limited period during which he caused conducting of Post Mortem examination on the body of deceased, he may not have been fully acquainted with the facts of the case. Moreover, the source from which information in regard to the assailant(s) was derived by the Doctor has not been disclosed, whether in the Post Mortem Examination Report or in the testimony of Doctor. No suggestion was put in crossexamination to SI Mohd. Munshi Bhat, the informant and Pw(s) Narinder Kumar and Rajan Singh that the assailants were more than one. It is thus found that the injuries on the back of he deceased could have been

caused with the assailant standing in front position. The witnesses may not have been able to see the impact of injuries inflicted in quick succession. Thus, it could be said that there was no discrepancy between ocular account and the medical evidence. The contention in this regard having been noticed by learned Trial Court and rejected for valid reasons is without substance and same is rejected

25. It is well settled that in the event of a conflict between ocular testimony of eye-witnesses and the medical opinion, eyewitnesses account would prevail as same is based on careful independent assessment and evaluation for testing its credibility. Viewed thus, the observation in alleged case history column of Post Mortem Examination report suggesting plurality of assailants would not override the consistent version of eye-witnesses found credit worthy and reliable.

26. Kirch marked EXP-1 recovered on 10.08.1991 at the instance of accused was sealed on spot. The testimony of witnesses including Shesh Pal establishes that the double edged blade of Kirch was stained with blood. As per opinion of Dr. S. D. Thakur the seized Kirch could have caused the injuries described in the Post Mortem Report. Thus, it corroborates the evidence tendered by witnesses Vijay Kumar and Shesh Pal. Blood sample of deceased had been obtained by S.I. Mohd. Munshi Bhat at the time of Post Mortem Examination of deceased. Investigating Officer had also seized blood-stained and plain clay from the place of occurrence. Blood-stained clothes of deceased had also been seized and sealed in presence of witnesses. Same was resealed by Ghulam Nabi, Tehsildar (Executive Magistrate). Dr. J.L. Fotedar, Assistant Director, FSL Jammu designated as Chemical Examiner by the Government found on examination of the material referred to hereinabove that the blood group of stains on the wearing apparel of deceased and the sealed Kirch was AGroup. Thus, the report admitted in evidence established that the blood found on the wearing apparel of deceased and the weapon of offence belonged to the same blood group. This establishes the culpability of accused beyond any shadow of doubt

27. The discrepancy pointed out in regard to Site Plan relates to omissions in preparing the copies of the original Site Memo and same could not dislodge the findings arrived on evaluation and analysis of direct and circumstantial evidence.

No major contradictions of significance going to the root of the case have been pointed out to affect the creditability of the witnesses relied upon by prosecution or to reflect upon their veracity.

28. Insofar as alleged motive for the crime is concerned, the informant claimed that he had been told by the deceased two days before alleged occurrence that the accused had threatened to kill him because he had taken an exception to the activities of accused who was indulging in eve-teasing. The informant wanted to broach it with the father of accused but the murder of deceased pre-empted his resolve. It is apt to notice that the father of accused was a Police Officer and thus it would have been futile for informant to approach the Police without discussing the subject with the father of accused. Since evidence in regard to complicity of accused is of clinching nature leaving hardly any scope for adopting a view other than the one that the accused is the author of crime, it is not of much significance whether the accused harbored ill-will against the deceased providing motive for his elimination or that he developed motive instantaneously on spotting the deceased at the place of occurrence.

29. On reappraisal of evidence we have no doubt in our minds that the murder of deceased was committed by the accused and none else. The findings recorded by the learned Trial Court are perfectly justified. We find that the impugned Judgment does not 50 suffer from any legal infirmity or factual frailty. We, accordingly, uphold the conviction of accused for offence under Section 302 RPC and confirm the Sentence imposed on him.

30. Resultantly, the Appeal is dismissed and the Confirmation Reference is upheld. Result of this Appeal and confirmation proceedings be certified to learned Trial Court as mandated under Section 425 Cr PC. The learned Trial Court shall take steps for execution of sentence.

31. Records be remitted back to Trial Court. (Bansi Lal Bhat) (Virender Singh)
Judge Judge Jammu: Sunita. 26.04.2013