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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 26th July, 2019

Judgment pronounced on 20 November, 2019

+ **CRL.A. 731/2007**

STATE

..... Appellant

Through: Ms.Radhika Kolluru, APP for State
with SI Dharmendra Pratap Singh, PS
Samaypur Badli
Mr.P.Choudhary, Advocate for the
Complainant

versus

SUSHIL AND ORS.

..... Respondents

Through: Mr.N. Hariharan, Sr. Advocate with
Mr.Rajeev Gaur, Mr.Siddharth Singh
Yadav, Mr.Varun Deswal, Mr.Aditya
Vaibhav Singh, Ms.Mallika Chadha
and Mr.Prateek Bhalla

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J.

1. Present appeal has been filed under Section 378(3) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') against the judgment dated 28.03.2007 passed by the Additional Sessions Judge: Fast Track Courts, Rohini ('Trial Court') in Sessions Case No. 02/2006 arising out of FIR No.359/1993 PS Samaypur Badli under Section 302/307/34 of the Indian Penal Code, 1860 ('IPC') whereby all the accused persons/respondents herein have been acquitted. Initially the State had filed a Petition seeking Leave to Appeal being CrL.L.P. 188/2007, which

was allowed vide order dated 16.11.2007 and the case was converted into a regular appeal.

2. The case of the prosecution as noticed by the Trial Court reads as under:

“2. It is case of prosecution that on 30.08.93 at about 10 pm, Raj Kiran was present in the compound of his house situated in Village Khera Kalan. At that time, his younger brothers Narender and Om Singh and their uncle Balwant were also present there. All of them heard someone calling Raj Kiran. Raj Kiran sent his younger brother Narender but at the same time, he himself also got up and went out of his house. Sushil Kumar (accused) was seen pulling Narender out of the house by his hand. Surrender took Narender in his grip from his backside. Sushil Kumar accused stabbed Narender. Sushil Kumar accused exhorted Ashok to stab Raj Kiran whereupon Ashok stabbed Raj Kiran in the middle of his abdomen, right side of his waist and on his buttock. As a result of the stab wound, Raj Kiran fell down and became unconscious. The occurrence was witnessed by Om Singh and Balwant Singh. Om Singh raised alarm for being saved. Accused persons then ran away from the spot towards their house. Many persons from the public also gathered there.

3. About 10/15 days prior to the aforesaid occurrence, at about 4/5 pm, Raj Kiran and his brother Om Singh were present near their house. Sushil accused came towards them driving a jeep at a high speed. Om Singh and Raj Kiran had a narrow escape. Complainant party went to house of Sushil accused to lodge protest with his father Randhir Singh. Sushil accused was scolded by his father. On the same day, Sushil accused threatened to deal with them one by one.

4. On 30.08.93 at about 10/10.30 pm, Inspector Harshvardhan, SHO, PS S.P. Badli received information on wireless that an incident of stabbing had taken place in Village Khera Kalan. Thereupon, he accompanied by Ct. Ramesh Kumar reached the spot i.e. near the house of Baldeva. SI Darshan Lal and Ct. Satanand were also found present there. The SI and the Constable had reached there on receiving call of quarrel at the

house of Ram Kishan. On reaching the spot, they learnt that two persons had been removed to hospital by PCR staff.

5. Inspector Harshvardhan left Constable Ramesh at the spot to guard it and himself accompanied by SI Darshan Lal and Ct. Satanand reached Hindu Rao Hospital and from there collected MLC of Narender. As per MLC, Narender had been declared brought dead. Raj Kiran, injured was allegedly declared by the doctor unfit to make statement. Balwant Singh met the Inspector at the hospital and made statement. The Inspector appended endorsement whereupon ruqqa was sent from the hospital through Ct. Sadanand and present case was registered.

6. On return to the spot, the Inspector collected sample of blood from there, turned it into a parcel and sealed the same with seal bearing impression HV. The sample of blood was then seized vide a memo. The Inspector prepared rough site plan of the place of occurrence as pointed out by Balwant Singh. From the spot, the Inspector once again visited Hindu Rao Hospital and enquired about fitness of Raj Kiran to make statement. Still Raj Kiran was unfit to make statement.

7. Balwant Singh PW produced before the Inspector one underwear of Raj Kiran. The underwear was found blood stained and having a cut. It was turned into a parcel, sealed with the seal bearing impression HV and then taken into possession vide a memo.

8. It is also case of prosecution that on 30.08.93, Dr. R. Bhagi medico legally examined Narender and Raj Kiran at Hindu Rao Hospital and opined that sharp weapon was used in causing injuries on their person. In this respect, reports were given by the doctor. Lateron, Dr. V.K. Sehdev of Santom Hospital appended endorsement in MLC declaring Raj Kiran unfit to make statement.

9. On 31.08.93, the Inspector once again reached Hindu Rao Hospital, carried out inquest proceedings in respect of dead body of Narender, recorded statements of Ram Kishan and Radhey Shyam in respect of identification of dead body; prepared inquest

proceedings and submitted request for conducting autopsy on the dead body.

10. Dr. Ashok Jaiswal conducted autopsy on the dead body of Narender and prepared report. In the opinion of the doctor, all the injuries were antemortem in nature; injury No.1 and 2 were caused with a sharp edged weapon; injury No.3 and 5 were caused by fall and friction against hard surface; and injury No.2 was sufficient to cause death in the ordinary course of nature. In the opinion of the doctor, Narender died due to haemorrhagic shock consequent to the injuries to the abdominal viscera.

11. Ct. Mahender Singh delivered special reports to senior police officers and learned Metropolitan Magistrate. Constable Satanand produced two sealed parcels and sample seal of the seal of Dr. B. Singh, before the Inspector who seized the same vide a memo and in turn deposited the same in the malkhana. The dead body of Narender was delivered to the relatives of the deceased.

12. It is further case of prosecution that in the evening of 31.08.93, the Inspector was present on G.T. Road, within the area of PS S.P. Badli. He received secret information to the effect that Sushil accused was present at the railway station, Khera Kalan and was about to flee away. Thereupon, the Inspector accompanied by SI Darshan Lal, Ct. Satanand and secret informer reached railway station, Khera Kalan, apprehended Sushil accused at the pointing out of secret informer. He was arrested and his personal search memo was prepared. He also made disclosure statement before the Inspector and in pursuance thereof he got recovered a knife from the grass under a bench at the railway station, Khera Kalan. The Inspector prepared rough sketch i.e of the knife, turned the knife into parcel and seized the same vide a memo. The Inspector visited Hindu Rao Hospital thrice/four times to record statement of Raj Kiran but every time he was found unfit to make statement. It was on 13.09.93 that the Inspector recorded statement of Raj Kiran after visiting Santom Hospital.

13. On 15.10.93, the Inspector got dispatched sealed parcels

lying deposited with MHC(M), to CFSL, Chandigarh through Ct. Jaswant Singh. On analysis, report was received.

14. On 30.09.93, SI Manohar Lal visited the spot, where Om Singh was present, and he prepared scaled site plan of the place of occurrence....”

3. The chargesheet was filed before the Trial Court and after hearing the parties, charge was framed on 16.09.1999 against the accused Sushil/respondent No.1 under Section 302 IPC and later on 09.11.2005, charge was framed against the other two accused persons/respondent No. 2 and 3 under Section 302/34 IPC. All the respondents pleaded not guilty and the case proceeded to trial. When the matter was listed before the Trial Court for final arguments on 14.03.2007, an additional charge was ordered to be framed against the accused Ashok/respondent No.2 under Section 307 IPC and against the other two accused persons/respondent No. 1 and 3 under Section 307/34 IPC.
4. To bring home the guilt of the accused persons/respondents, the prosecution examined 16 witnesses in all. Statements of the accused persons/respondents were recorded under Section 313 of Cr.P.C. wherein they denied all the incriminating circumstances against them and claimed false implication. The accused Surender/respondent no.3 raised the plea that he was not present in the village on the day of the offence. Two witnesses were examined by the respondents in their defence.
5. After examining the evidence before it, the Trial Court found the testimonies of the eyewitnesses (PW-4, 5 and 12) to be unreliable as being contradictory and being improved on material aspects, the prosecution had failed to show the exact location of the incident, recovery was found to be unreliable, motive was not established and

there was delay in lodging of FIR opening scope of tutoring and ultimately, acquitted all the accused persons/respondents herein. Aggrieved, the State had filed a leave to appeal, which was allowed and converted into the present appeal. The State is assisted by the counsel for the complainant.

6. Ms.Kolluru, learned APP for the State, submits that the judgment passed by the Trial Court is not in consonance with the law as well as facts which emerged during the trial. The Trial Court has failed to take into consideration that there were three eyewitnesses account, i.e. Om Singh (PW-4), Raj Karan (PW-5) and Balwant Singh (PW-12), whose testimony is cogent and reliable and the defence was unable to impeach their veracity even during the cross-examination. Ms.Kolluru submits that grave miscarriage of justice has occurred by recording acquittal of the accused persons/respondents herein by the Trial Court and thus, warranting interference by this Court. Learned counsel submitted that the three eyewitnesses have been consistent on all the material counts including that (i) the complainant party was sitting at home when the incident occurred; (ii) someone called out to Raj Karan (PW-5); (iii) the deceased was sent out and the respondent no.1/accused Sushil pulled him out and stabbed him while accused Surender held him; and (iv) The accused Ashok had stabbed Raj Karan (PW-5). Further all three accused persons have been named in the *rukka* and in the statements of PW-4 and PW-5 under Section 161 Cr.P.C. Further, the testimonies of PW-4 and PW-12 are consistent to the extent that the victims were taken to the Hospital in a PCR Van accompanied by PW-12. It is next submitted that there are very minor inconsistencies between the ocular account and the medical record and cannot cast any doubt upon the

ocular account. Learned counsel next contended that the eyewitnesses account coupled with the recovery of the blood stained knife at the instance of respondent Sushil as also a clear motive point solely towards the guilt of the respondents and hence, the judgment of the Trial Court cannot be sustained.

7. As regards motive, Ms.Kolluru has submitted that 15-20 days prior to the incident, respondent Sushil had driven his jeep at very high speed and in a reckless manner barely avoiding Om Singh (PW-4). The family members then went to complain to respondent Sushil's father about this, which enraged the respondent Sushil and he threatened them. It is submitted that as regards the inconsistencies highlighted by the Trial Court to throw out motive, the same were very minor and did not go to the root of the matter. The second reason of the Trial Court that Raj Karan (PW-5) was neither the victim of the rash driving nor the complainant and there was no reason for the respondent Sushil to call him out is also fallacious. Learned counsel submitted that both PW-4 and PW-5 were witnesses to the rash driving incident and even if some other family member complained about the same, it was only at their instance and thus, it was natural for the respondent Sushil to nurse a grudge against them. Further, Raj Karan (PW-5) being the eldest brother, it was natural for the respondent Sushil to call him over anyone else.
8. Ms.Kolluru next contended that there was no delay in the recording of the FIR which would have allowed deliberation to falsely implicate the respondents. The incident occurred at about 10.00 PM, the DD No. 18-A was recorded at 10:20 PM, the victims were brought to the Hospital at 11:20 PM while Narender succumbed to his injuries at

11:45 PM and the statement of PW-12 Balwant Singh was recorded at the Hospital and *tehrir* endorsed at 12:50 AM. The total time gap between the death of Narender and the registration of FIR is only 1 hour and the *rukka* statement clearly mentions the presence and role of all the three respondents. Accordingly, Ms.Kolluru submits that there was no delay in the recording of the FIR.

9. It is submitted by learned counsel for the State that the reason why the statement of Raj Karan (PW-5) was recorded on 13.09.1993 is that even though he was conscious, he was not oriented. Dr.R.Bhagi (PW-6) had prepared the MLC and deposed before the Trial Court that he had referred both the deceased and PW-5 Raj Karan to emergency surgery and hence, the IO would not have got a chance to record his statement. The MLC (Ex.PW-6/B) contains two endorsements to the effect that PW-5 Raj Karan was declared unfit to make a statement, one dated 02.09.1993 and the other undated made by PW-8 Dr.V.K. Sehdev of Santhom Hospital (where PW-5 Raj Karan received treatment after leaving Hindu Rao Hospital). The IO (PW-16) has also deposed that he went to the Hindu Rao Hospital 3-4 times for recording of the statement of PW-5 Raj Karan, but found him unfit. Learned counsel concluded that the delay in recording the statement of PW-5 Raj Karan stood duly confirmed and even otherwise, the names of the respondents already figured in the *rukka* on the same day the offence was committed. Further, Balwant Singh (PW-12) is not a planted witness. The mere omission of the doctor to mention his name in the MLC is not a ground to disbelieve his presence on the spot. All the eyewitnesses have categorically deposed about the presence of PW-12 at the spot and both PW-4 and PW-12 have stated that PW-12 accompanied the injured in

the PCR vehicle. PW-4 stated that Tara Chand later went to the Hospital and it is possible that at the time of recording of the MLC, the doctor spoke to him and his name got recorded. It was never contended that the bodies of PW-5 and the deceased were moved single handedly by Balwant Singh (PW-12) and the finding to this effect is in the realm of sheer conjecture. At the spot, admittedly PW-4 was also present and he could have assisted PW-12 in the endeavour.

10. Learned counsel for the State further submitted that the Trial Court has erred in not relying on the recovery of the blood stained knife at the instance of the respondent Sushil. The public witness (PW-2) and the police witnesses (PW-15 and PW-16) are consistent to all the material aspects of the recovery and the difference in the time of recovery is immaterial. Further, it is contended that the presence of the respondents namely Surender and Ashok also stands established from the testimonies of the eyewitnesses. Neither DW-1 nor DW-2 can serve as alibis with regard to the presence of respondent Ashok and even if they are believed, respondent Ashok could have accompanied his brothers/co-accused bidding DW-1 and DW-2 goodbye and entered his house. Even the failure of the prosecution to examine public witnesses is of no consequence in view of the clear and consistent testimonies of the eyewitnesses.
11. Ms.Kolluru submitted that the failure to seize the clothes of Raj Karan (PW-5) would make no difference as the knife used by the respondent Ashok was never recovered and the analysis of correlation between the stab injuries and the marks on the clothes would not be possible. It is next submitted that the spot of the occurrence was also identifiable. The mere statement by PW-15 and DD No. 18-A of the spot at the

house of Pradhan Ram Kishan is not sufficient to impeach the credibility of 6 other witnesses, i.e. PW-2, 4, 5, 10, 12 and 16. Even the two site plans are consistent as the site of the occurrence being in front of the house of Baldeva. Further, the absence of the location of PW-12 in the site plan (Ex.PW-16/B) from where he witnessed the incident is of no consequence and amounts to creating issues out of non-issues. As regards the position of the respondent Surender not being mentioned in the site plan (Ex.PW-16/B) is concerned, the same is clearly identifiable as point 'A' as the respondent Surender had caught hold of the deceased Narender and the place he was attacked would also be the location of the respondent Surender.

12. The final contention of Ms.Kolluru is that the non-examination of the PCR staff, though a lapse on the part of the IO, is not fatal to the case of the prosecution. Even the anomaly between the date of dispatch and receipt of the sealed parcels at Chandigarh cannot lead to the conclusion that there was a possibility of tampering as no suggestion has been made to any of the witnesses to this effect during cross-examination.
13. The learned counsel for the State concluded by submitting that the eyewitness accounts of PW-4, 5 and 12 are clear, consistent with each other and assign specific roles to each of the respondents. Statements of PW-4 and PW-12 are recorded soon after the incident, at different locations, without any time for family discussion for the purposes of meeting of minds for false implication of the respondents herein or for planting of PW-12 as a fake eyewitness. The ocular accounts are corroborated by medical evidence and police investigation. Recovery of knife at the instance of the respondent Sushil is proved by an independent witness PW-2. The defence witnesses do not provide

alibis to the respondent Ashok during occurrence of incident. Similarly, no witnesses or evidence has been led to disprove the presence of the respondent Surender at the time and place of incident. Narender suffered a hasty death consequent to the stab injuries and Raj Karan (PW-5) was hospitalized for over 2 weeks and underwent multiple surgeries.

14. Learned counsel for the complainant adopted the arguments of the State and further submitted that the non-examination of Tara Chand, even if he was present at the site, would not reduce the credibility of the eyewitnesses account. As regards motive, Mr.Choudhury relied upon the judgment of the Supreme Court in *State of Rajasthan v. Arjun Singh*, reported at (2011) 9 SCC 115 (paragraph 12 and 14) to submit that even in the absence of specific evidence as to motive, the case of the prosecution cannot be disbelieved owing to eyewitness account. Reliance was also placed on *Badru Ram v. State of Rajasthan*, reported at (2015) 11 SCC 476 (paragraphs 5-7) to submit that eyewitnesses account corroborated by medical evidence and recovery of the weapons are sufficient to convict the accused even if there are minor discrepancies in the ocular account.
15. Controverting the contentions of the State and the complainant, Mr.Hariharan, learned senior counsel for the respondents, submitted that there is no infirmity in the judgment of the Trial Court warranting interference by this Court. The Trial Court has correctly appreciated the evidence before it and acquitted all the respondents. Learned senior counsel submitted that the prosecution was unable to ascribe any motive to the respondents to attack Raj Karan (PW-5). There are numerous inconsistencies and contradictions in the testimony of PW-4, 5 and 12

about the incident of rash driving. PW-4 and PW-5 have deposed differently about the group of persons who went to lodge a complaint to the father of the respondent Sushil. Both have in their statements under Section 161 Cr.P.C. omitted to name each other when the incident of rash driving happened. Balwant Singh (PW-12) has given a completely different account and did not name PW-5 to be present when the respondent Sushil drove the jeep and also deposed that he alongwith his brother Tara Chand had gone to lodge a complaint as opposed to the testimony of PW-5 that he had gone with Balwant Singh (PW-12). Similar statement was made by PW-12 under Section 161 Cr.P.C. Mr.Hariharan further submitted that even if it is believed that Balwant Singh (PW-12) and Tara Chand had gone to lodge a complaint, the same would not supply any motive to the respondent Sushil to call out Raj Karan (PW-5).

16. Learned senior counsel next contended that the presence of Balwant Singh (PW-12) was rightly doubted by the Trial Court. Though, the prosecution had alleged that he was the only public person to accompany the injured to the Hospital but his name has not been recorded in the MLCs. Even the staff of the PCR Van, whose name figures in the MLCs, has not been examined to corroborate the presence of PW-12 at the spot and in the Hospital. In the MLC of PW-5 Raj Karan (Ex.PW-6/B), it is recorded: "*Alleged h/o fight (being stabbed by someone) as told by one Tara Chand, s/o Sis Ram, r/o village Khera Kalan*". Name of PW-12 is nowhere mentioned. Additionally, it is improbable that PW-12 would accompany the injured persons to the hospital and would not himself give the history of assault, especially when the accused persons were very well known to him. Tara Chand,

who could have deposed as to the presence of PW-12, was also not examined by the prosecution. Learned senior counsel contended that the account given by PW-12 is also unbelievable as it is not possible for him to shift two injured persons to the cots and in the process not get his clothes stained with blood. The testimony of PW-4 to the effect that Balwant Singh (PW-12) had accompanied the PCR Van to the hospital also cannot lend any credibility as the same was not mentioned in his statement under Section 161 of Cr.P.C. and PW-4 was duly confronted with the same. It was next pointed out that the underwear worn by Raj Karan (PW-5) was allegedly handed over by PW-12 to the police. Learned senior counsel contended that there is no basis for such a course of action. The doctor would not give the underwear to Balwant Singh (PW-12) and not seal it in a *pullanda* especially when the police officers were admittedly present in the Hospital. Further, neither Raj Karan (PW-5) identified the said underwear before the police nor the same was put to him during his testimony in Court; nor he himself deposed anything about his underwear being taken by somebody while he was admitted in the Hospital. It was also submitted that PW-12 himself cannot identify the underwear as the one worn by Raj Karan (PW-5) as he never removed it nor saw him wearing it. He can only identify the underwear as the one handed to the police and he never disclosed the source of the underwear. The fate of the other clothes of PW-5 is also unknown.

17. As regards the alleged recovery of the knife at the instance of the respondent Sushil, Mr.Hariharan contended that it is not believable as *first*, it cannot be believed that the respondent would keep the knife in question with himself throughout the night of 30th and the next day till

evening waiting for the same to be seized by the police at his instance; *second*, different accounts have been stated by PW-2, 15 and 16 about the manner in which the police party proceeded, was joined by PW-2 and the time of recovery; and *third*, as the public witness (PW-2) only deposed that the knife was similar to the one seized and not the same one. As an alternative submission, learned senior counsel contended that even if the recovery is believed, there is nothing to link the same with the offence as the opinion of the doctors was not sought nor the origin of the blood determined by the FSL. Further, out of the two knives used, only one was ever recovered. None of the eyewitnesses ever deposed that the knife changed hands.

18. Learned senior counsel contended that the place of the incident is also not identifiable. The initial DD No.18-A (Mark PW-16/B) records the location as the house of Pradhan Ram Kishan in Khera Kalan. Thereafter, the police was bound to reach the spot and they eventually did reach there. PW-15 deposed to the effect that other police officials also reached there and Ct.Ramesh (PW-10) was left to guard the same and blood was lying there. There is no evidence from the prosecution as to not only the site of the incident changed from there, but also the position of the blood. Mr.Hariharan next drew our attention to the Site Plans (Ex.PW-16/B and Ex.PW-9/A). The first site plan (Ex.PW-16/B) was allegedly made at the pointing of Balwant Singh (PW-12), however, PW-12 nowhere in his entire testimony deposed that the site plan was prepared on his pointing. Further, as per the case of the prosecution two stabbing incidents took place and hence, blood should be found on two spots, but the blood was found only at one spot. The site plan does not show the presence of respondent Surrender. Even the

scaled site plan (Ex.PW-9/A) does not show the presence of Balwant Singh (PW-12) nor does it show the presence of the respondents Surender and Ashok. It was next contended that the prosecution is also guilty for non-examination of important witnesses as neither Tara Chand nor the PCR officials were ever examined.

19. It was next contended on behalf of the respondents that there is no explanation for the recording of the statement of the injured witness Raj Karan (PW-5) belatedly after a gap of about 14 days. Dr.R.Bhagi (PW-6) had examined both the injured at first in point of time, however, he never made any endorsement on the MLC that the patient was unfit for statement nor deposed before the Trial Court. Even the MLC (Ex.PW-6/B) records that the patient was fully conscious at the time of admission and his blood pressure is shown as 110/80, therefore, there was no reason for his statement not being recorded at the first instance. On the other hand, though Dr.V.K. Sehdev (PW-8) deposed that he had made an endorsement to the effect that the patient was unfit for statement, but no such endorsement is found on the MLC. The only endorsement made stating that the patient is unfit for statement was made by Dr.Shanti on 02.09.1993 and she was never examined as a witness. Mr.Hariharan also pointed out to the contradiction in the testimony of PW-5 wherein he stated to have learnt about the death of his brother Narender while he was unconscious in the Hospital for about 10-15 days. While Balwant Singh (PW-12) negated the version by deposing that PW-5 was unconscious for 2-3 days and thereafter, started talking. PW-12 also deposed that Raj Karan (PW-5) was discharged after about a week and at the time, he could speak and talk.
20. Learned senior counsel submitted that the presence of Om Singh (PW-

4) has not been conclusively established by the prosecution. It was contended that his conduct was unnatural as he neither accompanied the deceased and injured (PW-5) to the Hospital nor came forward and approached the police while they reached the spot. Similarly, PW-15 and PW-16 never deposed that they met Om Singh (PW-4) upon reaching the spot. It was next contended that the veracity of the FSL Report was also questionable as there was a possibility of the parcels being tampered with. The parcels were dispatched on 05.10.1993, while they were deposited only on 07.10.1993 and the officer entrusted with the same, i.e. Ct.Jaswant Singh, was never examined. Further, even on their return, the parcels were sent to the SHO, PS Shalimar Bagh and not SHO, PS Samaypur Badli, who had sent them in the first place. Mr.Hariharan contended that as there is no explanation for the same, it would be highly unsafe to rely upon the report of the FSL. It was also contended that the ocular account given by PW-12 and PW-5 is not in consonance with the injuries found during medical examination of the deceased and injured (PW-5).

21. Our attention was also drawn the testimonies of DW-1 and DW-2 to show that the prosecution was never able to establish the presence of respondent Ashok at the site. Further, the testimony of the DW-2 to the effect that there was no electricity supply in the village has remained unchallenged and there was no possibility of the eyewitnesses ever identifying the respondents/accused. The name of both the respondents Ashok and Surender figured in Column 2 of the chargesheet as the IO found that they were not involved. Mr.Hariharan submitted that during investigation, PW-16 found that the respondent Surender and Ashok were never present at the site. It was finally submitted that the age of

Om Singh has been recorded as 26 years on the date of deposition and thus, would have been atleast 19 years old on the date of the incident and not 13 years as alleged by the State.

22. In rejoinder, Ms.Kolluru submitted that Om Singh (PW-4) was 13 years of age on the date of the incident and therefore, he did not accompany the deceased and the injured (PW-5) to the Hospital.
23. We have heard the learned counsel for the parties, examined their rival submissions and perused the record. At the outset, it would be necessary to analyse the testimonies of the eyewitnesses account.
24. PW4 Om Singh (brother of PW5 Raj Karan and the deceased) deposed in his examination-in-chief that on 30.08.1993 at about 10 PM, while he was sitting in the inner portion of his house and PW5 Raj Karan, deceased and their uncle Balwant were sitting in the compound of their house. The accused Sushil Kumar called his elder brother Raj Karan whereupon Raj Karan sent the deceased out of the house to see as to who was calling him out. As soon as the deceased went out of the house, the accused Sushil pulled him from his hand and took him out of the house. After watching this, they immediately rushed towards the deceased and saw that the accused Surender caught hold of the deceased from his back and had taken him into his grip whereas the accused Sushil stabbed the deceased with a knife causing injuries to the left portion of his body as well as on the left side of his abdomen.
25. As regards injuries on the person of PW5 Raj Karan, PW4 Om Singh deposed that when PW5 Raj Karan stepped out of their house in order to save his younger brother, the accused Sushil exhorted his elder brother Ashok to stab PW5 Raj Karan and it was thereupon he inflicted knife blows to the hip and stomach of Raj Karan. PW4 cried for help

due to which the accused Sushil alongwith his other brothers ran away towards their house. People gathered at the spot. Somebody made a call to the Police. Subsequently, Police reached the spot and took his brother PW5 Raj Karan, the deceased and his uncle Balwant to the hospital and PW4 was left at the spot.

26. With regard to motive, it was deposed by PW4 Om Singh that about 15-20 days prior to the incident, the accused Sushil had driven a jeep at a very high speed near the house of PW4. PW5 Raj Karan had lodged a complaint with the father of the accused Sushil who had scolded him. The accused Sushil had also driven his jeep near their house at a very high speed on earlier occasions but at that time they thought that the accused Sushil had done it innocently and had not complained about it. But, when the accused Sushil had done it again, while PW4 Om Singh was standing alongwith his elder brother PW5 Raj Karan, near their house, to which PW5 had a narrow escape, they complained about the said incident to the father of the accused Sushil due to which the accused Sushil threatened to take their lives. The accused Sushil and his elder brothers Surender and Ashok were known to him since childhood as they were residing next to their house. On 30.09.1993, some draftsman visited his house whereupon PW4 pointed out the place of incident to him and the said draftsman took the necessary drafting notes and measurements.
27. In his cross-examination, PW4 Om Singh stated that when he raised alarm at the time of the incident, no person came forward and reached the spot on hearing the noise since it was night time and people in his neighbourhood were inside their houses and watching Television in closed doors. PW4 Om Singh admitted that his uncles Tara Chand and

Ram Kishan had reached the spot after the incident and he narrated the entire incident to them. PCR also reached the spot after about half an hour of the incident. PW4 Om Singh further stated that his uncle Tara Chand did not accompany the deceased and Raj Karan when they were removed to the Hospital or gave the alleged history of the incident to the concerned doctor. It was further stated by PW4 that his statement was recorded by the Police on the night of the incident at 1.30/2.00 AM at his house but he did not remember the exact time when local Police met him.

28. It was further stated by PW4 Om Singh that he had informed the Investigating Officer that the accused Sushil had exhorted his elder brother Ashok to stab PW5 Raj Karan. However, the said fact does not find mention in the statement Ex.PW4/DA, dated 31.08.1993, recorded by the IO. PW4 further stated that he had stated to the Police in his statement that PCR had reached the spot and took his uncle Balwant Singh alongwith his brothers Raj Karan and the deceased. The said fact was also not found mention in his statement Ex.PW4/DA wherein it stands recorded that PCR vehicle had removed his brothers to the hospital and the name of Balwant Singh was not found mention in it. PW4 further stated that the Police officials did not record the factum of Balwant Singh going to the hospital in the company of his brothers because the concerned SHO was favouring the accused persons. PW4 denied that he had subsequently introduced the name of his uncle Balwant as the instant case was registered on the basis of the statement of Balwant Singh. PW4 also denied that his father's elder brother namely Tara Chand had accompanied his brothers to the hospital. It was voluntarily stated that Tara Chand had visited the hospital subsequently.

The house of Tara Chand was situated on the left side of their house. PW4 also stated that house of his uncle Balwant Singh was adjacent to their house and their houses were separated by a wall.

29. The next eyewitness to the incident is PW5 Raj Karan who deposed on the similar lines as deposed by PW4 with regard to the date, time and the manner in which the incident took place on the fateful day. The role assigned by him to the accused Surrender was that he took his brother (deceased) in his grip from his back side and the accused Sushil stabbed his brother on the left side of his abdomen and on the face near his nose. The accused Sushil exhorted his brother Ashok that he should stab him. As a result of which the accused Ashok stabbed him in the middle of his abdomen, right side of his waist and buttock. Thereafter, PW5 fell down and became unconscious and when he re-gained consciousness, he found himself at Hindu Rao Hospital. With regard to motive, PW5 Raj Karan reiterated the incident which took place 10/15 days prior to the instant case. He deposed that at about 4/5.00 PM, while he was standing alongwith his younger brother PW4 Om Singh, the accused Sushil had driven his jeep rashly to which they had a narrow escape. PW5 further submits that he alongwith his uncle PW12 Balwant Singh had gone to the house of the accused Sushil and complained to his father about the said incident who had inturn scolded the accused Sushil. As a result of the complaint, the accused Sushil threatened on the same day that he would kill them for complaining to his father. The statement of PW5 Raj Karan was recorded by the Police on 13.09.1993. All the three accused persons were known to him for the last 15/20 years as they were residing in his neighbourhood.

30. The next eyewitness to the incident relied upon by the prosecution is PW12 Balwant Singh. With regard to the motive, he had deposed in his examination-in-chief that 15/20 days prior to 30.08.1993, the accused Sushil had driven his jeep at a high speed in front of his house. The nephew of PW12 namely Om Singh (PW4) saved himself with great difficulty. In the evening, PW12 Balwant Singh alongwith his brother Tara Chand and two-three persons of his village went to the house of the accused Sushil and complained to his father. His father apologised and also warned his son (accused Sushil). The accused Sushil threatened them by saying that he would see them one by one.
31. The testimony of PW12 Balwant Singh is identical to other eyewitnesses including the date, time, place and the manner in which the accused Sushil called his nephew namely PW5 Raj Karan. The role assigned by him to the accused Sushil is that he pulled the deceased outside whereas the other brother of the accused Sushil namely Surender caught hold of the deceased from back. The deceased cried for help as a result of which PW12 alongwith his nephew PW5 Raj Karan reached the spot. The accused Sushil gave knife blows to the deceased on his stomach and his face whereas the other accused Ashok Kumar gave knife injuries on the back, stomach and on the left buttock of PW5 Raj Karan. PCR reached to the spot. PW12 Balwant Singh took both his injured nephews in the PCR to Hindu Rao Hospital. After 20/25 minutes of reaching to the hospital, the deceased succumbed to the injuries. The entire incident was witnessed by him, together with his other two nephews and other persons from the village. PW12 Balwant Singh failed to disclose the names of other persons from his village who had witnessed the incident. The statement of PW12 Balwant Singh was

recorded by the Police in the hospital which was proved by him as Ex.PW12/A. On 30.08.1993, PW12 Balwant Singh produced one underwear having blood stains and also having a cut belonging to PW5 Raj Karan before the Police officials which was turned into a parcel and was sealed. The said underwear was subsequently identified by PW12 in the Court.

32. In his cross-examination, PW12 Balwant Singh stated that none from his neighbourhood came to the place of occurrence and they were standing in front of their respective houses. PCR reached to the spot within 10 minutes of the occurrence. Tara Chand did not come to the place of occurrence and had not come even when PCR staff removed the injured from the spot. While injured persons were removed to the cot and then to the PCR van, the clothes of PW12 were not blood stained. It was voluntarily deposed by PW12 Balwant Singh that his hands were stained with blood while removing the injured persons to the PCR. PW12 did not state this fact to the Police in his statement to the Police. PW12 was given the underwear of PW5 Raj Karan while he was operated by the doctors and also other Police officials were present there. PW12 Balwant Singh denied the suggestion that his statement was not recorded by the Police on the night intervening 30/31.08.1993. PW12 further denied the suggestion that his statement was recorded by the Police on the next date of the incident i.e. 31.08.1993, at about 11.00 AM while he was present at the mortuary. It is noteworthy to mention that PW12 in the latter part of his cross-examination stated that it is correct that PW5 Raj Karan could speak and talk at the time of discharge from the Hindu Rao Hospital.

33. It is the case of the prosecution that the testimonies of the eyewitnesses

coupled with the medical evidence is sufficient to prove the guilt of the accused persons. In this backdrop, it would be relevant to discuss the medical evidence in detail.

34. PW6 R.Bhagi deposed in his examination-in-chief that on 30.08.1993, he was posted as a Casualty Medical Officer and had examined injured persons namely Narender (deceased), aged about 18 years with the alleged history of fight (stabbed by someone as told by his relative) and also examined Raj Karan, aged about 28 years with the alleged history of fighting (stabbed by someone as told by one Tara Chand). His detailed report was proved by him as Ex.PW6/A and Ex.PW6/B respectively. After examination, the injured persons were referred to EMO, Surgery for detailed examination.
35. Reading of MLC of the injured Narender (Ex.PW6/A) would show as under:
- i) that on 30.08.1993, at 11.20 PM, he was brought by HC Vijender Singh (PCR R-87) to Hindu Rao Hospital;
 - ii) that the injured was brought with alleged history of fight (stabbed) as told by the relations of the injured;
 - iii) that the injured was unconscious, gasping and his blood pressure was not recordable;
 - iv) that he was having incised wound on the left side of his abdomen with omentum protruding coming out of the wound,
 - v) that the injured had expired on 30.08.1993, at 11.45 PM.
36. Reading of MLC of the injured Raj Karan (Ex.PW6/B) would show as under:
- i) that on 30.08.1993, at 11.20 PM, he was brought by HC Vijender Singh (PCR R-87) to Hindu Rao Hospital;

- ii) that the injured was having alleged history of fight (being stabbed by someone) as told by one Sh. Tarachand s/o Sis Ram r/o Village Khera Kalan;
- iii) that he was fully conscious;
- iv) that he was having incised wounds on his abdomen in the midline, right side of the abdomen and also on the posterior side of left thigh (below hip joint);
- v) undated endorsement made by Dr. V. K. Sehdev (Santom Hospital) declaring him as medically unfit for the statement,
- vi) that on 02.09.1993, at about 11.45 AM, he was declared medically fit for the statement by Dr. R.Shanti.

37. Testimony of PW8 Dr. V. K. Sehdev assumes importance in the background that he gave endorsement on the MLC of PW5 Raj Karan (Ex.PW6/B) and declared him medically unfit for the statement. He deposed in his examination-in-chief that in the year 1993, he was serving as a Consultant Surgeon in Santom Hospital, Prashant Vihar. On that day, injured Raj Karan was brought to their Hospital from Hindu Rao Hospital on reference. He further deposed that after examination of the injured Raj Karan, he gave endorsement on Ex.PW6/B and declared that the said injured was unfit to make the statement.

38. PW7 Dr. Ashok Jaiswal conducted post-mortem examination on the body of the deceased Narender and deposed in his examination-in-chief that on 31.08.1993, he was working as a Senior Medical Officer at Sabzi Mandi Mortuary where he examined an 18 years old person namely Narender with alleged history of stab injuries. The following external injuries were found on the body of the deceased:

- i) Incised wound on the left side of chin;
 - ii) Incised stab wound on the left side of the abdomen with omentum seen coming out of the wound (total depth of the wound from surface was found to be 10 cm);
 - iii) Abrasion on the left shoulder;
 - iv) Abrasion on the back of left elbow joint,
 - v) Multiple abrasions on the back of right elbow joint.
39. PW7 Dr. Ashok Jaiswal further deposed that injuries No. 1 and 2 were caused by sharp edged weapon and injuries No. 3, 4 and 5 were caused by fall/friction against hard surface. The cause of death was opined as haemorrhagic shock consequent to the injuries on the abdominal viscera. Time since death was stated about 14 hours. The detailed report was proved by him as Ex.PW7/A. In his cross-examination, it was admitted by him that weapon of offence was never shown to him and the opinion with regard to the use of such weapon in the alleged offence was never sought.
40. Reading of the testimony of PW8 Dr.V.K. Sehdev shows that he had not deposed in his examination-in-chief the date and time on which injured PW5 Raj Karan was brought to Santom Hospital and was declared as medically unfit for the statement which is evident upon reading the sentence '*on that date*' emerged in his evidence in Court.
41. Since, various contentions have been raised by the parties; we deem it appropriate to deal with them under separate heads.

MOTIVE

42. The case of the prosecution is that about 15-20 days prior to the incident, while Om Singh (PW-4) was present in front of his house, the respondent Sushil drove his jeep at a fast speed leading to PW-4 having

a narrow escape. This led to Balwant Singh (PW-12) and Tara Chand complaining to the father of the respondent Sushil. Other persons also accompanied them. Father of accused Sushil begged forgiveness and reprimanded Sushil causing him to harbour a grudge against them.

43. Om Singh (PW-4) deposed before the Trial Court that about 15-20 days prior to the incident, the respondent Sushil had drove the jeep at a very high speed near their house and at the time, he had a narrow escape. At this, the witness goes astray of the story of the prosecution. He further deposed that he himself had complained to the father of the respondent Sushil, who had scolded Sushil. He deposed that earlier also, the respondent Sushil had driven his vehicle at a high speed and it was only when the incident was repeated, the incident was reported to the father of the respondent Sushil. He also deposed that at the moment of narrow escape, he was standing with his brother Raj Karan and then they both had gone to lodge a complaint to the father of Sushil. After the complaint, the respondent Sushil had threatened to kill them. During cross-examination, PW-4 categorically denied the suggestion that his uncle Balwant and *tau* (uncle) Tara Chand had gone to complain to the father of the respondent Sushil. He affirmed the suggestion that prior to the incident, there was no enmity with the family of the respondent Sushil.

44. The injured witness (PW-5) deposed that about 10-15 days prior to the incident, at about 4-5 PM, when the witness was standing near his house with Om Singh (PW-4), the respondent Sushil came driving a jeep at high speeds and the witness and PW-4 had a narrow escape. Thereafter, PW-5 and his *chacha* Balwant had gone to the house of the respondent Sushil and complained against him to his father Randhir

Singh. The respondent Sushil had threatened the witness on the same day stating that he will kill them for complaining to his father.

45. Balwant Singh (PW-12) deposed that about 15-20 days prior to 30.08.1993, the respondent Sushil had driven his jeep at a high speed in front of their house. His nephew Om Singh (PW-4) saved himself from the incoming jeep with great difficulty. In the evening, PW-12 with his brother Tara Chand alongwith 2-3 persons of their village went to the house of Randhir Singh and informed about the incident. Then Randhir Singh apologized and warned his son. However, respondent Sushil threatened that he will see them one by one.
46. The witnesses remain consistent to the extent that about 15-20 days prior to 30.08.1993, an incident took place when respondent Sushil drove his jeep and drove past Om Singh at high speed. Thereafter, the party informed the father of respondent Sushil which led to him being reprimanded and in turn respondent Sushil extending threat to deal with them one by one. However, the witnesses have been inconsistent on numerous material aspects as neither the victims of the first incident can be clearly identified nor the members of the party who went to lodge the complaint with the father antagonizing the respondent Sushil. Om Singh (PW-4) and PW-5 have deposed that at the time of the incident, both of them were present, while Balwant Singh (PW-12) has only deposed as to the presence of PW-4. Further, even the testimony of PW-4 and PW-5 are at odds to the extent that they depose differently about whether PW-4 only narrowly escaped the jeep or both of them. Thereafter, there is no consistency regarding the party who went to the house of respondent Sushil to protest against his behaviour. As per

PW-4, he and Raj Karan (PW-5) had gone; as per PW-5, he and Balwant Singh (PW-12) had protested; while as per the account of PW-12, he alongwith his brother Tara Chand had gone to lodge a complaint. Both PW-4 and PW-12 have been categoric to the extent that Raj Karan (PW-5) was not the person who had a narrow escape from the speeding jeep. As to who protested about the behaviour to the father of the respondent Sushil also remains unclear. We find no merit in the submission of Ms.Kolluru that the complaint being lodged by anyone would have been at the instance of PW-4 and PW-5 only, however, as the victim of the speeding jeep was Om Singh (PW-4) and not PW-5, whose presence at the incident is doubtful. The circumstance established ascribes no motive to the respondent Sushil against Raj Karan and thus, running contrary to the case of the prosecution that Raj Karan (PW-5) was first called out by respondent Sushil. Further, nothing has been produced by the prosecution to show any motive for attacking and killing Narender (since deceased). Thus, we find no error in the decision of the Trial Court that motive has not been established.

DELAY IN RECORDING OF STATEMENT OF PW-5 RAJ KARAN:

47. The Trial Court has returned a finding that there was delay in recording of the statement of Raj Karan (PW-5) by the Investigating Officer and during his admission in Hindu Rao Hospital opened the scope of his tutoring and raised doubt over the statement (Ex.PW-12/A) of Balwant Singh (PW-12). Ms.Kolluru and Mr.Chaudhary have assailed the finding on the grounds that as the names of all the accused persons have been stated in the *rukka* (Ex.PW-12/A) prepared at 12:50 AM on the intervening night, merely 1 hour after the death of the deceased which was at around 11.45 PM; and the delay was occasioned as though PW-5

Raj Karan was conscious, he was not oriented while being admitted in the Hospital and was unfit to make a statement.

48. A cumulative reading of the MLC's of the deceased Narender and PW5 Raj Karan would show that in the column of name of relative or friend accompanying the injured, name of HC Vijender Singh of PCR stands recorded. It shows that both these injured were brought to Hindu Rao Hospital by HC Vijender Singh of PCR on 30.08.1993 at about 11.20 PM. It nullifies the statement made by PW-12 that he was the only public witness who had accompanied the injured persons to the Hospital. Had PW-12 accompanied the injured persons to the Hospital, he would have given the alleged history to the attending doctor and his name would have been mentioned in both the MLCs. Thus, we find merit in the contention raised by the counsel for the respondents that it is improbable that PW-12 had accompanied the injured persons to the hospital, but did not give alleged history of the incident to the attending doctor especially when the accused persons were well known to him.
49. On the contrary, the name of one Tara Chand son of Sis Ram has been mentioned in the MLC of PW-5 Raj Karan who gave alleged history to the attending doctor as PW-5 having been stabbed by 'someone'. We have not found the name of PW-12 Balwant Singh in any MLC. Interestingly, both the witnesses namely HC Vijender Singh and Tara Chand were not examined by the prosecution who could have been a possible link to unfold the case of the prosecution. There is nothing on record to suggest if the Investigating Officer recorded statement of HC Vijender Singh of PCR. In his cross-examination, PW16-Inspector Harshvardhan stated that house of Tara Chand was situated adjacent to the house of the injured persons. PW-16 displayed ignorance about

relationship of Tara Chand with the injured, but stated to have interrogated Tara Chand.

50. Moreover, a careful reading of the MLCs would further show that the deceased Narender was semi conscious and gasping at the time he was brought to the hospital and died at about 11.45 PM, on the fateful night. However, Raj Karan was fully conscious despite having three incised wounds on his person at the time of his admission in the hospital.
51. A careful reading of MLC of Raj Karan (Ex.PW6/B) would also show that he was not declared unfit to make statement at any point of time. It is noteworthy to mention that Ex.PW6/B is silent with regard to the date and time of the endorsement made by PW8 declaring PW5 as unfit for making a statement. Thus, it is difficult to believe that PW5 Raj Karan was not medically fit to make a statement on 30.08.1993 when he was brought to Hindu Rao Hospital or soon thereafter. In this regard, we concur with the findings of the learned Trial Court that the contents of *rukka* showing that the doctor declared Raj Karan unfit to make statement are not in consonance with the contents of the MLC Ex.PW6/B. In this regard, PW16 who was Investigating Officer deposed that he had visited Hindu Rao Hospital three to four times to record the statement of PW5 Raj Karan but he was found unfit every time and the statement of PW5 was recorded on 13.09.1993 by him upon his visit to Santom Hospital, Rohini. The statement of injured witness PW-5 Raj Karan was recorded after about 14 days from the incident, the delay in doing so remained unanswered and unexplained. The evidence of PW12 is further belied by this fact that though he had removed both the injured persons to the cots and then to the Hospital, despite this his clothes were not stained with blood which is absolutely

unbelievable considering deceased had suffered two stab wounds and PW5 Raj Karan suffered two stab wounds.

RECOVERY OF BLOOD STAINED KNIFE:

52. It is the case of the prosecution that on 31.08.1993, the respondent Sushil made a disclosure statement and then got discovered a blood stained knife from the Railway Station of village Khera Kalan. The said recovery was made in the presence of PW2 Kartar Singh, SI Darshan Lal (since deceased), PW15 HC Satanand and PW16 Insp. Harshvardhan.
53. PW2 Kartar Singh deposed in his examination-in-chief that on 31.08.1993, at about 7.00/7.30 AM while he was returning from his fields, he saw Police Officials standing near Railway Station of village Khera Kalan. Some public persons were also found standing there. The respondent Sushil who was correctly identified by PW2 in Court alongwith the Police officials and PW2 entered the platform. The respondent Sushil picked a knife which was blood stained from the platform which was subsequently sealed and turned into a parcel.
54. PW15 HC Satanand deposed in his examination-in-chief that he was accompanied by PW16 Harshvardhan and SI Darshan Lal (since dead) to the village Khera Kalan where they were being informed by a secret informer that the respondent Sushil who gave stab injuries during the incident which took place last night was sitting at the Railway Station of village Khera Kalan. Thereupon, they reached the said Railway Station and found respondent Sushil sitting on a bench. Enquiry was made to him. One knife was found lying in the grass under the cement bench where he was sitting. The said knife was found blood stained. PW15 further deposed that PW2 Kartar Singh, a resident of the same

village had also come to the Railway Station who had attested the recovery memo. In his cross-examination, it was stated by PW15 HC Satanand that a secret informer met them on 31.08.1993, at about 5.00 PM. Disclosure statement of the respondent Sushil was recorded whereupon he disclosed about a knife. It was stated by PW15 that he did not remember as to whether respondent Sushil had disclosed that he had concealed a knife under the cemented bench, or that the said knife was used by him in causing injuries to the deceased and PW5 Raj Karan. It was also stated by PW15 that pursuant to the secret information received, firstly they had gone to the village Khera Kalan and then PW2 Kartar Singh was taken along from the village.

55. PW16 Harshvardhan who was posted as SHO, Police Station S.P.Badli on the day of incident and was the Investigating Officer in the present case deposed in his examination-in-chief that in the evening of 31.08.1993, while he was present on G.T.Road within the area of Police Station S. P. Badli, he received an information through a secret informer that the respondent Sushil was present at Railway Station Khera Kalan and was about to flee from there. PW16 accompanied by SI Darshan Lal (since dead), PW15 HC Satanand alongwith the secret informer reached the Railway Station Khera Kalan. After pointing out by the secret informer, PW16 apprehended the respondent Sushil and then interrogated him after arresting him. His personal search memo was prepared by him. The respondent Sushil made a disclosure statement (Ex.PW16/D) stating that the knife used by him in the stabbing was concealed by him in the grass under the bench of the Railway Station. Thereafter, respondent Sushil pointed out the place where he had concealed the knife and at the same time took out the said

knife from the grass under the bench at the Railway Station. The total length of the knife was 11 inch and its blade was found blood stained.

56. A careful reading of the evidence of PW2, PW15 and PW16 would show that the testimony of PW2 Kartar Singh is silent on various aspects including as to whether the said knife was recovered at the instance of the respondent Sushil from any hidden place or it was found lying in an open place. As per the testimony of PW2 Kartar Singh, the said recovery was made in the morning of 31.08.1993, however, a conjoint reading of testimonies of PW15 and PW16 would show that the said recovery was made in the evening of 31.08.1993. PW15 Const. Satanand also deposed that PW2 Kartar Singh, a resident of the same village had also come to the Railway Station who had attested the recovery memo, however, in his cross-examination, he has stated that pursuant to the secret information received, firstly they had gone to the village Khera Kalan and then PW2 Kartar Singh was taken along from the village. Thus, there is no consistency in the evidence of PW2, PW15 and PW16 and we find there are contradictions favouring the respondents. The linkage could also be established through lifting of finger prints from the handle of the knife or the blood found on the knife. It is evident from Ex.PW16/F that the blood found on the knife was insufficient for determination of origin.

57. The evidence on record establishes that on 30.08.1993 at about 10:00 PM, Om Singh (PW4), Raj Karan (PW5) and deceased along with their uncle Balwant Singh (PW12) were sitting in their house. The accused Sushil called for Raj Karan, whereas Raj Karan sent the deceased Narender out of the house as to see who was calling him. As soon as the deceased went out, the accused Sushil pulled him from his hand and

took him out of the house. After watching this, as per Om Singh (PW4), they immediately rushed towards the deceased and saw that the accused Surender caught hold of the deceased from his back and had taken him into his grip whereas the accused Sushil stabbed the deceased with a knife. As per the evidence of PW-4, accused Sushil exhorted his elder brother Ashok to stab PW-5 Raj Karan and it was thereafter he inflicted knife blows to the hip and stomach of Raj Karan. PW-4 has also deposed that the accused Sushil along with his brothers ran away.

58. On a careful analysis of the testimony of PW-4 Om Singh who claims to be present at the spot would show that PW-4 Om Singh, his brother Raj Karan (PW-5), deceased Narender and their uncle Balwant (PW-12) were present at their house. Out of the three accused, one called out for Raj Karan (PW-5), however Raj Karan sent Narender to find out as to who was calling. This evidence would establish that there were three accused persons and four persons from the family. No doubt *rukka* named all the three accused persons and it is claimed to have been sent within one hour of the incident. On this aspect, the following questions remain unanswered.

59. Firstly, as to who accompanied the injured persons to the Hospital. As per the evidence of Balwant Singh (PW-12), he took both the injured persons in the PCR to the Hindu Rao Hospital. However, PW-12 has claimed that there was no blood on his clothes. It is completely unbelievable that Balwant Singh removed the two injured persons with multiple stab wounds and one of the injured died within 15-20 minutes of the incident and there was no spot of blood on his clothes. This aspect gains importance for the reason that even in the MLC there is no

mention that the injured was brought to the Hospital by Balwant Singh. This aspect gains further importance with the fact that as per MLC, injured was brought to the Hospital by one Tara Chand. There is no explanation as to why Tara Chand was not examined as the evidence of Tara Chand would have been extremely important to establish presence of Balwant Singh at the Hospital or at the place of the incident. Accordingly, the evidence of Balwant Singh is unreliable.

60. The other eye witness Om Singh (PW-4), brother of the deceased as well as brother of the injured, also claims to be an eye witness. There is no evidence to show that Om Singh made any attempt to save his brothers or whether he helped his uncle in removing the injured persons in the PCR van or whether he accompanied his injured brothers to the Hospital. There is also no evidence to show that Om Singh (PW-4) claimed that he became so scared that he hid himself. It has also come in cross-examination of PW-4 Om Singh that his *Tau* Tara Chand did not accompany his injured brothers Narender and Raj Karan to the Hospital on the night of the incident. He further stated that Police had reached the spot and took his brothers Raj Karan, Narender along with uncle Balwant to the Hospital, however, he remained at the spot. We find this in stark contradiction to the fact that as per the MLC, the history was given by one Tara Chand. In the absence of these questions not being answered, even the presence of Om Singh becomes suspicious.
61. We are conscious of the fact that the evidence of injured witness is placed at a highest level. The presence of the injured witness would be established by the injuries sustained by him, however, there is absolutely no explanation as to why the statement of PW-5 Raj Karan

was recorded after 14 days and after he was removed from Hindu Rao Hospital to Santom Hospital. While MLC of Raj Karan (Ex.PW6/B) shows that the injured was brought to the Hospital on 30.08.1993 at 11:20 PM by HC Vijender Singh with alleged history of fight (being stabbed by someone) as told by one Sh. Tarachand s/o Sis Ram r/o Village Khera Kalan. He was fully conscious and his blood pressure was recordable. This MLC nowhere records that the injured was unfit for making a statement. Although, as per the testimony of PW16 Harsh Vardhan (Investigating Officer), who had testified that he visited the Hospital on 3-4 occasions, but Raj Karan was not found fit for the statement but this is not borne out from the record. The delay of 14 days in recording the statement of the injured witness PW-5 Raj Karan is also fatal to the case of the prosecution. From the MLC (Ex.PW6/B), it stands established that the injured persons were brought to the Hospital by Vijender Singh with alleged history of fight. There is nothing on record to suggest that Investigating Officer had recorded the statement of HC Vijender Singh of the PCR. There is also no evidence on record to show as to whether Tara Chand was anywhere related to the injured/deceased persons. We may also note that the MLC of Raj Karan (Ex.PW6/B) contains only two endorsements to the effect that PW-5 Raj Karan was declared unfit to make a statement on 02.09.1993 and another undated endorsement by PW-8 Dr. V.K. Sehdev of Santom Hospital where Raj Karan received the treatment after leaving the Hindu Rao Hospital.

62. We find this also to be very strange in the light of the testimony of PW-16 (IO) who has deposed that he went to Hindu Rao Hospital 3-4 times for recording of statement of the injured but found him unfit. We

also find this to be highly unusual that a simple statement has been made by the IO that he visited the hospital 3-4 times for recording of the statement of PW5 but found him unfit while there are only two endorsements on the MLC, one of Hindu Rao Hospital and another undated by Dr. V.K. Sehdev of Santom Hospital.

63. Although counsel for the appellant has strongly urged that the presence of the eye witnesses stand established, for the reasons aforesaid we are unable to agree with this contention. We also find that the motive which is sought to be urged is highly weak in the present case for the detailed discussion in paras 42 to 46 aforesaid.

CONCLUSION:

64. In the case of *Sarwan Singh S/o Rattan Singh vs. State of Punjab*, reported at *AIR 1957 SC 637*, it was held by the Hon'ble Supreme Court that in criminal cases mere suspicion, however, strong, cannot take the place of proof.
65. In the case of *Raj Kumar Singh vs. State of Rajasthan* reported at *(2013) 5 SCC 722*, the Hon'ble Supreme Court reiterated while dealing with a case based on circumstantial evidence that in a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and before an accused is condemned, the evidence produced by the prosecution must be clear, cogent and unimpeachable and the basic and golden rule must be applied. The relevant paras 21 and 43 to 45 read as under:

“21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between 'may be' and 'must be' is quite large and

divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

43. In the instant case, there have been major contradictions/improvements/embellishments in the deposition of witnesses which cannot be ignored when they are examined in the correct perspective. The chain of links connecting the appellant with the crime appears inconclusive. It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labelled as omissions or contradictions. Therefore, the courts must be cautious and very particular in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the same appears to have in it, a ring of truth, then it may become necessary for the court to scrutinise the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the

witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief.

“9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.”

It is in fact, the entirety of the situation which must be taken into consideration. While appreciating the evidence, the court must not attach undue importance to minor discrepancies, rather must consider broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereotype investigation. After exercising such care and caution, and sifting through the evidence to separate truth from untruth, embellishments and improvements, the court must determine whether the residuary evidence is sufficient to convict the accused.

44. In *Kehar Singh v. State (Delhi Admn.)* (1988) 3 SCC 609 this Court has held that if the discrepancies are material it would be safer to err in acquitting than in convicting the accused.

45. In *Subhash v. State of Haryana* (2011) 2 SCC 715 this Court has held that a significant omission in the statement of a witness recorded under Section 161 CrPC may amount to a major contradiction. However, it may depend upon the facts of case and in case of a material contradiction the accused becomes entitled for benefit of doubt and thus acquittal.”

(Emphasis Supplied)

66. There is no quarrel to this proposition that the failure of the prosecution to examine the public witnesses is of no consequence in view of the clear and consistent testimonies of the eyewitnesses. In this backdrop, it would be relevant to analyse the testimonies of all the three eyewitnesses.

67. After a careful analysis of the testimonies of all the three eyewitnesses alongwith the medical evidence discussed in the paragraphs 34 to 39 aforegoing and applying law to the facts of the given case, we find that there are contradictions, embellishments and improvements in their testimonies and there is nothing which would establish the guilt of the accused persons beyond reasonable doubt. All the testimonies of the witnesses are not consistent with respect to the manner in which the incident happened and there are certain loop holes and lacunas leading to the benefit of doubt to all the respondents. The evidence produced by the prosecution is not clear, cogent and unimpeachable.
68. As far as the respondents Ashok and Surender are concerned, it would be necessary to analyse the evidence of Investigating Officer i.e. PW16 Harsh Vardhan who stated in his cross-examination that he had enquired from the persons living in houses near the spot after having come to know that the accused Sushil had inflicted injuries. PW16 admitted that that none from the neighbourhood levelled allegations or raised suspicion against accused persons Surender and Ashok. PW16 also admitted that during investigation, it was transpired from the statement of DW1 Rajbir Singh that at the time of incident the accused Ashok was present at his home but did not reach the spot after hearing cries of the people. At the time of occurrence, the accused Ashok was present with one Anando Mukherji at House No. S-29, Panchsheel Apartments, New Delhi and the said fact was duly verified by him from the records of employer of the accused Ashok. It was categorically admitted by PW16 that after completion of investigation, he found that the accused persons Ashok and Surender were not involved in the occurrence and this was the reason that he did not arrest them. The

names of both the accused persons Ashok and Surender were found in column No. 2 of the report filed under Section 173 of Cr.P.C. PW16 further stated that he did not remember as to whether it transpired during investigation that there was no supply of electricity in the Village Khera Kalan at the time of incident.

69. The judgments relied upon by the counsel for the complainant is distinguishable. In ***Badru Ram & Ors.*** (*supra*), the Hon'ble Supreme Court dismissed the appeal filed by the accused persons while relying upon the substantive evidence of the two injured eyewitnesses and the Investigating Officer together with the medical opinion. The Apex Court also relied upon the recovery of the weapons used in the commission of offence, at the instance of the accused persons and confirmed the concurrent findings of the courts below. This judgment is not applicable to the facts of the case on hand as the evidence of all the three eyewitnesses relied upon by the prosecution is not consistent on material particulars and could not be relied upon.
70. In the case of ***Arjun Singh & Ors.*** (*supra*), it was held by the Hon'ble Supreme Court that the testimonies of the eyewitnesses who are related to each other must not be rejected merely because the witnesses are related to the deceased but have to be carefully analysed and if the same are cogent and if there is no discrepancy, the same are acceptable. It was further held that minor discrepancies in the evidence of the eyewitnesses are immaterial.
71. We have gone through all the cited judgments. Due to difference in facts and circumstances of the case on hand, the ratio given in the cases enumerated in the foregoing paragraphs are not of much help to the appellant.

72. Upon applying the settled position of law to the facts of the present case and on the basis of evidence placed on record, only one view is possible i.e. there exists no evidence to prove the guilt of the accused persons beyond reasonable doubt. We have no reason to disagree from the view taken by the learned Trial Court. There is no perversity in the appreciation of the evidence. We also find that by the acquittal of the respondents there has been no miscarriage of justice. For the above reasons, we dismiss the appeal filed by the State.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

NOVEMBER_30, 2019

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