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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 11th September, 2024
Pronounced on: 6th February, 2025

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CRL.A. 826/2018 & CRL.M.(BAIL) 85/2024**RAJESH @ TINKU**

.....Appellant

Through: Ms. Aishwarya Rao, Advocate.

versus

STATE

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP
for the State with Mr. Lalit
Luthra and Ms. Divya Yadav,
Advocates (M- 9910645959).
Insp. Amit Kr. DPA, Insp. V.
Jha, Rohini, Insp. Kishore
Kumar, P.S. South Rohini.

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CRL.A. 1073/2018**RAVINDER @ TUNDA**

.....Appellant

Through: Ms. Dolly Sharma, Advocate.

versus

STATE

.....Respondent

Through: Mr. Ritesh Kumar Bahri, APP
for the State with Mr. Lalit
Luthra and Ms. Divya Yadav,
Advocates (M- 9910645959).
Insp. Amit Kr. DPA, Insp. V.
Jha, Rohini, Insp. Kishore
Kumar, P.S. South Rohini.



+ **CRL.A. 1108/2018 & CRL.M.(BAIL) 189/2024**

RUSY @ SURENDERAppellant

Through: Ms. Arundhati Katju, Advocate
(DHCLSC).

versus

STATERespondent

Through: Mr. Ritesh Kumar Bahri, APP
for the State with Mr. Lalit
Luthra and Ms. Divya Yadav,
Advocates (M- 9910645959).
Insp. Amit Kr. DPA, Insp. V.
Jha, Rohini, Insp. Kishore
Kumar, P.S. South Rohini.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeals under Section 374 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') have been filed by the Appellants assailing the impugned judgment of conviction dated 24.04.2018 and order on sentence dated 03.05.2018 passed by learned Additional Sessions Judge-02, North Rohini Courts, Delhi, whereby the Appellants have been convicted in Sessions Case No. 58155/16, arising out of FIR No. 152/12, under Sections 302/406//396/457/34 of the Indian Penal Code, 1860, (for short, 'IPC'), registered at Police Station South Rohini.



2. *Vide* the aforesaid impugned judgment of conviction and order on sentence the Appellants namely, Rusy @ Surender, Rajesh @ Tinku and Ravinder @ Tunda, (hereinafter referred to as, 'Rusy', 'Tinku' and 'Tunda' respectively), have been convicted for the offences punishable under Sections 302/34 and Section 460 of the IPC. Whereas another co-accused person named, Mahesh @ Chikna, was acquitted for the offences punishable under Sections 302/457/460/395/396/34 of the IPC. The Appellants were sentenced to undergo rigorous imprisonment for life along with a fine of Rs. 10,000/- each and in default of payment of fine, to undergo further simple imprisonment for a period of 1 year each for the offence punishable under Sections 302/34 of the IPC. The Appellants were also sentenced to rigorous imprisonment for a period of 10 years along with a fine of Rs. 5,000/- each and in default of payment of fine, to undergo further simple imprisonment for a period of 6 months each for the offence punishable under Section 460 of the IPC. Learned ASJ, while passing the impugned order on sentence, had also directed the learned Secretary, North, DSLSA, Rohini Court, Delhi for awarding appropriate compensation to the family of the victim/deceased in accordance with the provisions of Section 357A of the CrPC and Victim Compensation Scheme.

FACTUAL BACKGROUND

3. Brief facts necessary for the disposal of the present appeals are as under: -



- i) On 24.07.2012 at around 02:15 AM, *vide* DD No. 6A, Inspector VN Jha (PW-25) along with SI Mohd. Imtiyaz Alam (PW-23) and Constable Ajay Singh went to G-30/340, 341, Sector 3, Rohini in pursuance of PCR call received. On reaching at the said address, they found that the SHO along with staff and HC Rajesh were already there and at the front gate and street of the said house there was a lot of blood. It was also found that there was an iron rod (house breaking tool) lying on the sofa of the inner room of the house.
- ii) After enquiring regarding the victim, it was revealed that she was taken to Jaipur Golden Hospital. Then, PW-25 left PW-23 at the spot and went, along with HC Rajesh, to the said hospital and obtained MLC (No. 11308) of the deceased/victim whereby, the latter was declared brought dead by the concerned doctor.
- iii) In the hospital itself, Bhim (PW-1), eye-witness, son of the deceased, met PW-23 and his statement was recorded on the basis which FIR in the present case was registered. In his statement, PW-1 stated that he was running a cyber cafe in Karol Bagh and residing at the aforesaid address along with his family. He stated that like all other days, he, after closing his shop, returned home at 09:30 PM and at around 10:30 PM, he and his family members went to sleep in their respective rooms. He further stated that his mother, the deceased, was sleeping in the drawing room which is adjacent to the main room on the ground floor, whereas his father was sleeping in the room which is



to the right side of the drawing room and he was inside another room on the ground floor while his brothers were sleeping on the upper floors in their respective rooms. He further stated that before going to sleep, he had bolted the latch of the main door from inside.

iv) At around 1:30 AM, he heard some noise and because of the same, he woke up and saw that one unknown person was going to the drawing room from his room. He then got suspicious of the fact that someone had intruded into their house and immediately turned on the light of the drawing room and caught hold of the said person. He raised alarm, and hue and cry and on hearing his voice, his mother, who was sleeping in the drawing room, also woke up and caught hold of another person who was present in the drawing room. Thereafter, both of them raised hue and cries.

v) Thereafter, they found that the door of the main gate of their house was opened and one more person (third person) was standing outside the gate and holding a knife in his hand. This third person, then, came inside the house and told PW-1 and his mother that they should leave his companions otherwise they will be killed and the other two persons also warned them in this regard. Then, this third person came inside the room and gave a severe blow, thereby, stabbing mother of PW-1 because of which she started screaming. After listening to the hue and cry of his mother, his father, who was sleeping in the adjacent room, also woke up and all of them started taking care of his mother.



vi) Taking advantage of the situation, all three of the said persons ran away. Thereafter, he called his brothers from the upper floors as also made a PCR call. His mother was taken to Jaipur Golden Hospital where she was declared brought dead. PW-1 further stated that he can identify all three of the said persons, if brought before him. He also provided the descriptions of the said persons. PW-1 further stated that one brown colour purse along with RC of a motorcycle, voter card, an ATM card, few visiting cards and Rs. 160/- went missing in this incident. He also stated that in this incident, he had also received injuries on his left wrist, and while running away, the said persons left the iron rod on the sofa of their room.

vii) On the basis of the facts narrated by PW-1 in his statement (Ex. PW-1/A), PW-23 prepared a *rukka* and sent HC Rajesh to the police station for registration of FIR and subsequently, FIR under Sections 460/302/34 of the IPC was registered at PS South Rohini.

viii) Thereafter, the crime team and FSL team inspected the spot and collected evidence from there and corpse of the deceased was directed to be preserved. Autopsy of the deceased was conducted in BSA hospital. Statements of various witnesses were recorded and case property seized from the spot was deposited in *maalkhana*. The aforesaid missing brown purse was found at the spot of another incident, i.e., D-17/252, Sector-3, Rohini.



ix) On 25.07.2012 at around 08:30 PM, on the basis of information of Constable Rajkumar (PW-11), a park situated in H-32, Sector 3, was surrounded and three suspects, i.e., the present Appellants, were apprehended. On the personal search of Rusy, an iron rod (house breaking tool) was recovered from the inner pocket (dub) of his pant and two ATM cards were also recovered. From his right pocket, one silver coin was also recovered which as per Rusy, he had stolen from Sector 3, Rohini, two days ago. Whereas on the personal search of Tinku, one *buttondar* knife was recovered from his left pocket and one silver coin, which he had looted from one old lady after wounding her. And from the personal search of Tunda, one *buttondar* knife and one silver coin was recovered. From the disclosure statements of all the Appellants it was revealed that they had looted the said silver coins few days ago.

x) Based on the disclosure statements of the Appellants, two more accused persons, i.e., Mahesh @ Chikna and Amit @ Gora, were also apprehended. Amit @ Gora was stated to be a juvenile and was subsequently sent to an observation home. As per the disclosure statements of the Appellants, the blood-stained clothes, which they had hidden near the BSA hospital in bushes, were recovered and seized.

xi) Pursuant to the aforesaid recoveries, Sections 25/27 of the Arms Act were added and a motion to conduct Test Identification Parade (TIP) of the present Appellants was moved, however, all of them



refused to undergo TIP. The aforesaid brown purse was recovered in FIR No. 153/12 and a copy thereof was obtained and placed on record in the present case. FIR No. 153/12 relates to another incident which had occurred in the same vicinity on the same night as the incident in the present case is stated to have been reported. Statement of Insp. Anil (PW-17), who was IO in the said FIR, was also recorded in this regard. TIP of the said purse was also conducted through Dilip Kumar (PW-2), who had correctly identified the purse.

xii) After completion of investigation, chargesheet for the offences punishable under Sections 302/460/396/380/457/34 of the IPC and Sections 25/27 of the Arms Act was filed in the Court of competent jurisdiction. Learned Trial Court, *vide* order dated 23.07.2013, framed charges for the offences punishable under Sections 302/457/460/395/396/34 of the IPC against the present Appellants.

xiii) Prosecution in order to substantiate the charges levelled against the present Appellants had examined 25 witnesses during the course of trial. Learned Trial Court after analysing the prosecution evidence, statement of the Appellants recorded under Section 313 of the CrPC had convicted and sentenced them as noted hereinabove. Hence, the present appeals have been filed assailing the impugned judgment of conviction and order on sentence.



SUBMISSIONS ON BEHALF OF APPELLANTS

4. Learned Counsels for the Appellants have made the following submissions in support of their respective appeals.

4.1 Arguments advanced on behalf of Appellant, Rusy, are as follows: -

i) Learned Counsel for Rusy has submitted that the Trial Court has passed the impugned judgment of conviction and order on sentence without due appreciation of facts and evidence placed on record by the prosecution and has erred in convicting the Appellants. It is further the case of the Appellant that the prosecution has built up an entirely fabricated case against the present Appellant as well as the other co-convicts in the present case.

ii) It is the case of the Appellant that the concerned Investigating Officers, i.e., PW-25 and PW-17, in both the aforesaid FIRs were under constant pressure from their senior police officials to resolve the said cases. Attention of this Court has been drawn towards the testimonies of PW-20, PW-17, PW-23, and it is submitted that in the testimonies all these witnesses, to certain extent, have admitted the fact that they were under immense pressure from their seniors to resolve both the cases whereby deaths of persons had been reported to have taken place on the night of 24.07.2012 within the same vicinity. It has been pointed out that PW-17, IO in the other FIR No. 153/12,



has also admitted the fact that he had shared information with the IO in the present case and both of them were in constant communication with each other.

iii) It is further submitted that the prosecution has foisted a false case against the present Appellants as they were allegedly holding bad reputation in the vicinity. It is also the case of the Appellant that allegations made in FIR No. 153/2012 were not put to him as well as to the other co-convicts in the present case while their statement under Section 313 of the CrPC was recorded. Hence, reliance has wrongly been placed in the impugned judgment on the said incriminating circumstances to convict the present Appellant.

iv) It is submitted that the arrest of the present Appellant has been made in a haste and hurried manner and that too, on the very next day of the happening of the incident. It is further submitted that PW-11, Rajkumar, has in his testimony stated that he was briefed by IO/PW-25 in respect of the descriptions of the present Appellant as well as his other co-convicts/appellants. It is further pointed out that PW-11 was not the beat constable of the area from where the present Appellants were arrested and no explanation has been rendered by PW-11 as to why he was patrolling in that area prior to the arrest of the present Appellants.

v) It is pointed out that perusal of the arrest memos of the Appellants would show that no public witnesses were associated by



the team of police officials who were arresting the present Appellants. As per the case of prosecution, PW-25 had asked many public persons to join the investigation. However, no one had volunteered. It is the case of the Appellants that given the timing and the place from where the Appellants were arrested, it is quite unusual that the investigating team was not able to associate any public witness while arresting the Appellants. It is further submitted that a mere statement to the effect that efforts were made to join public witness during arrest would not be sufficient to place reliance on the case of the prosecution as the names of the persons whom the investigating team had approached, were not noted and it has also not been explained as to why provisions of Section 174 of the IPC were not invoked against such persons who had refused to join the investigation at the request of the concerned investigating officer. An adverse inference has to be drawn against the case of prosecution for not joining the public witnesses while arresting the Appellants.

vi) It is submitted that PW-1 in his statement (Ex. PW-1/A), on the basis of which FIR in the present case was registered, had not given any facial descriptions of the present Appellants. It is further pointed out that the police witnesses, i.e., PW-8, PW-23, PW-25, in their testimonies were explicit to the extent that the physical as well as the facial descriptions of the present Appellants were not mentioned by the PW-1/complainant in the *ruqqa*. Therefore, no facial as well as physical descriptions of the Appellants was available with the investigating team prior to their arrest and the same casts suspicion



over the case of prosecution. It is further the case of the Appellants that it is highly unlikely that after committing murders, the Appellants would be sitting in a public park. It is further submitted that the learned Trial Court has, therefore, erred in placing reliance on the testimony of the PW-1/complainant in convicting the Appellants.

vii) Insofar as the refusal of the Appellants to undergo TIP is concerned, it is submitted that though no answer, in particular, has been given by them, however, the same has been answered by them in their statement under Section 313 of the CrPC. It is the case of the Appellants that despite their refusal to undergo TIP, the Appellants were shown to the eye witnesses of the present case while they were in police custody in respect of other FIR No. 153/2012. It is pointed out that PWs 1, 2 and 9, in their statements recorded under Section 161 of the CrPC had stated that they had identified the present Appellants in the police station, South Rohini, when they were in police custody in the aforesaid FIR. It is further pointed out that PW-1, in his statement under Section 161 of the CrPC, had stated that he had identified the present Appellants in Court as he had already identified them in the police station, when he had accompanied his brother for the TIP of the aforesaid missing brown purse. It is also the case of the Appellants that they had refused to undergo TIP as the concerned witnesses were already shown the pictures of the Appellants in the police station in order to facilitate their identification. In view of the aforesaid, it is submitted that the subsequent dock identification of the Appellants by PW-1 and PW-9 stands vitiated.



viii) It is further the case of the Appellants that their TIP was not conducted in accordance with the procedure envisaged in CrPC. It is contended that possibility of the present appellants being shown to the eye witnesses prior to their identification in the Court cannot be ruled out and, in such a case, reliance cannot be placed on the dock identification. Reliance has been placed on **Mukesh Singh v. State**,¹ and **Kamal v. State (NCT of Delhi)**,² in support of this contention.

ix) It is further submitted that PW-1 and PW-9 had identified the present Appellant as well as other co-convicts in the Court along with their respective names, and thus, have failed to render any explanation as to how they knew names of the Appellants as the latter had refused to undergo TIP at the first instance. This, as per the learned Counsel for the Appellant, raises suspicion that the latter has falsely been implicated in the present FIR.

x) Regarding the alleged recoveries affected from the Appellant, it is submitted that the same do not, in any manner whatsoever, connect the Appellant with the commission of the acts alleged against him in the present case. It is further submitted that it is not the case of the prosecution that the alleged iron rod which has been recovered from present Appellant has been used to cause death of the mother of the PW-1. With respect to the recovery of 2 ATM cards from the present Appellant is concerned, it is submitted that no attempt has been made

¹ 2023 SCC OnLine SC 1061

² 2023 SCC OnLine SC 933



by the Appellant to withdraw any sum of money using the said cards and the same had been planted on the Appellant in order to falsely implicate him. In respect of the silver coin from the back pocket of the present Appellant, it is submitted that the same has not been identified by the witnesses either in FIR No. 152/2012 or FIR No. 153/2012 and the same are easily available in the market. It is further submitted that the alleged missing brown purse which has been recovered from the crime spot of the other FIR No. 153/12 is also readily available in the market, and thus, the same does not prove the presence of the present Appellant at the crime spots of either of the FIRs. Moreover, the said purse is stated to be of PW-2, however, it contained a duplicate of driving license (DL) of Prem Chand (brother of PW-1 and PW-2) and no explanation has been put forth by either of these witnesses in their testimonies before the learned Trial Court as to why DL of Prem Chand was found in PW-2's purse. It is pointed out that the said purse was recovered from the place of incident of FIR No. 153/2012 and there was one independent witness, Jyoti, to the recovery/seizure memo of the said pursue and the said witness has not been examined by the prosecution during the course of trial in the present case.

xi) Attention of this Court has been drawn towards the personal search memos of the Appellants (Ex. PW-11/A to Ex. PW-11/C) and it is submitted that the same have been prepared by different persons as the handwriting engraved in all of them are different. It is the case of the Appellant that it is unlikely that the same had been prepared at the spot and rather have been prepared in the police station.



xii) Insofar as the recovery of the blood-stained clothes allegedly worn by the Appellant is concerned, it is submitted that the prosecution had failed to establish that the same were connected to the Appellant or other co-convicts. It is pointed out that no specific description as such in respect of the clothes worn by the Appellant as well as other co-convicts/Appellants was given by the PW-1/complainant in his statement (Ex. PW-1/A) recorded by IO/PW-25 and the latter in his testimony recorded before the learned Trial Court had admitted the fact that he did not have any specific description of the Appellants prior to their arrest. It is further pointed out that the said clothes of the Appellant as well as the other co-convicts were never sent to FSL for examination.

xiii) It is further submitted that the prosecution has not examined the brothers of the PW-1/complainant and sister-in-law (*bhabhi*), who were also present at the spot where the incident in the present case had taken place. Therefore, an adverse inference has to be drawn against the prosecution for not examining them.

xiv) It is further submitted that there is no forensic evidence which could link or connect the Appellant herein, or for that matter the other co-convicts, to the recoveries made in the present case thereby proving their complicity in the commission of the offences alleged in either of the FIRs. It is further pointed out that it is not the case of the



prosecution that the iron rod recovered from Rusy was used to forcibly enter the house of PW-1 on the date of incident.

xv) Without prejudice to the aforesaid contentions, it is submitted that the learned Trial Court has erred in awarding consecutive sentences to the Appellants in the present case as they have already been sentenced for life imprisonment and in view of the embargo provided under Section 31(2) of the CrPC, the Appellants could not have been awarded consecutive sentences. Reliance has been placed on **O.M. Cherian v. State of Kerala**³ and **Duryodhan Rout v. State of Orissa**⁴ to support this contention.

xvi) It is further submitted that, even if, the presence of the Appellant is presumed at the crime spot, the same does not reflect intention on the part of the Appellant to cause the death of the mother of the PW-1. It is the case of the Appellant that the present is not the case where the deceased was repeatedly stabbed with a knife and a single blow injury is not sufficient, in view of the facts of the present case, to show that the Appellant had intended to cause the death of the mother of PW1. Thus, the present case would not come within the purview of Section 302 of the IPC. Reliance has been placed on **Matadin v. State of Maharashtra**⁵ to support this contention.

³ (2015) 2 SCC 501

⁴ (2015) 2 SCC 783

⁵ (1998) 7 SCC 216



xvii) Learned Counsel for Rusy has further placed reliance on the following precedents: -

- a) **Dhani Ram v. State of Himanchal Pradesh** ⁶;
- b) **Sadhu Singh v. State of Punjab**⁷;
- c) **Gian Singh v. State**⁸;
- d) **Badshah v. State**⁹;
- e) **Mukesh Singh v. State**¹⁰;
- f) **Tain Singh v. State (Delhi Admn.)**¹¹;
- g) **Pramod Kumar v. State**¹²;
- h) **Kamal v. State (NCT of Delhi)**¹³;
- i) **Kanan v. State of Kerala**¹⁴;
- j) **Sidharth Vashisht v. State (NCT of Delhi)**¹⁵;
- k) **Nazir Ahmad v. Emperor**¹⁶;
- l) **Sunil v. State**¹⁷;
- m) **Md. Akhtar Hussain v. Asst. Collector of Customs**¹⁸;
- n) **O.M. Cherian v. State of Kerala**¹⁹;
- o) **Duryodhan Rout v. State of Orissa**²⁰;
- p) **Matadin v. State of Maharashtra**²¹.

⁶ 2016 SCC OnLine HP 738

⁷ 1997 SCC OnLine P & H 329

⁸ SCC OnLine Del 279

⁹ MANU/DE/1776/2017

¹⁰ 2023 SCC OnLine SC 1061

¹¹ 1986 SCC OnLine Del 4

¹² 1989 SCC OnLine Del 373

¹³ 2023 SCC OnLine SC 933

¹⁴ (1979) 3 SCC 319

¹⁵ (2010) 6 SCC 1

¹⁶ AIR 1936 PC 253

¹⁷ 2023/DHC/000036

¹⁸ (1988) 4 SCC 183

¹⁹ (2015) 2 SCC 501

²⁰ (2015) 2 SCC 783

²¹ (1998) 7 SCC 216



4.2 Arguments advanced on behalf of Appellant, Tinku, are as follows: -

i) Learned Counsel for Tinku has submitted that the recovery of the blood-stained clothes was affected from a public place and no independent witnesses were associated during the said recovery. Therefore, the same causes doubt over the legitimacy and credibility of the said recovery. It is further the case of the Appellant that the said clothes were planted so as to falsely implicate him as well as other co-convicts in the present case. It is further submitted that the said blood-stained clothes which were allegedly worn by the Appellant during the commission of the murder of the deceased were not identified by the prosecution witnesses, i.e., PW-1 and PW-9, during trial and thus, the presence of the Appellant has not been proved at the crime spot. It is further pointed out that PW-1 and PW-9 had not provided any specific description of the clothes worn by the Appellant on the date of the incident.

ii) Regarding the recovery of the knife from the present Appellant, it is submitted that, even as per the case of the prosecution, the said knife has not been used in causing the death of the mother of the PW-1, and thus, the recovery of the knife is of no consequence. Attention of this Court has been drawn towards the FSL report (Ex. PW-22/A) and it is submitted that the said knife had no blood stains on it and the same undoubtedly lends support to the case of the Appellant that the said knife has not been used in the commission of offence in the



present case. It is further pointed out that no serological report was obtained by the IO/PW-25 with respect to the knife recovered from the present Appellant.

iii) In respect of the recovery of silver coin from the present Appellant, it is submitted that the prosecution has not adduced any purchase bill which could show that the said silver coin was, in fact, owned by or was the property of PW-1 or any of their family members, and thus, the same does not prove the fact that the said coins were stolen by the Appellant from the house of PW-1. It is further submitted that the said silver coins which have allegedly been recovered from the present Appellant as well as other co-convicts have not been identified by any of the prosecution witnesses during the course of trial in either of the FIRs wherein the present Appellants have been arrayed as accused.

iv) Attention of this Court has also been drawn towards the report (Ex. PW-21/A) given by PW-21, SSO Biology at FSL, Rohini, whereby observations were made in respect of the crime spot. It is pointed out that in the said report PW-21 had observed that there was no sign or marks which could have indicated towards the forcible entry through the entrance of the drawing room into the house of PW-1. Attention of this Court has also been drawn towards the seizure memo of the interlock of the house of PW-1 (Ex. PW-23/B), wherein it has been mentioned that the said lock is free and it seems that the thieves have entered the house by breaking the lock. However, it is



also not the case of the prosecution that the iron rods (house breaking tool), one recovered from the crime spot and other from the Appellant, Rusy, were used to break open the main door of the house of PW-1. It is also pointed out that PW-21 was not cross-examined by the learned APP before the learned Trial Court in respect of the forcible entry by the Appellants into the house of PW-1 with the use of the said recovered iron rods. It is further the case of the Appellants that no photographs of either the door or lock have been tendered by the prosecution during trial which could have pointed towards the claim of forcible entry into the house of PW-1 by the present Appellants. It has further been pointed out that PW-1 had, in fact, stated that he had locked the main door from the inside before he went to sleep. This fact has not been adverted to by the prosecution at all, which as per learned Counsels for the Appellants, could have shown that whether the present Appellants had forcibly entered the said house by breaking open the lock. Thus, the charge for the commission of offence punishable under Section 460 of the IPC has not been cogently proved by the prosecution.

v) Insofar as the other grounds of appeal are concerned, learned Counsel for Tinku has made similar submissions, as noted hereinabove in the appeal filed by the Appellant, Rusy.



4.3 Arguments advanced on behalf of Appellant, Tunda, are as follows: -

i) Regarding the knives recovered, learned Counsel for Tunda has submitted that the said knives were never sent for FSL examination, and thus, no serological report was obtained in respect of the said knives. It was emphasized that though one of the knives had blood stains on it, however, the DNA of the said blood stains had not matched thereby failing to establish the presence of either of the Appellants at the crime spot.

ii) It is further submitted that the alleged recovery of the silver coin from the Appellant has not been made in the present FIR and it is further pointed out that no document has been placed on record during trial to show that the same belong to the deceased's family.

iii) Learned Counsel for the Tunda has also made similar submissions, as noted hereinabove in case of other co-convicts, and has adopted the arguments advanced on their behalf regarding the other grounds of appeal, and therefore, the same have not been reproduced for the sake of brevity.



SUBMISSIONS ON BEHALF OF THE STATE/RESPONDENT

5. Learned APP for the State, refuting the submissions made on behalf of the learned Counsels on behalf of the Appellants, has made the following submissions: -

i) Learned Trial Court has passed the impugned judgment of conviction and order on sentence after due appreciation of the facts and the material placed on record by the prosecution and has rightly convicted the present Appellants and sentenced them accordingly.

ii) It is submitted that PW-1 and PW-9 have categorically identified all of the Appellants as the perpetrators of the incident. It is pointed out that PW-1 in his testimony had stated that there was sufficient light in the passage between the main gate of their house and the drawing room and the incident had taken place for a considerable period of time, providing him enough time to retain the physical descriptions of the Appellants in his memory. It is further the case of the prosecution that PW-1 and PW-9 had provided sufficient features regarding the identity of the Appellants in the FIR.

iii) It is further submitted that all the Appellants had refused to undergo TIP during the course of investigation and had not even assigned any reason for the said refusal. Thus, an adverse inference has to be drawn against them in this regard. It is further submitted that PW-1 and PW-9 had in their testimonies, recorded before the learned



Trial Court, identified the present Appellants. It is further the case of the prosecution that it is the dock identification which carries much more evidentiary value irrespective of the fact whether TIP has been conducted during the investigation or not. It has also been contended that there was a coincident meeting of PW-9 with the Appellants, when he had gone, along with his sons, to the Court for the identification of the belongings of his mother and the said coincidence cannot vitiate the dock identification of the Appellants by the concerned prosecution witnesses.

iv) Regarding the non-examination of the independent witness, Jyoti, associated with the recovery of the aforesaid brown purse, it is submitted that her non-examination would not be fatal to the case of the prosecution as she is a witness to FIR No. 153/2012 and the IO/PW-17 in the said case FIR had sufficiently proved the recovery of the said purse, as he has testified for the prosecution in the present case. It is further submitted that the testimony of the said prosecution witness cannot be discarded merely because an independent witness has not been examined. It has further been argued that it is not the case of the Appellants that the police officers or other witness in the present were having any malice against the present Appellants. Moreover, the seizure of the purse was in FIR No. 153/2012 and the same could not have afforded any opportunity to the investigating agency to allegedly plant the recoveries against the Appellants.



v) It is further submitted that the RC, DL, and voter card recovered from the missing brown purse of Dilip, PW-2, had his name over them and he had also identified the said purse, which recovered from the crime spot of the FIR No. 153/12. Moreover, the name of PW-2 was also mentioned on the ATM card which was recovered from the Appellant, Rusy, which is indicative of the fact that the Appellants had robbed the aforesaid articles from the house of PW-1. This, apparently, as per learned APP for the State, shows the presence of the present Appellants at both the crime spots and their involvement in both cases, i.e., FIR Nos. 152/12 and 153/12.

vi) It is further the case of the prosecution that FSL report (Ex. PW-22/A) of the knife and silver coin recovered from Tunda and Tinku shows that the blood on the *buttondar* knife contained the blood of the deceased, mother of PW-1, and this fact has further been fortified by the recovery of the blood-stained clothes of the Appellants on which the blood group of the deceased had been found. It is pointed out that the PW-14, doctor, had also *vide* his report (Ex. PW-14/B) had opined that the nature of injuries inflicted in person on the deceased could have been made by the aforesaid knife recovered from the aforesaid Appellants.

vii) It is the case of the prosecution that PW-1 had caught hold of one of the Appellants and during the said scuffle between them, he had sustained some injuries. The medical examination of PW-1 by PW-5 and MLC, Ex. PW-5/A, shows that PW-1 had, in fact, sustained



injuries in person during the happening of the incident in the present case. The abrasions on his left forearm as noted in the MLC attaches legitimacy to the case of the prosecution and post-mortem report of the deceased also corroborates the case of the prosecution as narrated by PW-1.

viii) It is further the case of the prosecution that the Appellants had entered the house of PW-1 by arming them with deadly weapons like *buttondar* knives and iron rod (house breaking tool) which demonstrates that they were acting on the basis of the prior concert of mind and had caused the death of the mother of PW-1 while acting in the furtherance of their common intention.

ix) It has further been argued that the incident in the present has been reported to have been occurred at around 01:30 AM in the night and the *ruqqa* in the present case was prepared and sent to the police station at around 05:00 AM in the morning and the same shows that there has been no manipulation or setting up of false concocted story against the Appellant by the investigating agency. The Appellants have not been able to demonstrate or point out any incident from which it can be concluded that there was any prior enmity between the Appellants and prosecution witnesses. Thus, there was no occasion for the concerned police officials to have falsely implicated the Appellants in the present case.



x) Thus, it has been submitted that the impugned judgment of conviction and order on sentence suffers from no infirmity or illegality and the same are to be upheld.

ANALYSIS AND FINDINGS

6. Heard learned Counsels for the parties and perused the records.

7. The Hon'ble Supreme Court, recently, in **Balu Sudam Khalde v. State of Maharashtra**²², has considered the entire law on appreciation of evidence in a criminal case and held as under: -

“Appreciation of oral evidence

25. The appreciation of ocular evidence is a hard task. There is no fixed or strait jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there

²² (2023) 13 SCC 365



are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eyewitness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or



heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [*Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, (1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] , *Leela Ram v. State of Haryana* [*Leela Ram v. State of Haryana*, (1999) 9 SCC 525 : 2000 SCC (Cri) 222 : AIR 1999 SC 3717] and *Tahsildar Singh v. State of U.P.* [*Tahsildar Singh v. State of U.P.*, 1959 SCC OnLine SC 17 : AIR 1959 SC 1012]]



26. When the evidence of an injured eyewitness is to be appreciated, the undernoted legal principles enunciated by the courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

26.4. The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that



of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

(emphasis supplied)

8. In the present case, the investigation was initiated on the basis of the statement of the PW-1/complainant, i.e., Bhim, son of the deceased, based on which *ruqqa* (Ex. PW-1/A) was sent for registration of the FIR. The said statement of PW-1/complainant reads thus: -

“That he was residing in the said house bearing no. G-30/340-341, Sector-3, Rohini and he was running a Cyber Cafe in the area of Karol Bagh, as daily he came back to his house after closing his shop at 9:30 pm and at around 10:30 pm, he and his family members went to their respective rooms for sleeping, however, his mother as usual slept in the drawing room adjoining the main room on the cot, whereas his father slept in the room from the right side of the drawing room and he also slept in another room on the ground floor, his other brothers also went to sleep in their respective portions on the upper floors. Before sleeping he had bolted the latch of the main door from inside. Around 1 :30-1 :45 am, in the night, he heard some noise i.e. opening of almirah due to which his sleep got disturbed then he saw that one unknown person was going from his room towards drawing room. He got suspicious that some thief had intruded into the house. He immediately got up and put on the light of the drawing room and caught hold of the said person and also raised alarm. On hearing this, his mother also got up, who was sleeping in the drawing room. She also caught the other person who was present in the drawing room. Thereafter, both of them raised an alarm of chor-chor. They found that the door of main gate was open and one more person was standing outside the gate, who was having a knife in his hand. He came inside saying that they should leave his companions, failing which they will be killed, however, the person whom he had called said that they should be finished then only they would escape.



Thereafter, the other thief also stated so and thereafter the said person, who was standing at the main gate came inside the room and stabbed his mother with a knife blow due to which she started screaming. His father who was sleeping in the adjoining room also got up. All of them started taking care of their mother. Taking the advantage of the situation all the thieves I accused persons ran away. In the said episode, he also received injuries in his left wrist. He also called his brothers from the top floor and also called PCR and removed his mother in a private car in Jaipur Golden Hospital, where his mother was declared brought dead. He could identify all the accused persons, if brought before him. He also gave the descriptions of the said accused persons in the rukka. He also stated that he also came to know that from the pant of his brother hanging on the hook of his room, one brown colour purse was missing alongwith RC, voter card and ATM card and visiting cards and Rs.160/- and while running away the accused persons had also left the iron rod on the sofa of his room.”

9. The case of the prosecution is primarily based on the identification of the present Appellants by the aforesaid PW-1/complainant. The said witness in his testimony before the learned Trial Court has deposed on the lines of his aforesaid statement, Ex. PW-1/A, as recorded by the IO/PW-25. The examination-in-chief of PW-1/complainant recorded before the learned Trial Court is reproduced, hereinbelow, for the sake of completeness: -

“I am residing at the above mentioned address along with my parents and four brothers with family and I am running a Cyber Cafe at Karol Bagh, Delhi. On the night intervening of 23/24.07.12, after taking meal. We left our room for sleeping. I was sleeping in a room attached with the kitchen while my mother Shanti Devi since deceased was sleeping in the drawing room. My father was sleeping in another room at the



ground floor. While my brothers and their family were sleeping on first, second and third floor.

At about 1.45 a.m., I heard the voice of knocking (khat khat) from the side of Almirah lying in my room. I immediately woke up and switch on the light. I found one person who was wearing cap on his head leaving my room and entered in the room where my mother was sleeping. I immediately over powered him and during scuffle the cap was removed from his head. I raised alarm Chor Chor and started grappling with him. Thereafter, my mother also woke up after hearing the noise. I also found another boy found present in the room of my brother. When he tried to come towards me, he was caught hold by my mother Shanti Devi from his waist in the meanwhile the third person who was present at the gate of my house also entered in the house and he was carrying knife in his hand. The person who was caught hold by me and other accused who was caught hold by my mother exhorted "Chaaku Mar Tabhi Hame Chodega. The third person who was wearing white colour T shirt had given a knife blow on the person of my mother Shanti Devi. Blood started oozing out from stabbed injuries. When my mother cried loudly my father Sh. Bishan Lal woke up and came there. After seeing my father there, the third accused who stabbed my mother ran away from there with knife. My father helped my mother while she was in drowsy condition. Due to fear, I also set free accused and thereafter, remaining two accused persons also ran away from there. Accused Rusi @ Surender present in the court today (correctly identified by the witness) is the person who entered my room with whom I grappled and accused Ravinder @ Tunda, present in the court today (correctly identified by the witness) is the same person who was present at the gate and he entered on the asking of other two accused persons and he stabbed my mother with his knife. Accused Rajesh@ Tinku, present in the court today (correctly identified by the witness) is the same person who was caught hold by my mother and he was covering his face with black colour cloth which was removed from his face during scuffle. I immediately called my brothers and also informed police at 100 number from the mobile phone of my father. PCR reached at the spot. By the time we had kept my mother in our Alto car, PCR arrived and they also asked us and accompanied us to Jaipur Golden Hospital where my mother



Shanti Devi declared as brought dead. Later on from my brother Dilip I came to know that his purse containing ATM cards, purse and RC of his motorcycle and other articles and cash was found missing from the pocket of his pant lying in my room; IO recorded my statement in this case and the same is Ex.PW1/A bearing my signatures at point A. I had told the police the description including the age of those persons and Iso told them that I can identify them if shown to me. After the arrest of accused persons, I was informed by the IO that I have to identify the accused persons in judicial TIP. I accompanied the IO but I came to know that all the accused persons refused to join the TIP proceedings. IO prepared the site plan of place of occurrence. IO called the crime team, photographer and dog squad at the spot who inspected the spot. IO lifted one iron rod which accused person had thrown while running from the spot and same were sealed by the IO in the pulanda with the seal of VJ and was taken into possession vide seizure memo Ex.PW1/B bearing my signatures at point A. IO also lifted one handkerchief of black colour on which human skull was printed and same was sealed in the pulanda with the seal of VJ and was taken into possession vide memo Ex.PW1/C which bears my signatures at point A. IO also lifted the blood from the spot and the same were kept in plastic jar and was sealed in a pulanda with the seal of VJ and was taken into possession vide memo Ex.PW1/D which bears my signatures at point A. IO also lifted blood stains from the main gate of my house, from the door of the house and the same were kept in separate envelopes and were sealed with the seal of VJ and these samples were taken into possession vide memo Ex. PW1/E bearing my signatures at point A. IO also lifted earth control without blood from the floor and same was kept in plastic jar and sealed in the pulanda with the help of doctor tape with the seal of VJ and was taken into possession vide memo Ex.PW1/F bearing my signatures at point A. IO also lifted the blood stained earth control (floor pieces) from the spot and same were sealed in the jar with the seal of VJ and was taken into possession vide memo Ex.PW1/G bearing my signatures at point A. IO recorded my supplementary statement in this regard on 24.07.12.

I can identify the case property, if shown to me.



At this stage, MHC(M) has produced one sealed pullanda sealed with the seal of FSL. Same is opened and it found to contain an iron rod about 42 c.m. in length (screw driver type) and shown to the witness who correctly identified the same rod which was lying at the spot and the same was left at the spot by accused persons while running from the spot. Rod is Ex.P-1.

MHC(M) has produced another sealed pullanda sealed with the seal of FSL. Same is opened and it found to contain black and white colour printed handkerchief and shown to the witness who correctly identified the same being the said handkerchief which accused Rajesh was wearing. Same is Ex.P-2.”

10. From the aforesaid deposition, the material facts which have emerged are: -

(a) That he (PW-1) had switched on the light during the course of the incident and that there was enough light at the crime spot on the said date and time of the incident in order to identify the Appellants;

(b) PW-1 had grappled one of the Appellants and during the same, he had also received minor injuries which were, subsequently, corroborated by the MLC of PW-1 (Ex.PW-5/A);

(c) This witness clearly identifies the person, he grappled and overpowered, i.e., Rusy @ Surrender, and thus, he had sufficient opportunity to see him from very close range. Even, the description of the assailants/accused persons was mentioned



in the *rukka* (Ex. PW-1/A). Although, it was not specific, the general description was there;

(d) He identifies Rajesh @ Tinku who was caught hold by his mother;

(e) He identifies Ravinder @ Tunda who entered on the asking of other two accused person and stabbed his mother with his knife;

11. The aforesaid testimony of PW-1/complainant has been duly corroborated by the testimony of PW-9, his father, who in his statement before the learned Trial Court has stated as under: -

“I am residing in the above mentioned house with my son Bhim and my wife (since deceased) on the ground floor of my house. My other son namely Prem was residing at the first floor of the house, my son Rajender is residing on the second floor and my sons namely Mukesh and Dalip are residing on the third floor of the said house. My son Dalip and his wife used to use my kitchen for preparation of food at ground floor. On the night intervening of 23/24.07.12 after taking dinner, myself, my wife and my son Bhim had slept on the ground floor in separate rooms. My wife was, sleeping in the lobby at ground floor. At about 1.30/1.45-a.m. when I was sleeping I heard the cries of Bhim I thought Bhim must be making noise in dream. Thereafter, I heard the cries of my wife who was saying "Chor Chor Maar Diya Maar Diya". The light in the lobby was on and I reached in the lobby in the same clothes which I was wearing. I found accused Rusy @ Surrender, present in the court today (witness has correctly pointed out towards accused Rusy @ Surrender) grappling with my son Bhim and he was having shaved head. I found two more boys outside the door of lobby of my house and those two boys are



present in the court today. Witness has correctly pointed out towards accused Rajesh and Ravinder, who were present outside the door. I found blood oozing out from the injuries of my wife and she was standing at that time. I also found blood lying on the floor in the lobby. I immediately supported my wife. I asked my son Shim to inform the police immediately. In the meantime, my elder son Prem Kumar also reached at the spot. However, before arrival of Prem Kumar all the three accused persons mentioned above escaped from the spot. I found the kundlee of door of my house open and gate was also found open. When we raised the alarm my other sons also came down on the lobby. Some of our neighbours also reached at the spot. Thereafter, I removed my wife Shanti Devi to Jaipur Golden Hospital where doctor after examining her declared her brought dead. While helping 'my wife and during the process of removing her to hospital from the spot my clothes got also smeared with blood and during the course of investigation, I handed over my baniyan and pyjama to the police. My said clothes were sealed with by the 10 with the seal and same were taken into possession vide seizure memo Ex.PW9/A which bears my signatures at point A. I had identified the dead body of my wife in the Mortuary and IO recorded my statement in this regard and the same is Ex.PW9/S which bears my signatures at point A. After the post mortem, the dead body of my deceased wife was handed over to me and carbon copy of receipt is Ex. PW9/C which bears my Signatures at point A. After the incident, I came to know that accused persons had taken away one purse containing some documents and cash amount from the pocket of the pant of my son Dalip which was lying on the hanger in the room. IO recorded my statement in this regard.

On 09.08.12 I had come to Rohini Court along with my son Dalip regarding the identification of purse of my son and on that day I identified all the above mentioned three accused persons who were brought to court in police custody and after pointing out correctly towards accused persons, I told the 10 Inspector V.N. Jha who was also present there stating that these are the same persons who were seen by me at the time of incident and also told about their roles. 10 recorded my statement in this regard (objected to). I can identify my clothes if shown to me.



At this stage, MHC(M), PS South Rohini has produced one parcel no. 9 sealed with the seal of FSL Delhi. Same is opened and it found to contain pyjama and baniyan blood stained and shown to the witness who correctly identifies the same pyjama and baniyan which he was wearing at the time of incident. Pyjama is EX.P-4 and Baniyan is Ex.P-5.

I can also identify the clothes of my wife, if shown to me. At this stage, MHC(M), PS South Rohini has produced one parcel no. 8 sealed with the seal of FSL Delhi. Same is opened and it found to contain one petti cot and blouse and shown to the witness who correctly identifies the same peticot and blouse which his wife Shanti Devi (since deceased) was wearing at the time of incident. Peticot is Ex.P-6 and Blouse is Ex.P-7.”

12. This witness also corroborates the fact that Rusy @ Surender was grappling with his son, PW-1, and the other two boys, who were present outside the lobby, were also identified as accused, Rajesh @ Tinku and Ravinder @ Tunda.

13. It is matter of record that IO/PW-25 had clearly deposed that, after the medical examination of the Appellants, all of them were produced in the muffled face and on the very next date of their production, i.e., 28.07.2012, he had moved an application for conducting TIP. It is further pertinent to note that all the Appellants had refused to go TIP. A perusal of the TIP proceedings dated 30.07.2012 (Ex. PXI to Ex. PX-IV) shows that despite the warning given by the learned Metropolitan Magistrate, the Appellants did not opt for TIP. It is also pertinent to note that in the aforesaid proceedings, the Appellants have given the following statements: -



“I do not want to join the TIP proceedings, because my photographs were taken inside the police station and the same are shown to the witnesses.”

Rajesh @ Tinku

“I do not want to join the TIP proceedings because my photographs were taken inside the police station and the same are shown to the witnesses.”

Ravinder @ Tunda

“I do not want to join the TIP proceedings and there is no reason for declining to participate in TIP.”

Rusy @ Surender

Perusal of the aforesaid statements of the Appellants show that the Appellants, Rajesh @ Tinku and Ravinder @ Tunda, had stated the reasons for refusing to undergo TIP proceedings. However, learned Counsels appearing on behalf of the Appellants have vehemently argued that the latter were shown to the witnesses on 09.08.2012, (after the TIP proceedings on 30.07.2012) while they were in remand in another case bearing FIR No. 153/12, registered at PS South Rohini, and that since they were not produced in muffled face in that case, the dock identification by the prosecution witnesses becomes doubtful in the present case.

14. Perusal of the Trial Court Record would reflect that on 09.08.2012, the TIP of the purse was conducted (Ex. PW-2/A) wherein, PW-1/complainant, and Bishan Lal, PW-9, were present and at that particular point of time the Appellants were being produced in FIR No. 153/2012, and thus, they were identified by the said witnesses. IO/PW-25, Inspector V.N. Jha, in his examination-in-chief,



has stated that he subsequently recorded the statement of the witnesses under Section 161 of the CrPC. It is, thus, noted that the request for conducting TIP of the Appellants by IO/PW-25 was made on 30.07.2012 and the same was refused on the same day, i.e., even before the alleged identification of the Appellants in the Rohini Courts on 09.08.2012. Nothing has been shown on record on behalf of the Appellants that any time prior to 30.07.2012, these Appellants were shown to the said prosecution witnesses. Thus, refusal of TIP would lead to drawing of adverse inference. It is further pertinent to note that TIP of the purse was conducted on 09.08.2012 as the seizure memo (Ex. PW-17/A) of the purse in FIR No. 153/2012 was handed over to the IO/PW-25 on 01.08.2012.

15. The next contention raised on behalf of the learned Counsels appearing on behalf of the Appellants was that the latter were in police custody in the FIR No. 153/2012 on 09.08.2012 and in judicial custody in the present FIR. It was further contended that the Appellants were shown to the said witnesses in the police station on 09.08.2012 and the same could not have been done as no prior permission to conduct investigation was taken from the concerned Court in the present case FIR in which they were in judicial custody. A perusal of the record would reflect that in their statements recorded on 09.08.2012, the aforesaid witnesses have clearly stated that they have identified the Appellants in the Court while they had gone for TIP proceedings of the purse. The said portions of their statements, as highlighted by the learned counsel for the Appellants, recorded under



Section 161 of the CrPC with regard to the identification of the Appellants at P.S. South Rohini were not confronted to these witnesses while they were examined before the learned Trial Court. Both the aforesaid witnesses have clearly stated that they had identified the Appellants in Rohini Court when they had come for TIP of their purse. In any case, as has been pointed out hereinabove, that the witnesses, PW-1/complainant and PW-9, had ample opportunity and time to identify the Appellants during the incident. They had no reason to falsely testify against the present Appellants. The aforesaid witnesses have been thoroughly cross-examined and no material contradiction has been elicited from their testimonies recorded before the learned Trial Court. It is further pertinent to note that the presence of these witnesses cannot be doubted. The evidence of injured eye witness has greater evidentiary value and no compelling reason has been shown to discard testimony of PW-1/complainant.

16. The Hon'ble Supreme Court in **Abdul Sayeed v. State of M.P.**²³ has observed and held as under: -

“Injured witness

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC

²³ (2010) 10 SCC 259



881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29)

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v. State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 :



(2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

17. Reliance has been placed on the aforesaid precedents by the learned counsel for the Appellant, Rusy, which are distinguishable on the grounds: -

a) In **Badshah (supra)**, the Appellant therein was kept in an unmuffled face in the police station and was taken to the Court premises in the same condition and the said assertion was corroborated by the statement of Inspector K.S. Rawat who had stated that the Appellant was kept unmuffled face in the police station. However, in the present case, it has come on record that the Appellants in the present case were produced before the concerned Court for conducting TIP with muffled faces.

b) In **Tain Singh (supra)**, the Appellant therein was allegedly produced in the concerned Court in unmuffled face, however, in the present case, perusal of the TIP proceedings



show that the Appellants herein were produced in the concerned Court with muffled faces.

c) In **Parmod Kumar** (*supra*), the Appellant therein was able to show on the basis of the preponderance of probabilities that he was shown to the witnesses prior to the TIP proceedings and had given cogent reasons for refusing to undergo TIP proceedings. However, in the present case, the Appellants herein had not been able to point anything from the records whereby, it can be cogently established that they were shown to the concerned prosecution witnesses prior to their TIP proceedings.

18. The prosecution has further relied on the recoveries affected from the present Appellants during the course of the investigation. Relevant recoveries made from the respective Appellants are as under:

a) On the personal search of Rusy, from the dub of his pants one iron rod (house breaking tool) which is bended from one side was recovered (Ex. PW-11/A). Further two ATM cards were also recovered from his pants, out of which one ATM card was bearing the name of Dilip Kumar and other was of SBI, Patiala (Ex. PW-11/B). From his right pocket, one silver coin was recovered (Ex. PW-11/C), which, as per this Appellant, he had stolen from Sector 3, two days ago. Thereafter, one blood-



stained T-shirt and one denim pant *vide* seizure memo Ex. PW-8/F were also recovered at the instance of this Appellant.

b) On the personal search of Tinku, one *buttondar* knife of 32 cm of length (K-1) was recovered *vide* seizure memo Ex. PW-11/E from the dub of his pants and from the left pocket one silver coin was recovered (Ex. PW-11/F), which, as per this Appellant he had looted from one old lady after wounding her. One blood-stained T-shirt and light blue colour pant were also recovered *vide* seizure memo Ex. PW-8/E.

c) On personal search of Tunda, from the right dub of his pant, one *buttondar* knife of 25 cm length (K-2) was recovered *vide* seizure memo Ex. PW-11/H and from his left pocket, one silver coin was recovered (Ex. PW-11/I), which also, as per this Appellant, he had looted few days ago. One blood-stained jeans and one white T-shirt were also recovered *vide* seizure memo Ex. PW-8/F.

19. The prosecution has further relied upon the FSL examination and the serological analysis (Ex. PW-22/A) of the aforesaid recoveries affected in the present case. As per the said report, on the blood-stained clothes of Appellants, Rajesh @ Tinku (Exhibit 14a & 14b) and Rusy @ Surender (Exhibit 15a & 15b), presence of blood of the deceased ('A' Group) was detected. It was argued that this cogently



proves that the Appellants were the perpetrators of the crime in the present case.

20. Besides the aforesaid recoveries which have been affected from the present Appellants in the present case FIR, a purse belonging to PW-2, Dilip Kumar, was also recovered from the crime spot of the other FIR No. 153/12 and the same was seized in the said FIR. Statement of the IO in the said case was also recorded in this regard and thereafter, TIP of the said purse (Ex. PW-2/A) was conducted, wherein, PW-2, Dilip Kumar, had identified that it is his purse which the present Appellants had taken with them during the course of the incident in the present case at his home. As per the initial statement of PW-1/complainant (Ex. PW-1/A), the said purse contained one RC, one voter ID card, ATM card and other documents including visiting cards.

21. As per the case of the prosecution, the aforesaid recoveries in the present case shows that the present Appellants were the perpetrators of the incident in the present case and were present at the relevant point in time in the house of PW-1/complainant. The recovery of the ATM card belonging to PW-2 from one of the Appellants, immediately after the incident, undoubtedly points towards their complicity in the present case. It is further pointed out that the present Appellants have not been able to provide any plausible explanation regarding the recoveries affected from them in their statements under Section 313 of the CrPC.



22. It is further the case of the prosecution that the kind of knives which have been recovered from the Appellants are not the ones which are ordinarily used for domestic purposes in homes, however, the same were kept/carried by Appellants for purposes of commission of house-breaking. It has also been argued that, *vide* the subsequent opinion (Ex. PW-14/B) obtained regarding the knife (K-2) of 25 cm length recovered from the Appellant-Ravinder @ Tunda, it has been opined that the nature of stab wounds and injuries inflicted in person on the deceased, as mentioned in the post mortem report, could have been caused by such knife which was recovered from the said Appellant.

23. The recovery of the purse in the other FIR has been sought to be proved as a chance recovery and it has been contended that there was no opportunity for the investigating agency to plot the same in order to falsely implicate the Appellants. It is also pointed out that the statement of the IO/PW-17 in the other case FIR has also been recorded in this regard and subsequent identification of the said purse in the TIP proceedings by PW-2, lends support to the case of the prosecution and attaches legitimacy to the said recovery. Further, the recovery of blood-stained clothes has been made in pursuance of the disclosure statements made by the Appellants and it has not been their case that the said clothes do not belong to either of them.



24. *Per contra*, learned counsel appearing on behalf of the Appellants had argued that the present appellants have falsely been implicated in the present FIR as well as the other FIR bearing No. 153/2012, under Sections 302/460/34 of the IPC and Section 25 of the Arms Act, registered at PS South Rohini, wherein, they also stand convicted. It is their submission that the Appellants were falsely implicated on account of the fact that there were two incidents on the same night and the police were under tremendous pressure to solve the case.

25. Attention of this Court was drawn to cross-examination of IO/PW-25, Insp. V.N. Jha, IO of the present case, PW-23, SI Imtiyaz Alam, and PW-17, Insp. Anil Kumar, IO in the other case FIR, to demonstrate that the concerned police station was under tremendous pressure and both the IOs, i.e., of the present FIR and as well as the other FIR, were in continuous touch with each other. It is submitted that since the Appellants were allegedly bad elements of the area, they were easy targets. It is submitted that the case of the prosecution is that the Appellants were arrested on 25.07.2012 at 08:30 PM from the park of H-32, Sector-3, Rohini, i.e., the day after the incident in the present case had occurred. The said Appellants were apprehended on the basis of an information given by PW-11, Head Constable Raj Kumar, who allegedly on the basis of the description identified the Appellants sitting in the park, which eventually led to their arrest. It is submitted that, in cross-examination PW-11, had admitted the fact that he was not the beat constable of the area from where the Appellants



were apprehended and he was only patrolling on foot when he saw the Appellants. In view of the above and in absence of any public witness, the arrest of the Appellants become highly doubtful. In absence of any facial description given by the complainant/PW-1, the possibility of PW-11, HC Raj Kumar, identifying the Appellants is highly improbable, and therefore, it was argued that the entire story of the Appellants' apprehension has been concocted. It was vehemently argued on behalf of the Appellants that it is unlikely that after having committed two consecutive murders in a single night, the Appellants would sit together in a park. It is also argued that the recovery as alleged by the prosecution are improbable and do not connect the Appellants with the commission of the offence. It is submitted that even the recovery memos are in different handwriting.

26. Following reasons have been highlighted on behalf of the Appellants for doubting the recoveries: -

Recoveries Affected from Rusy @ Surender

a) Two ATM cards which were recovered from the right back pocket of the Appellant, Rusy, allegedly belonging to PW-2, Dilip Kumar, were never identified by PW-2/Dilip Kumar during the course of trial. It was also argued that, as per case of the prosecution, these ATM cards were in PW-2's purse, which was recovered from the crime spot of the FIR No. 153/2012 but the ATM cards remained with this Appellant. The same is completely improbable that he would



retain the ATM cards and throw away the purse as ATM cards cannot be used without a PIN.

b) Silver coins were also recovered from the back pocket of Appellant, Rusy, which have not been identified by any of the witnesses either in the present FIR or in other case, i.e., FIR No. 153/2012. It is the case of the prosecution that the Appellant, Rusy, in his disclosure statement, had stated that these coins were looted by him 2-3 days ago, however, no evidence has been led to establish the same. Even the purse which was recovered from the spot of the other FIR is a common item which is easily available in the market. The said purse is alleged to have contained a driving license of one namely, Prem Chand (brother of PW-1 and PW-2), however, no explanation was put forth as to why Prem's driving license was in PW-2/Dilip's purse.

c) As per the expert opinion, the iron rod (house-breaking tool) recovered from this Appellant has not been used to enter the house of PW-1/complainant forcibly (Ex. PW-21/B).

Recoveries Affected from Ravinder @ Tunda

a) Regarding knife (K-2) (Exhibit 12; Ex. P-14) of 25 cm length, in relation to which subsequent opinion from expert (Ex. PW-14/B) was also sought, it is submitted that as per the FSL examination and serological report, blood group of the deceased, i.e., 'A' Group, was not detected on the said knife.



b) It is further submitted that even on the blood-stained clothes of this Appellant, no blood group of the deceased was detected.

c) The said silver coin recovered from the Appellant has been disputed on the ground that the same has not been identified by any of the witnesses in the present case as well as the other case FIR and also on account of the fact that no document was placed on record from where it could be inferred that the said coin belong to the deceased's family.

Recoveries Affected from Rajesh @ Tinku

a) Regarding knife (K-1) (Exhibit 11: Ex. P-13) of 32 cm length, it is submitted that as per the FSL examination and serological report, no blood at all was detected on the said knife.

b) Silver coin recovered from this Appellant has also been disputed on the ground of non-identification during the course of trial.

c) With respect to the recovery of the clothes from this Appellant, it is submitted that said clothes were different from that of the description given by the PW-1/complainant in his initial statement. Thus, the detection of the blood group of the deceased on the said clothes is of no consequence.

27. Another aspect which was vehemently argued by learned



Counsels for the Appellants was that there is no evidence of house breaking or lurking house trespass as PW-21, who was Assistant Director of FSL, Rohini, and examined the spot and had prepared a report Ex.PW-21/B, in which he gave his opinion that, “*Iron rod with flat tip (Exhibit-1), door lock (Exhibit-2) and iron rod with bended tip (Exhibit-3) were examined physically, under microscope and using VISPEC. No such tool marks which is indicative of use of tool Exhibit-1 & Exhibit-3 was observed on door lock Exhibit-2*”. It is further submitted that in view of the above, house breaking has not been proved on record, and therefore, the conviction of the Appellants for the offence punishable under Section 460 of the IPC is not made out, and therefore, cannot be sustained.

28. It was argued on behalf of the Appellants, Rusy and Tinku, that even if their presence is established at the spot, the stabbing as per the prosecution was done by the Appellant, Ravindra @ Tunda, and therefore, they cannot be convicted with the aid of Section 34 of the IPC. It was further argued that the allegations that the exhortation made by these two Appellants to Ravindra @ Tunda “*Chaaku Mar Tabhi Hame Chodega*” would not be sufficient to establish that all three of them shared common intention for causing the death of the deceased. It was further argued that no DNA test was conducted with regard to the blood-stained clothes as well as the knives recovered from the Appellants in the present case. It was submitted that the blood group testing is not conclusive as there are common blood types. Similarly, the fingerprint examination of neither the iron rod



which was recovered from the spot nor of the knives recovered from the Appellants was done.

29. So far as the arrest of the Appellants are concerned, this Court has gone through the cross-examination of PW-11 as well as IO/PW-25. These witnesses have stood the test of the cross-examination. The submission of the learned Counsels for the Appellants that it is highly unlikely that PW-11, who was not the beat constable of the area, identified the Appellants without even having facial description being given by the complainant/PW-1 in his initial statement (Ex. PW-1/A) is concerned, it is noted that, admittedly, two incidents of murder and house breaking had taken place within the territorial jurisdiction of the same police station in the same night. In these circumstances, the entire staff of said police station and even the neighbouring police stations, would be on high alert and presence of PW-11 around that area cannot be taken as a circumstance to show that the entire story is concocted.

30. Insofar as the identification of the present Appellants are concerned, it is noted that the general description of the Appellants had been given by the complainant/PW-1 in his initial statement (Ex. PW-1/A) to the police. Even otherwise, the description of the Appellants, which to an extent, would have been useful for PW-11 to raise suspicion on the present Appellants was the description in the said statement. In any case, identification of the Appellants has been



proved through the testimony of the complainant/PW-1 and PW-9 as has been discussed hereinbefore.

31. It is pertinent to note that in the statement given by complainant/PW-1, based on which the FIR was registered, it is clearly mentioned that, after the Appellants fled from the crime spot, the purse of his brother, PW-2, Dilip, containing RC, Voter Card and ATM card and visiting cards was found missing. The relevant portion of the said statement (Ex. PW-1/A) reads thus: -

“He also stated that he also came to know that from the part of his brother hanging on the hook of his room, one brown colour purse was missing alongwith RC, voter card and ATM card and visiting cards and Rs. 160/- and while running away the accused persons had also left the iron rod on the sofa of his room”

32. As per the FIR (Ex. PW-13/B), the incident in the present case was stated to have been reported at around 01:30 AM to 01:45 AM on 25.07.2012, and the recovery of the ATM card from Appellant, Rusy, was on the night of 25.07.2012. Therefore, it cannot be said that the ATM cards were taken from the house of the complainant/PW-1 and planted on the Appellants after their arrest. Neither can it be presumed that the aforesaid fact was mentioned by the complainant/PW-1 in his statement with the intention that such a thing would be instrumental in planting and falsely implicating some body in the present FIR. Regarding the contention on behalf of the Appellants that the recovery memos were in different handwriting, it is pertinent to note that the recoveries in the present case were affected in three phases, i.e., the recovery of the ATM cards was from the personal search of the



Appellant, Rusy, at the time of his arrest; recovery of purse of PW-2 was from the crime spot of the other case FIR No. 153/12; recovery of the blood-stained clothes was pursuant to the disclosure statement of the Appellants from the bushes near the BSA Hospital. Further, this contention that the recovery memos were in different handwriting has not been put to IO/PW-25 during his cross-examination to elicit out any explanation regarding the same.

33. Insofar as conviction for the offence punishable under Section 460 of the IPC is concerned, from the testimonies of complainant/PW-1 and PW-9, it is proved that the Appellants did enter the house belonging to the said witnesses with intent to commit an offence. The testimony of PW-21 and his report (Ex.PW-21/B) would not be of any assistance to the Appellants as they have been held guilty for commission of offence punishable under Section 460 of the IPC. Section 445 of the IPC which defines house breaking, reads as under:-

“445. House-breaking.—A person is said to commit “house-breaking” who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he



has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.



(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.”

(emphasis supplied)

34. It is pertinent to note that in the seizure memo of the lock (Interlock), Ex. PW-23/A, it has been mentioned that the interlock of the house was free.

35. Section 446 of the IPC further defines house breaking by night, which reads as under: -

“446. House-breaking by night.—Whoever commits house-breaking after sunset and before sunrise, is said to commit “house-breaking by night”.

36. In the present case, the Appellants entered the house of PW-1/complainant, which would amount to house trespass, by opening the lock of the main door at 01:45 AM on 25.07.2012, which is after sunset and before sunrise, thereby committing house-breaking by night in order to commit an offence, and in furtherance of the same



had voluntarily caused the death of the deceased, and thus, leaving no doubt that the Appellants have committed offence punishable under Section 460 of the IPC which reads as under: -

“460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.—If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

37. In these circumstances, it is immaterial whether the iron rod recovered from the spot or from the Appellant, Rusy, was used in entering the house or not.

38. Presence of blood group ‘A’ of the deceased on the clothes of both the Appellants, Rajesh (Exhibit 14a & 14b) and Rusy (Exhibit 15a & 15b), further corroborates the case of the prosecution with respect to the guilt of the present Appellants.

39. So far as the contention of the Appellants, Rusy and Tinku, with regard to their conviction with the aid of Section 34 of the IPC is concerned, it is pertinent to note that, the manner in which the offence was committed clearly demonstrates the common intention on part of all three of them. PW-1/complainant had categorically stated that he had grappled Rusy and Tinku was held by his mother and both of



them, when they were unable to escape, sought help and exhorted Tunda to stab the deceased. It has been categorically stated by PW-1/complainant that only after the stabbing of his mother, he let go of Rusy, thereafter all of them managed to run out of the room.

40. It is a settled principle of law that to attract Section 34 of the IPC, a common intention has to be gathered from the facts and circumstances of the case. It is also a settled principle of law that the common intention need not be the result of a premeditated plan and can be formed at the spur of the moment at the time of the commission of the offence. In the present case, it is clear that the Appellants with a premeditated plan had committed house-breaking at night, while two of them were armed with knives, as pointed out hereinabove. It was only when the Appellants, Rusy @ Surender and Rajesh @ Tinku, sought help from the Appellant, Ravinder @ Tunda, used the knife for stabbing the deceased.

41. As per PW-14, Dr. Vijay Dhankar, on examination of the deceased, the following injuries were found in person on the corpse of the deceased which were also mentioned in the postmortem report (Ex. PW-14/A). The relevant portion of his testimony reads thus: -

“External injuries:- Incised stab wound 3.7 cm x 1 cm x cavity deep present over the back of left side of chest 8 cm from the midline, 20 cm from the left shoulder. The wound was horizontally placed with clean cut margins and one angle acute and another comparatively obtuse. Cut intercostal muscles and rib was visible through the wound. Fluid blood was coming out of the wound.



Internal Injuries in chest - On reflection of chest wall, the external injury was found to be upto the pleural cavity. Extravasation of blood was present surrounding the track of the injury.

Collar bone, sternum and Ribs showed no fractures. The intercostal muscles were cut between 9" and 10" rib beneath the external injury with nicks on the adjoining ribs. Pleural cavities contained about 300 cc of fluid and clotted blood.

Left lung was lacerated 3 cm x 1 cm on the posterior surface of the lower lobe. The wound was 4.5 cm deep. Both lungs were collapsed and pale. All internal organs were pale.”

Based on the aforesaid injuries, following opinion was rendered by him: -

“Opinion :

After postmortem, opined that death was due to hemorrhagic shock consequent to penetrating injury to the chest caused via injury no.1. All injuries were antemortem, fresh at the time of death and injury no.1 was sufficient to cause death in the ordinary course of nature.

My detailed postmortem report running into seven pages including the diagram, is **Ex. PW-14/A** bearing my signatures at point A on each page.”

On a subsequent opinion sought regarding a knife recovered from the Appellant, Tunda, PW-14 had given an opinion *vide* a report Ex.PW-14/B. The relevant part of his testimony regarding the same reads thus: -

“On 27.08.2012, I examined a weapon i.e. knife, produced before me regarding the injuries caused to the deceased. After



examining the weapon, I opined that the injuries mentioned in the PM report could be caused by the weapon examined. My detailed report including the diagram in this regard is **Ex. PW-14/B** bearing my signatures at point A.”

42. In view of the above, this Court is of the considered opinion that the Appellants, Ravinder @ Tunda, Rusy @ Surender and Rajesh @ Tinku, had clearly committed an offence punishable under Section 302 read with Section 34 of the IPC and therefore, conviction for the said offences is upheld.

43. *Vide* the impugned order on sentence, learned ASJ has directed that the sentence awarded to the Appellants for the offences punishable under Section 302 read with Section 34 of the IPC shall run after the expiry of the sentence of rigorous imprisonment of 10 years each awarded to the Appellants for the offence punishable under Section 460 of the IPC. The relevant portion of the order on sentence reads as under: -

“8. Consequently, in the facts and circumstances, the interest of the justice shall be met, if all the convicts Rusy @ Surender, Rajesh @ Tinku and Ravinder.@ Tunda are sentenced to undergo rigorous imprisonment of 10 (Ten) years each and are also sentenced to pay a fine of Rs. 5,000/- each u/S. 460 IPC, in default SI for 6 months each. They are all further sentenced to undergo rigorous imprisonment for life and they are also sentenced to pay a fine of Rs. 10,000/- each u/S. 302/34 IPC, in default SI for one year each. The sentence(s) u/S. 302/34 IPC shall run after the expiration of the sentence of rigorous imprisonment awarded u/S. 460 IPC.”

44. Learned Trial Court in the impugned order on sentence has duly noted that the present Appellants belong to poor families and were



sole bread earners in their families. Thus, this Court is of the considered opinion that the sentences awarded to the Appellants shall run concurrently and not consecutively.

45. The present appeals *qua* the impugned judgment of conviction dated 24.04.2018 is dismissed and the same is upheld. Insofar as the impugned order on sentence dated 03.05.2018 is concerned, the same is modified to the aforesaid extent that the sentences shall run concurrently.

46. Appeals stand disposed of accordingly along with all pending applications, if any.

47. Copy of this judgment be sent to the concerned Jail Superintendent for necessary information and compliance.

48. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

PRATHIBA M. SINGH, J.

FEBRUARY 6, 2025/nk/bsr