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

Reserved on: 01.09.2026
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\# **CNR No. DLHC010063602003**

\+ CRL A. 239/2003

VINOD & ANR. .....Appellants

Through: Mr. Raman Sahney & Mr. Sagar Singh, Advs.

versus

THE STATE .....Respondent

Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present appeal has been filed by the appellants against the Judgment of Conviction dated 24th March, 2003 and the Order on Sentence dated 25th March, 2003 passed by the learned Additional Sessions Judge, Delhi ["**Trial Court**"], in Sessions Case No. 101/2001, arising out of FIR No. 293/1986 registered under Sections 302/34 of the Indian Penal Code, 1860 ["**IPC**"] at Police Station Mangolpuri.

Brief Facts

2. The prosecution's case, as per the chargesheet, is that on 03.11.1986, at around 11:30 PM, information was received at Police Station Mangolpuri from PW-12/Duty Constable Sultan Singh at

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RML Hospital that one Krishan Lal S/o Sohan Lal, R/o R-575 Mangolpuri was brought to the hospital by his mother Darshna with stab injuries sustained during a fight. He was declared 'brought dead' by the hospital doctor. Such information was recorded vide DD No. 27-A (Mark X). PW-26/Insp. Manohar Singh, PW-23/Head Ct. Ram Charan, Ct. Jasbir Singh and PW-18/Ct. Naresh Kumar were entrusted the investigation.

3. PW-26/Insp. Manohar Singh, along with PW-23/Head Ct. Ram Charan and Ct. Jasbir Singh, went to RML Hospital and obtained the medico-legal report ('MLC') of the deceased Krishan Lal (Ex. PW-24/A). No eye-witness was found at the hospital.

4. The Investigating Officer ('IO'), that is, PW-26/Insp. Manohar, along with police officials, proceeded to the spot, that is, House No. R-575-76, Mangolpuri, where they met the sister of the deceased, PW-1/Smt. Kunti Devi. Her statement was thereafter recorded (Ex. PW 1/A). In her statement, PW-1/Smt. Kunti Devi stated that on 03.11.1986, she along with her husband had come to her parent's house, that is, at House No. R-575-76, Mangolpuri, to celebrate *bhaiya dooj*. Her sister Asha and her husband Ashwani had also come there to celebrate *bhaiya dooj*. In the evening, when her other sister PW-22/Mohani was cooking vegetables near the door of the house in the *gali*, the neighbour co-accused Pushpa's dog came and licked the raw meat which was lying there. Seeing this, her brother-in-law Ashwani picked up a broom and beat the dog. PW-1/Smt. Kunti Devi's neighbour and the dog's owner/co-accused Smt. Pushpa, who was sitting on a cot nearby, objected to the same and asked Ashwani

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as to why he had beaten her dog. An altercation took place between the two and Pushpa slapped Ashwani and hurled abuses at him. Ashwani was counselled to come inside the house.

5. It is further the prosecution's case that after a while, Ramesh @ Meshi (friend of Pushpa's brother) and Vinod @ Toni (nephew of Pushpa) came to their house through the roof. They were armed with *dandas* and wanted to beat Ashwani. PW-1/Smt. Kunti Devi and her sister PW-22/Mohani locked Ashwani in a room of the house and pushed out Ramesh @ Meshi and Vinod @ Toni, but while leaving, they broke the window panes of the house with *danda*. Pushpa and her sisters hurled abuses at them too.

6. At around 8 PM, Krishan Lal, brother of PW-1/Smt. Kunti Devi returned home after work and was informed about the incident. At that time, Krishan's friend, Devinder, and the brother-in-law of PW-1/Smt. Kunti Devi, PW-4/Gopal, were also present at the house. Upon getting to know of the incident, Krishan Lal got enraged but was asked not to lose his temper. At around 9:30 PM, PW-4/Gopal and Ashwani along with their wives Sudesh and Asha left for their homes.

7. At around 9:45 PM, Krishan Lal with his wife, children and friend Devinder were leaving for their house. Seeing Krishan Lal leaving, co-accused Pushpa alerted the relatives present at her house and told them to catch hold of Krishan Lal. Thereafter, co-accused Sohan Lal (brother-in-law of Pushpa) and Vinod @ Toni caught hold of Krishan Lal on the road. Sohan Lal caught the left arm of Krishan Lal while appellant Vinod @ Toni caught his right arm. Pushpa, along with her brother Shyam and Ramesh @ Meshi (friend of Pushpa's

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brother), came out of the house armed with knives. Pushpa exhorted and said "*dekhte kya ho, khatam kardo*". On hearing this, appellant Shyam gave a knife blow on the stomach of Krishan Lal and Ramesh @ Meshi gave a knife blow on the left buttock/thigh of deceased Krishan Lal. PW-1/Smt. Kunti Devi and her family members tried to intervene and save Krishan Lal, but they were stopped by Tirlok Chand @ Toka and Darshan Lal @ Lala. Krishan Lal fell on the ground. PW-1/Smt. Kunti Devi and her family members raised the alarm to call the police, upon which the assailants ran away towards Railway Line. The injured Krishan Lal was taken to the hospital by his mother Darshna/PW-5, her brother Deepak/PW-21, and Krishan Lal's wife Narmada/PW-2, but he expired on the way to the hospital.

8. On the statement of PW-1/Smt. Kunti Devi, *rukka* (Ex. PW26/A) was prepared by the IO, on the basis of which FIR No. 293/1986 (Ex. PW9/A) was registered under Sections 452/302/34 of the IPC at Police Station Mangolpuri.

9. During the course of investigation, the IO prepared the site plan (Ex. PW 26/B) of the place of occurrence. Crime team was called and photographs of spot were taken. Exhibits were lifted from the place of crime. Inquest documents (Ex. PW26/C) were prepared and body was sent to mortuary for post-mortem.

10. Accused Pushpa was arrested on 05th November, 1986. On 12th November, 1986, accused Shyam Lal, Vinod @ Toni, Tirlok Chand @ Toka, Sohan Lal, and Darshan Lal @ Lala were arrested. Their disclosure statements were recorded. It was discovered that accused Ramesh @ Meshi, who had run away from home after the incident,

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died in a road accident in Gujarat.

11. Upon interrogation, the appellants and the other co-accused gave disclosure statements. The appellant Vinod @ Toni gave disclosure statement (Ex. PW 23/G) and got recovered a dagger (Ex. P1) in a cover (Ex. P2) lying below a wooden plank from the roof of his house. The sketch of the dagger was prepared (Ex. PW 23/K). The same was then kept in a parcel which was sealed with the seal of MS and seized *vide* memo (Ex. PW 23/A). The appellant Shyam Lal also made disclosure statement (Ex. PW 23/F) and on his instance a knife (Ex. P3) was recovered from the bushes near Railway line, Mangol Puri. Its sketch (Ex. PW 23/L) was prepared. The knife was kept in a parcel and was sealed with the seal of MS and seized *vide* memo (Ex. PW 23/B). The appellant Shyam Lal had also got recovered his shirt (Ex. P6) and blood stained pant (Ex. P5), which were also kept in a sealed parcel and seized *vide* memo (Ex. PW 23/D).

12. During interrogation, the statements of witnesses were recorded.

13. The CFSL Report and the post-mortem report was also collected and, upon a completion of the investigation, charge sheet was filed against the appellants and the co-accused under Sections 452/302/342/114/34 of the IPC.

Proceedings before Trial Court

14. The learned Trial Court framed Charge under Sections 302/34 of the IPC against both the appellants and the co-accused Pushpa, Tirlok Chand, Darshan Lal and Sohan Lal, on 16th September, 1987. The appellants and the co-accused pleaded not guilty and claimed

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trial.

15. In order to prove its case, the prosecution examined 26 witnesses.

16. During the course of trail, co-accused Darshan Lal and Sohan Lal expired and therefore, the proceedings against them stood abated.

17. The statements of the appellants and the co-accused were recorded under Section 313 of the Code of Criminal Procedure ["Cr.P.C."]. They denied all the incriminating evidence appearing on record against them. They stated that they have been falsely implicated, being the relatives of co-accused Pushpa Devi, against whom the family of the deceased was having grudge. They pleaded that they were not present at the house of Pushpa Devi at the time of the alleged incident. They refused to lead defence evidence.

18. *Vide* judgment dated 24th March, 2003, the appellants Vinod and Shyam Lal were convicted under Section 302/34 IPC, while the co-accused Pushpa and Tirlok Singh were acquitted.

19. *Vide* Order on Sentence dated 25th March, 2003, the appellants Vinod and Shyam Lal were sentenced with imprisonment for life with fine of Rs. 5,000/- each, in default of payment of fine, to undergo further rigorous imprisonment for one year each under Section 302 of the IPC.

Submissions on behalf of the Appellants

20. Learned counsel for the appellants submitted that the impugned judgment suffers from mis-appreciation of the evidence and that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt. It was contended that the case rests substantially

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upon the testimonies of interested and related witnesses, whose versions contain material inconsistencies and omissions, and that the surrounding circumstances do not furnish corroboration.

21. It was submitted that the testimony of PW-1/Smt. Kunti Devi requires close scrutiny, being the sister of the deceased and an interested witness. Her version that her sister- PW-22/Mohani was preparing meat in the *gali* at about 4:50 PM, was specifically denied by PW-22/Mohani. PW-1/Smt. Kunti Devi also attributed an injury to Ramesh @ Meshi on the left buttock, which was not borne out by the post-mortem report. Further, PW-1/Smt. Kunti Devi stated that information regarding Tirlok @ Toka biting the deceased's finger was given to her by an unidentified "*chholey wala*", which, according to the defence, indicates that she had not actually witnessed the entire occurrence.

22. It was further submitted that none of the alleged eye-witnesses had bloodstains on their clothes, despite the prosecution claiming that the deceased, who was profusely bleeding, was removed from the spot by his close relatives. This circumstance, according to the appellants, is inconsistent with their alleged presence at the place of occurrence. The failure of the witnesses to disclose the names of the assailants to the police at the earliest opportunity was also urged as a serious infirmity.

23. Learned counsel also pointed out that in her testimony, PW-1/Smt. Kunti Devi admitted the financial dispute concerning the pawning of Ramesh @ Meshi's flat papers with her mother PW-5/Darshna. It was contended that the existence of such dispute

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furnished a circumstance for false implication. Her assertion that the deceased had requested them to drop him at his residence at about 9:45 PM, was also stated to be a material improvement, not finding mention in her earlier police statement.

24. As regards PW-2/Narmada, the learned counsel submitted that her statement was recorded after a delay of about five days, despite the occurrence allegedly lasting hardly a minute. It was further pointed out that although PW-2/Narmada stated that the deceased's clothes were drenched in blood, she herself claimed to have accompanied him in the same three-wheeler without receiving any bloodstains on her clothes.

25. It was further submitted that PW-2/Narmada, PW-21/Deepak and PW-5/Darshna, the mother of the deceased, who allegedly accompanied him to RML Hospital, did not disclose the names of the assailants to the attending doctor. The learned counsel contended that such non-disclosure at the earliest opportunity creates a serious doubt regarding the subsequent introduction of the appellants' names.

26. Learned counsel further submitted that PW-2/Narmada deposed that the deceased was given 6-7 *danda* blows on his legs, abdomen and chest, whereas the post-mortem report did not record any corresponding blunt-force injuries. It was, therefore, contended that the ocular version was materially inconsistent with the medical evidence. PW-2/Narmada also admitted that it was dark at the time of occurrence, making identification of the assailants doubtful.

27. Referring to the testimony of PW-5/Smt. Darshna, the mother of the deceased, it was submitted that she did not support the

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prosecution's version, inasmuch as, she stated that when she came out upon hearing the cries, she did not see what had happened and only heard shouts. Though declared hostile and cross-examined by the learned APP, she stated that the statement attributed to her had been made at the instance of the police. It was contended that it was improbable that if she had actually witnessed the murder, she would have withheld the identity of the actual assailants.

28. The learned counsel further submitted that PW-13/Brij Mohan, relied upon by the prosecution as the only independent witness, also turned hostile. He stated that he saw Krishan Lal lying unconscious on the road and that it was dark. His testimony does not support the presence of the alleged eye-witnesses at the spot.

29. Similarly, PW-17/Kishan Lal, that is the husband of PW-1/Smt. Kunti Devi, did not identify the accused persons, including the appellants. According to him, some unknown persons *gheraod* his brother-in-law Krishan Lal. They were armed with weapons and they gave beatings to deceased Krishan Lal. According to him, it was night time and there was darkness outside, due to which, he could not identify those persons. It was argued that in view of the testimony of PW-17/Kishan Lal that it was dark all around, it is difficult to accept that PW-1/Smt. Kunti Devi could identify all the assailants in the same conditions.

30. He further submitted that the statement of PW-15/Sudesh was recorded after about two months and, according to learned counsel, it contained an improvement regarding her brother-in-law reaching her house shortly after the occurrence and narrating that the appellants had

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murdered Krishan Lal. Since this aspect was absent from her previous statement, it was contended that her testimony was liable to be discarded.

31. Relying upon the testimony of PW-21/Deepak, the brother of the deceased, it was submitted that PW-21/Deepak could not identify the persons who had caught hold of deceased Krishan Lal on the call of co-accused Pushpa. He stated that his brother, Krishan Lal, was given knife blows, but did not remember as to who gave those knife blows. He could not identify the assailants. He stated that he, his mother, and sister in law took the deceased to the hospital in a taxi, but did not refer to the presence of PW-1/Smt. Kunti Devi. This was contrasted with the prosecution's version that the deceased was removed in a three wheeler.

32. It was argued that PW-22/Mohani also did not support the prosecution's case and was declared hostile. She denied that Ramesh @ Meshi and appellant Vinod @ Toni entered their house from the roof of co-accused Pushpa with *dandas* in their hands and attempted to beat Ashwani with *dandas* or that he was saved due to their intervention.

33. The attention of the Court was also drawn to the testimony of PW-18/Constable Naresh Kumar, who deposed that he had removed the dead body from R-Block, Mangol Puri to RML Hospital. It was argued that such testimony was in conflict with the prosecution's version of shifting the body of the deceased Krishan Lal by his wife, mother and brother.

34. It was further contended that PW-7/Suraj Bhan, who was

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projected as a witness to the recoveries, did not state that he had accompanied the police during the recovery proceedings. According to the learned counsel, this raises a serious doubt regarding the manner in which the recovery memos were prepared and signed.

35. It was submitted that there are also contradictions between the testimonies of PW-23/HC Ram Charan and PW-26/Inspector Manohar Singh regarding the arrest of the appellant on 12th November, 1986, inasmuch as, PW-23/HC Ram Charan stated that they went to the office of DCP and found accused Shyam Lal, Sohan Lal, Darshan Lal, Tirlok and Vinod sitting at a tea shop outside the office and they were then apprehended and arrested. In cross-examination, he stated that they had reached the DCP Office at about 12:30 PM. However, PW-26/Inspector Manohar Singh, in cross-examination, stated that he arrested the appellants Shyam Lal, Vinod, and the other co-accused at about 5:20 PM on 12th November, 1986. It was thus submitted that these contradictions render the arrest and consequential recoveries doubtful.

36. As regards the alleged recovery of the dagger from appellant Shyam Lal, the learned counsel submitted that the recovery was made from bushes near the railway *phatak*, an open place, without joining any independent public witnesses. No site plan of the place of recovery was prepared. It was also submitted that the dagger was not subjected to any fingerprint examination, no fingerprints were collected and no opinion was obtained from the doctor that the injuries present on the person of the victim were possible from the said dagger. It is thus argued that it is not duly proved that the dagger was the

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weapon of offence.

37. As regards appellant Vinod, learned counsel submitted that there is no allegation that he inflicted any knife injury upon the deceased. His alleged role was confined to catching hold of the deceased. It was contended that, in the absence of proof of any prior meeting of minds or participation in the fatal assault, mere presence or catching hold of the deceased could not establish the requisite common intention under Section 34 of the IPC.

38. The learned counsel further submitted that the prosecution evidence, viewed as a whole, suffers from material contradictions regarding the presence and conduct of the alleged eye-witnesses, the manner in which the deceased was removed to the hospital, the timing and preparation of the FIR and inquest proceedings, the arrest of the appellants, and the recovery of the alleged weapon. These infirmities, it was argued, cannot be treated as isolated discrepancies but must be assessed cumulatively.

39. It was accordingly submitted that the prosecution has failed to establish a consistent, credible and unimpeachable chain of evidence connecting either of the appellants with the murder of Krishan Lal. The appellants therefore deserve the benefit of reasonable doubt and acquittal of the charges under Sections 302/34 of the IPC.

40. In support of his arguments, the learned counsel for the appellants placed reliance on the following judgments:-

i. *Shahid Khan v. State of Rajasthan, AIR 2016 SC 1178*
ii. *State v. Ramesh, 1998 SCC OnLine Del 106,*
iii. *Rehmat v. State of Haryana, AIR 1997 SC 1526,*

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iv. *Devinder v. State of Haryana, 1997 SCC (Cri) 570,*

v. *Shyam Sunder & Raj Kumar v. State (Delhi Admn.), 1995 SCC OnLine Del 190,*

vi. *Bishan @ Binny @ Bagga & Anr. v. State, 2009 SCC OnLine Del 689,*

vii. *Manjunath & Ors. v. State of Karnataka, 2023 SCC OnLine SC 1421, and*

viii. *Deva v. State of Rajasthan, 1999 SCC (Cri) 41.*

Submissions on behalf of the State

41. *Per contra*, Mr. Aman Usman, learned Additional Public Prosecutor ["APP"] for the State submitted that the impugned judgment does not suffer from any infirmity, inasmuch as the learned Trial Court has given well-reasoned findings and convicted the appellants after a fair trial and proper appreciation of evidence.

42. It was submitted that the occurrence took place on 03.11.1986 at about 9:45 PM, when deceased Krishan Lal was proceeding towards his house. The prosecution evidence establishes that he was intercepted by the accused persons and was subjected to knife assault. Specific role was attributed to appellant Vinod in catching hold of the deceased, while appellant Shyam Lal inflicted the knife blow upon him.

43. The learned APP contended that the prosecution's case does not rest upon any solitary circumstance, but is supported by the ocular testimony, medical evidence, prompt reporting of the occurrence, seizure of blood-stained articles, investigation conducted by the police, recoveries pursuant to disclosure statements and scientific

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evidence. The cumulative effect of such evidence lends assurance to the findings recorded by the learned Trial Court.

44. It was submitted that PW-1/Smt. Kunti Devi, the principal eye-witness, gave a cogent account of the occurrence and specifically attributed roles to the accused persons. She deposed that appellant Vinod, along with appellant Sohan Lal, caught hold of the deceased while he was being assaulted, and specifically attributed the knife assault to appellant Shyam Lal. Her testimony remained substantially intact despite extensive cross-examination, and could not be discarded merely because she was related to the deceased.

45. Learned APP further relied upon the testimony of PW-5/Darshna, submitting that although she was declared hostile, her testimony could not be wholly discarded. It was contended that, in her cross-examination by the learned APP, she admitted material version of the prosecution's case, including that accused Sohan Lal and Vinod caught hold of deceased Krishan Lal and that appellant Shyam Lal came armed with a knife and inflicted the abdominal injury. Such version materially corroborated the testimony of PW-1/Smt. Kunti Devi.

46. The learned APP placed considerable reliance upon the medical evidence. It was submitted that upon examination of the body, PW-3/Dr. L.T. Ramani found an incised injury in the abdominal/umbilical region and another incised injury on the left thigh, besides an abrasion. The injuries were opined to be ante-mortem and caused by a sharp-edged weapon. Such injuries were sufficient in the ordinary course of nature, to cause death. The medical evidence, therefore, was stated to

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be consistent with the ocular account of a knife assault.

47. With regard to appellant Vinod, it was submitted that his involvement was not based upon his mere presence at the spot. A specific role of catching hold of the deceased while he was being assaulted by a co-accused was attributed to him. It was contended that such conduct constituted active participation and merely because he himself did not inflict the fatal blows, did not absolve him of liability under Section 302 read with Section 34 of the IPC.

48. The learned APP submitted that information regarding the death was acted upon promptly, the *rukka* was prepared and the FIR was registered in a timely manner, followed by seizure of blood-stained earth, *chappals* of the deceased, the cot, broken glass pieces and other articles from the place of occurrence. It was contended that these circumstances provided further corroboration to the prosecution's version.

49. It was further submitted that the recoveries were effected pursuant to the disclosure statements of the accused persons. It was argued that while the learned Trial Court did not place reliance upon the weapon recovered from appellant Vinod, as it did not bear bloodstains, the dagger recovered pursuant to the disclosure of appellant Shyam Lal was found to contain bloodstains, with blood matching the blood group of the deceased. It was contended that this circumstance furnished further corroboration to the ocular and medical evidence against appellant Shyam Lal.

50. In answer to the defence objections, learned APP submitted that the recovery of the weapon, after the date of occurrence, did not by

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itself render the recovery unreliable. It was further contended that the non-examination of Ashwani was not fatal to the prosecution since he had already left for his house and was not an eye-witness to the actual offence of murder. It was also submitted that the fact that several prosecution witnesses were related to the deceased was not, by itself, sufficient to discard their testimony, particularly when their evidence received corroboration from medical and circumstantial evidence.

51. It was further contended that the delay in recording the statements of some witnesses did not demolish the prosecution's case, particularly when the statement of the principal witness was recorded promptly and the FIR was thereafter registered without delay. It was submitted that the defence has failed to demonstrate any material contradiction between the testimonies of PW-1/Smt. Kunti Devi and PW-2/Narmada**,** which may go to the root of the prosecution's case.

52. On the question of common intention under Section 34 IPC, the learned APP submitted that the same could be inferred from the conduct of the accused persons and the manner in which the occurrence took place. It was contended that the act of appellant Vinod of catching hold of the deceased while the other co-assailants, who were armed with knives, inflicted injuries to the victim, demonstrated concerted participation and was sufficient to attract the principle of constructive liability under Section 34 IPC.

53. It was thus argued that the conviction of appellants Vinod and Shyam Lal was founded upon reliable evidence. No perversity, illegality or misappreciation of evidence had been demonstrated so as to warrant interference with the impugned judgment, hence, the

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present appeal is liable to be dismissed.

Reasoning and Analysis

54. We have heard the arguments advanced by counsels of both parties and have perused the material on record.

55. It is well settled that while exercising the appellate jurisdiction in a criminal appeal against conviction, this Court may re-appreciate the evidence to ascertain whether the findings recorded by the learned Trial Court suffer from perversity, material illegality, or result in miscarriage of justice.

56. There is no serious dispute that deceased Krishan Lal died a homicidal death. As per the MLC Report (Ex. PW-24/A), the patient Krishan Lal was declared "brought dead". PW-3/Dr. L.T. Ramani, who conducted the post-mortem on the body of the deceased, found following injuries on the person of the deceased:-

> ***"External Injuries***
> *1. An incised wound 1" x 1/4" x ? placed vertically on the umbilical region 3/4" below and to the right of umblicus;*
> *Margins of injury were regular and upper end was more acutely cut.*
> *2. Incised wound 1-1/4" x 1/2" x ? (2" deep in the muscles) vertically present on the postero lateral aspect of left thigh: 1" below the glutial foll, margins of the injuries were regular and upper end was acutely cut.*
> *3. An abrasion 1½" x ½" on the back of left forearm.*
>
> ***Internal Examination***
> *Scalp tissues were normal, skull bones were intact, brain was pale, neck tissues were normal, ribs were intact, lungs were pale, heart was normal. Abdominal cavity was full*

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of blood. Injury no. 1 was found to be communicating with abdominal cavity where loops of small intestines showed cuts at two places. Injury continued upto the posterior abdominal wall where abdominal aorta showed a cut on its anterior wall ½" long. Total depth of the injury was 2 ½" from body surface. Stomach contained 2 Ozs of semi digested food material. Lever, spleen and kidneys were pale. Bladder contained clear urine and rectum contained faeces.

57. PW-3/Dr. L.T. Ramani deposed that the injuries were ante-mortem in nature and were caused by a sharp-edged weapon. According to him, injury no. 1 was sufficient to cause death in the ordinary course of nature and death was due to shock and haemorrhage, consequent to injury to the abdominal viscera. In his cross-examination, PW-3/Dr. L.T. Ramani stated that injuries nos. 1 & 2 suggest the possibility of a single-edged weapon causing those injuries.

58. Nothing substantial has been pointed out from the cross-examination which may dent the testimony of Dr. L.T. Ramani. Hence, from the testimony of PW-3/Dr. L.T. Ramani**,** it is proved that the injury, which resulted in the death of Krishan Lal, was caused by a sharp-edged weapon. It is therefore proved that the death was homicidal in nature.

59. The present case pertains to two incidents, the first happened in the evening while PW-22/Mohani was cooking meat and the dog of co-accused Pushpa licked the same, whereafter, Ashwani had beaten the dog with a broom. Co-accused Pushpa objected to the beating of dog and a scuffle took place between co-accused Pushpa and

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Ashwani. Thereafter, appellant Vinod and co-accused Ramesh (since deceased) came to the parental house of PW-1/Smt. Kunti Devi, armed with *danda*, wanting to beat Ashwani, but were prevented from doing so, and while leaving, they broke the window panes. This incident was followed by the second incident, which took place at about 9:45 PM, when victim Krishan Lal was murdered.

60. Prosecution examined ten material witnesses of the occurrence, most of whom are the family members of the deceased. PW-4/Gopal Krishan, PW-15/Smt. Sudesh and PW-25/Smt. Asha Rani are the witnesses to the first incident, inasmuch as, the murder took place after they had already left the house. PW-2/Smt. Narmada, PW-5/Smt. Darshna and PW-13/Sh. Brij Mohan are the witnesses to the murder. PW-1/Smt. Kunti Devi, PW-21/Deepak, PW-17/Kishan Lal and PW-22/Mohani are stated to be the witnesses of both the incidents.

61. PW-1/Smt. Kunti Devi is the sister of the deceased Krishan Lal. She deposed that on 03rd November, 1986, she had gone to the house of her parents on the eve of *Bhaiya Dooj* festival. Her younger sister PW-25/Asha, her brother-in-law Ashwani and younger sister PW-22/Mohani had also come there to celebrate *Bhaiya Dooj*. PW-22/Mohani was cooking vegetables at 4:50 PM near the door of the house in a *gali*. A dog belonging to co-accused Pushpa (since acquitted) touched the raw meat which was lying there, upon which, Ashwani beat the dog with a broom. Co-accused Smt. Pushpa, who was then sitting in front of her house on a cot, lost her temper and asked Ashwani as to why he had beaten the dog. Ashwani retorted that if her dog would touch the meat with his mouth, then he would

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definitely beat the dog. Co-accused Smt. Pushpa thereupon caught hold of Ashwani by his collar, slapped him and abused him. Ashwani was counselled and was taken inside the house.

62. PW-1/Smt. Kunti Devi further deposed that co-accused Ramesh (since deceased) and appellant Vinod @ Toni came to their house through the roof of co-accused Smt. Pushpa. They were armed with *dandas* and wanted to beat her brother-in-law Ashwani. However, she and PW-22/Mohani took Ashwani inside the room and closed the door and pushed out the appellant Vinod @ Toni and accused Ramesh. However, while leaving their house, appellant Vinod @ Toni and accused Ramesh broke the window panes.

63. PW-1/Smt. Kunti Devi further deposed that her brother Krishan Lal came to the house at about 8:00 PM with his friend Devinder. She narrated the entire incident to Krishan Lal, whereupon, he lost his temper. However, he was counselled not to lose his temper and to calm down, whereupon, Krishan Lal told them that he would keep quiet but they should also ask co-accused Smt. Pushpa not to abuse, who was continuously abusing even at that time. They then went out and asked co-accused Pushpa to remain quiet.

64. PW-1/Smt. Kunti Devi further deposed that her brothers-in-law PW-4/Gopal Krishan and Ashwani and their wives PW-15/Sudesh and PW-25/Asha left for their houses at 9:30 PM. The deceased Krishan Lal requested them at 9:45 PM to drop him at his house. While she, her husband, her mother PW-5/Darshna Devi and Devinder were accompanying the deceased and his and children to their house, Co-accused Smt. Pushpa, who was sitting in front of her house, alerted

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her relatives that Krishan Lal was leaving the house and should be caught. On hearing this, co-accused Sohan Lal, brother-in-law of Pushpa and her nephew Vinod @ Toni (appellant) came out of the house. Co-accused Sohan Lal caught the left arm of the deceased Krishan Lal while appellant Vinod @ Toni caught him from his right arm. Meanwhile, appellant Shyam Lal, brother of co-accused Smt. Pushpa and his friend Ramesh @ Meshi came out of the house armed with knives. Appellant Shyam Lal gave a knife blow on the belly of the deceased. Ramesh hit the deceased with knife on his left buttock. She deposed that they tried to intervene and come to the rescue of the deceased, but were not allowed to do so by Tirlok Singh @ Toka and Darshan Lal @ Lala. She further deposed that Tirlok Singh @ Toka caught the deceased from the front, whereupon, Krishan Lal bit the finger of accused Tirlok Singh @ Toka. The deceased was released by Tirlok Singh @ Toka as soon as his finger was bitten by the deceased, as a result of which, he fell down on the ground. She further deposed that upon an alarm raised by them, all the accused persons ran away towards Police Line. The deceased was lifted with the help of the neighbours, who reached at the spot and was made to lie on a cot. The mother of PW-1/Smt. Kunti Devi hired a scooter rickshaw and deceased Krishan Lal was taken to the hospital by her mother, sister-in-law and younger brother.

65. The presence of PW-1/Smt. Kunti Devi at the place of occurrence is not an incidental circumstance. She is the natural witness of the occurrence, who had gone to the house of her mother to celebrate *Bhaiya Dooj*. Her statement narrates the quarrel concerning

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the dog, the subsequent confrontation with Ashwani, the arrival of accused Vinod and Ramesh at the house and thereafter the events which culminated in the assault upon the deceased Krishan Lal. The genesis of the occurrence, as narrated by her, provides a continuous sequence, leading upto the fatal incident.

66. PW-2/Narmada, wife of the deceased, also deposed regarding the occurrence and the circumstances in which her husband was removed to hospital. The defence has tried to assail the testimonies of PW-1/Smt. Kunti Devi and PW-2/Narmada on account of absence of blood stains on their clothes, even though, they helped to transport the deceased to the hospital, as also their failure to disclose the names of the assailants to the attending doctor and the delay in recording the statements of certain witnesses. These circumstances are not individually decisive. Mere absence of blood stains on the clothing of the persons who helped in shifting the victim to the hospital, does not necessarily disprove their presence.

67. PW-2/Narmada deposed that the deceased was given 6-7 *danda* blows, while PW-1/Smt. Kunti Devi stated that deceased had received stab injury on his left buttock. Admittedly, the post-mortem report does not record any blunt force injury which may have been caused by the *danda*, while stab injury is not on the right buttock but on the left thigh. The medical evidence does not corroborate the assertion of PW-1/Smt. Kunti Devi regarding the stab injury on the left buttock, as deposed by PW-1/Smt. Kunti Devi or *danda* blows, as deposed by PW-2/Narmada. However, it does corroborate the material assertion that the deceased was inflicted injuries with a sharp-edged weapon.

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The incident occurred on 03rd November, 1986. The testimonies of PW-1/Smt. Kunti Devi and PW-2/Narmada were recorded much later, that is, after more than one year. The discrepancies/contradictions, as pointed out by the defence, may occur in the examination of the witnesses, howsoever truthful he/she may be, when they are examined long after the date of occurrence and, therefore, cannot be disbelieved on that count, if otherwise, their testimonies are straight-forward, cogent, coherent and trustworthy.

68. The defence has assailed the testimonies of PW-1/Smt. Kunti Devi and PW-2/Narmada on the ground that they are close relatives of the victim and therefore are interested witnesses. It is true that PW-1/Smt. Kunti Devi is the sister and PW-2/Narmada is the wife of the deceased and thus, are related witnesses. However, relationship is a circumstance requiring careful scrutiny and not a ground for rejection of their testimonies. What is material is whether their evidence regarding the occurrence is cogent, consistent on material particulars and receives assurance from the surrounding circumstances. In the present case, PW-1/Smt. Kunti Devi and PW-2/Narmada gave a specific account of the manner in which deceased Krishan Lal was intercepted and of the respective roles played by the persons present.

69. In this regard, we may also refer to the judgment of the Supreme Court in the case of ***Sarwan Singh & Ors. v. State of Punjab***, (1976) 4 SCC 369, wherein the Supreme Court clarified that it is not the law that the evidence of an interested witness should be equated with that of a tainted witness; it is only a rule of prudence that the evidence of an interested witness should be scrutinised with a little

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extra care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth, such evidence could be relied upon even without corroboration. It was also opined that there may be circumstances where only interested witnesses may be available, like occurrences that take place at midnight in the house. In such cases, it would not be proper to disbelieve the evidence of interested witness/family members only because of their interest.

70. The objection regarding absence of independent public witnesses also does not, by itself, create a reasonable doubt. The occurrence took place in the vicinity of the residence of the deceased. The prosecution, by producing the related witnesses, does not lose the right to rely upon their testimonies. The 'related witnesses' are not necessarily the 'interested witnesses'. What is required is careful scrutiny. Defence has failed to show any motive for false implication of the appellants. There is no reason why the related witnesses would falsely implicate the appellants, by letting the actual culprits go free. The testimonies of PW-1/Smt. Kunti Devi and PW-2/Narmada regarding the role played by appellants Vinod and Shyam Lal remained consistent and, therefore, cannot be disbelieved.

71. The learned counsel for the appellant argued that none of the family members of the victim tried to come to his rescue. Their conduct is unnatural, which makes their presence at the spot doubtful. In this regard, PW-1/Smt. Kunti Devi deposed that they had tried to intervene and come to the rescue of the deceased, but were not allowed to do so by Tirlok Singh @ Toka and Darshan Lal @ Lala. In

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cross-examination, she stated that Tirlok Singh and Darshan Lal had told her not to proceed from there, otherwise, she would be stabbed by knife. In fact, she also admitted the defence suggestion that accused Ramesh and Vinod were superior in strength in comparison to them. Since the assailants were armed with weapons, were superior in strength, and were preventing the witnesses from interfering, it by the explains why even the close family members could not intervene to save the victim. Hence, the presence of PW-1/Smt. Kunti Devi and PW-2/Narmada therefore cannot be disbelieved only on this count.

72. PW-13/Brij Mohan and PW-17/Kishan Lal did not identify the appellants as the assailants. PW-13/Brij Mohan stated that he saw the deceased lying unconscious on the road and did not support the prosecution allegation concerning co-accused Pushpa's call to catch-hold of the deceased. PW-17/Kishan Lal stated that owing to darkness, he could not identify the persons who assaulted the deceased. PW-21/Deepak also turned hostile with regard to the identity of the assailants. He deposed that he cannot identify the person who caught hold of Krishan Lal on the call of co-accused Pushpa. He saw that his brother PW-17/Krishan Lal was given knife blows, but he does not know who gave those blows.

73. PW-22/Mohani, even though partly supported the first incident, turned totally hostile with regard to the second incident, inasmuch as, she stated that she was rushed to hospital being unwell and therefore does not know as to what happened after the first incident. Her cross-examination by the learned APP, did not yield any fruit. She denied the suggestion that accused Vinod, Shyam Lal, Tirlok Chand, Darshan

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Lal and Sohan Lal had killed her brother in her presence.

74. Similarly, PW-5/Smt. Darshna also did not support the prosecution's case with regard to the identity of the assailants. According to her, at about 9:45 PM, her son Krishan Lal @ Pappu and his friend Devinder came out of the house to go to their respective houses. Her daughter PW-1/Kunti Devi, her son-in-law PW-17/Kishan Lal, and her daughter-in-law had come to see them off. She also followed them in order to see off Krishan @ Pappu and his friend Devinder, but when she came out, there was a hue and cry. She stated that she did not see as to exactly what had happened. She had only heard the shouts "*Pakrloo Pakrloo mar do mar do*". PW-5/Darshna was also declared hostile and was cross-examined by the learned APP. In such cross-examination, she stated that co-accused Pushpa exhorted Shyam Lal and Ramesh to finish Krishan Lal, whereupon, appellant Shyam Lal stabbed Krishan Lal at his abdomen, while Ramesh stabbed Krishan Lal on his left hip. Later, during her cross-examination by the defence, she stated that such statement in the cross-examination conducted by the learned APP was at the instance of the police. It is thus seen that PW-5/Darshna is not a truthful witness, inasmuch as, she gave different versions at different stages and, therefore, her testimony is not reliable in proving the identity of the assailants.

75. Notwithstanding the fact that the testimonies of PW-13/Brij Mohan, PW-5/Darshna, PW-21/Deepak and PW-22/Mohani do not establish the identity of the assailants, the failure of these witnesses to identify the assailants does not by itself, negate the testimony of PW-

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1/Smt. Kunti Devi and PW-2/Narmada, who duly identified the appellants as the assailants. The important question still remains whether the identification of PW-1/Smt. Kunti Devi and PW-2/Narmada and their attributing specific roles are reliable when assessed in the light of the other evidences.

76. During cross-examination of PW-1/Smt. Kunti Devi, the defence gave the following suggestions:-

> *"…It is wrong to suggest that Shri Ashwani addressed Smt. Pushpa as a lame person whereupon Smt. Pushpa retorted and said that she was of the age of his mother and then slapped him. It is incorrect that Smt. Pushpa slapped Shri. Ashwani but not on this score. However, it is correct that on being slapped, Shri. Ashwani lost his temper. It is wrong to suggest that having gone into his tantrum, Shri Ashwani rushed towards Smt. Pushpa..."*
>
> *xxx xxx xxx*
>
> *It is incorrect to suggest that when Krishan Lal- deceased had returned to the house and after coming to know about the dispute of Pushpa and Ashwani of the morning time, he (Krishan Lal- deceased) started abusing Pushpa and on this Krishna, Bua of Krishan Lal scolded Krishan Lal (deceased), and then Krishan Lal- deceased stopped abusing Pushpa.*
>
> *xxx xxx xxx*
>
> *Q. When your brother was being stabbed at that time Trilok Chand had come in front of you to save you and to help you?*
> *A. Trilok Chand had come and said to me that I should not proceed further, otherwise they will stab me."*

77. It is implicit from the tone and tenor of the aforesaid

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suggestions/questions that the defence itself admits the occurrence.

78. The defence also referred to the delay in recording of the statements of PW-2/Narmada, PW-15/Sudesh and other witnesses. The incident took place on 03rd November, 1986. In cross-examination, PW-2/Narmada stated that her statement was recorded by the police on 07th November, 1986. PW-15/Sudesh, in cross-examination, stated that her statement was recorded after about two months of the incident, when she was called at the police station. The delay in recording of the statements does not invariably render the testimonies of the witnesses unreliable. In such circumstances, the Court only needs to consider whether the delay is explained and whether it creates a genuine possibility of fabrication or not. The Investigating Officer, that is, PW-26/Inspector Manohar Singh deposed that upon receiving information from RML Hospital regarding the death of Krishan Lal, he went to the hospital, obtained the medico-legal report and thereafter proceeded to the place of occurrence, where, he recorded the statement of PW-1/Smt. Kunti Devi. The FIR was registered on the basis of the *rukka*. The prompt recording of the statement of PW-1/Smt. Kunti Devi is a circumstance favouring the prosecution. In such circumstances, the delay in recording the statements of other witnesses cannot be the sole factor for rejecting their testimonies. The presence of PW-1/Smt. Kunti Devi and PW-2/Narmada at the place of incident cannot be doubted as they are natural witnesses of occurrence, being family members of the deceased.

79. The discrepancy with regard to the time of arrest of the accused

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persons, as apparent from the cross-examination of PW-23/HC Ram Charan and PW-26/Inspector Manohar Singh, cannot by itself be treated as sufficient to discard the prosecution's case, more particularly, in the absence of any demonstrated connection between the discrepancy in timing and the alleged manipulation of the recovery proceedings. The contradiction with regard to the time of arrest is only a minor discrepancy and does not touch the core of the prosecution's case and, therefore, cannot discredit the story of the prosecution. Giving undue importance to such contradiction would amount to adopting a hyper-technical approach. Such like contradictions which do not shake the basic version of the prosecution's case, should not be attached much significance and are to be ignored.

80. No doubt, the names of the appellants as assailants do not find mention in the MLC (Ex. PW-24/A). The main concern of the doctor in the hospital is to treat the victim, it is none of his concern as to who the assailants were. In the present case, the deceased was brought to the hospital by the close relatives in a critical condition and in fact was declared "brought dead". In such situation, close relatives must have been in a state of grief and, therefore, the mere fact that in such a state they did not disclose the names of the assailants to the doctor, cannot by itself lead to an inference that the names of the appellants were falsely introduced subsequently.

81. In her cross-examination, PW-1/Smt. Kunti Devi stated that her mother gave Rs. 5000/- to Ramesh and Ramesh had paid back half of the said amount in instalments. She admitted that Ramesh pledged his flat with his mother before borrowing the money. She stated that she

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had seen the slip regarding the plot given by Ramesh to her mother. The defence has tried to fasten the entire responsibility for the murder on co-accused Ramesh. However, PW-1/Smt. Kunti Devi denied the suggestion that Ramesh came to the house of her mother at 4:00 PM on that day and asked for the return of his papers. She denied that her mother thereupon told him that he should talk to Krishan Lal, as and when he returns. She denied the suggestion that the deceased used to maintain the accounts of her mother. She denied that when Ramesh demanded his papers back from her mother, he was supported in such demand by co-accused Smt. Pushpa. She denied that when Krishan Lal was going, Ramesh met him in the way. She denied that Ramesh had told Krishan Lal that he should go back to his house and settle the account with him and should return the *Parchi* of house allotment. She denied that Krishan Lal had not agreed for this and then there was a struggle between Ramesh and Krishan Lal, in which, Ramesh had stabbed twice to Krishan Lal.

82. Even though, PW-1/Smt. Kunti Devi admits of a loan transaction between her mother and co-accused Ramesh, defence has failed to prove any financial dispute between them, leading to false implication not only of Ramesh but also of the co-accused persons, including the present appellants. Assuming, for the sake of arguments, that there was some financial dispute between the mother of PW-1/Smt. Kunti Devi and co-accused Ramesh, there is no reason why PW-1/Smt. Kunti Devi and PW-2/Narmada would falsely implicate the appellants, who had no connection with such dispute.

83. The defence has tried to hit the prosecution's version, especially

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with regard to the first incident of dog licking the meat, leading to the scuffle and the second incident of murder, on the ground that on the day of *Bhaiya Dooj*, Hindu families do not eat meat and therefore the entire story is fictitious. In her cross-examination, PW-1/Smt. Kunti Devi admitted that the *Tikka* Ceremony and *Rakhi* festivals are considered auspicious and Hindus do not take meat on the auspicious occasions. She, however, also clarified that, in case, a son-in-law insists on taking meat, then it is arranged for him. In view of the consistent testimonies of the witnesses that the meat was being cooked at the house and the dog of Pushpa had licked the meat, we are not inclined to accept the aforesaid argument.

84. The defence also highlighted that there is a major contradiction, inasmuch as, Mohani (PW-22) denied that she herself was cooking the meat. According to her, her mother, sister and *Bhabhi* were preparing the meat in the house. Admittedly, PW-22/Mohani has not supported the prosecution's version and was declared hostile by the prosecution. In view of the consistent testimonies of the other witnesses that the meat was being cooked by PW-22/Mohani, such contradiction in evidence due to such statement made by PW-22/Mohani, cannot be given undue importance.

85. The non-examination of Ashwani does not create a reasonable doubt regarding the actual assault. As per the evidence, Ashwani was present in the house during the first incident of quarrel and the prosecution's case itself is that he had subsequently left. The direct evidence regarding the later assault, is furnished by the witnesses, who were present when Krishan Lal was attacked. The absence of Ashwani

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may affect the prosecution evidence concerning the genesis of the earlier quarrel, but does not discredit the eye-witness account of the subsequent murder.

86. We now proceed to examine the specific role of appellant Shyam Lal. The evidence against appellant Shyam Lal is direct and specific. PW-1/Smt. Kunti Devi attributed to him the role of causing abdominal knife blow upon Krishan Lal. The same assumes significance because the medical evidence independently establishes the existence of an incised abdominal injury, sufficient in the ordinary course of nature to cause death. Thus, the ocular account as to the nature and location of the injury is in material conformity with the medical evidence.

87. Furthermore, there is circumstance of recovery of weapon, pursuant to the disclosure made by appellant Shyam Lal. The evidence reveals that after his arrest on 12th November, 1986, appellant Shyam Lal made a disclosure statement and a knife/dagger was recovered at his instance from bushes near the railway lines at Mangolpuri. The weapon was seized and sent for forensic examination. The CFSL report records the presence of blood on the dagger and the blood group detected thereon corresponds with the blood group of the deceased. Even though, no opinion was obtained from the doctor regards the possibility of causing injury by the recovered dagger, the presence of blood of the deceased on recovered dagger cannot be regarded as of no significance. The appellant has failed to render any explanation for the presence of blood of the victim on the recovered dagger.

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88. The defence has correctly pointed out that the recovery was not made immediately after the occurrence, but several days thereafter. This circumstance, however, cannot by itself render the recovery inadmissible or wholly unreliable. The relevant question is whether the recovery was pursuant to the disclosure of the accused and whether the surrounding evidence lends assurance to it. In any case, the recovery is not the sole circumstance establishing the guilt of appellant Shyam Lal. Rather, it is an additional evidence, corroborating the direct ocular evidence.

89. The prosecution has, therefore, established beyond reasonable doubt that appellant Shyam Lal inflicted the fatal abdominal knife injury upon Krishan Lal. The nature of the weapon, location of the injury, depth of penetration and the damage to the abdominal aorta demonstrate the lethal character of the act. The deliberate infliction of such an injury upon a vital part of the body, in the circumstances established on record, attracts the principles governing murder under Section 300 of the IPC. No material has been established which would justify bringing the act within any of the exceptions to that provision.

90. The evidentiary value of the recovery of weapon from appellant Vinod however stands on a different footing. The dagger recovered from his house did not bear blood stains. The learned Trial Court also did not place any decisive reliance upon such recovery. Moreover, the role of appellant Vinod is not of giving any stab injury or use of knife and there being no evidence that the dagger recovered from appellant Vinod was used in the commission of the offence, such recovery cannot be considered incriminating evidence against Vinod.

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91. The more difficult question is whether the fatal act committed by appellant Shyam Lal was done in furtherance of an intention shared with appellant Vinod. The prosecution's case against appellant Vinod is that he had caught hold of the right arm of the deceased, while appellant Sohan Lal held left arm whereafter Shyam Lal and Ramesh inflicted knife injuries upon the deceased.

92. Section 34 of the IPC embodies the principle of joint liability where a criminal act is done by several persons in furtherance of the common intention of all. It does not require that every participant in the crime should inflict an injury or perform an identical overt act. Nor is it necessary in every case that the common intention should have been formed long before the occurrence. It may develop immediately before or during the commission of the offence. Nevertheless, the prosecution must prove the participation in the criminal act and the existence of a common intention embracing the offence for which constructive liability is sought to be imposed.

93. It has been argued that since appellant Vinod did not himself wield the knife, his liability under Section 302 read with Section 34 of the IPC cannot follow. The submission, however, overlooks the liability contemplated by Section 34 of the IPC. Prosecution is not required to establish that every member of the group must himself inflict the fatal injury. What is required is proof that the criminal act was done in furtherance of the common intention shared by the participants.

94. In determining whether such common intention existed, the Court is entitled to consider the conduct of the accused immediately

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before, during and after the occurrence, as well as the manner in which the assault was carried out. In the present case, the testimony of PW-1/Smt. Kunti Devi is that appellant Vinod, not merely remained present at the spot, he actively participated by restraining Krishan Lal by holding his arm at the very moment when the deceased was confronted by persons armed with knives and was subjected to knife assault. The role attributed to appellant Vinod is of facilitating the execution of the assault.

95. The conduct of appellant Vinod in holding the deceased, coupled with the presence of armed assailants and the manner of the assault, furnishes sufficient circumstances from which common intention can be inferred.

96. The fact that certain other accused persons were acquitted by the learned Trial Court, may also require consideration. The acquittal of one accused does not necessarily render the prosecution's case against another accused unacceptable. The criminal liability has to be determined on the basis of the evidence specifically adduced against each accused. Indeed, the learned Trial Court's acquittal of co-accused Pushpa and Tirlok Chand, demonstrates that the learned Trial Court did not accept the prosecution case mechanically against every person named in the occurrence. The same evidence must consequently be assessed independently against appellants Vinod and Shyam Lal.

97. The evidentiary position against the two appellants is materially distinct. Against appellant Shyam Lal, there is a direct ocular attribution of the fatal abdominal knife blow, corroboration from testimony of PW-2/Narmada, medical confirmation of the

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corresponding fatal injury and subsequent recovery of a blood stained dagger at his instance bearing blood of the group, corresponding to that of the deceased. The liability of appellant Vinod, rests upon the direct evidence that he restrained the deceased and facilitated the assault in furtherance of common intention.

98. We are unable to accept the submission that the evidence against appellant Vinod is merely one of presence at the spot as a passive spectator. The evidence attributed to him is of a positive act of catching hold the deceased during the assault. Equally, we find the evidence against appellant Shyam Lal considerably stronger, since the injury attributed to him corresponds to the injury, which the medical officer found sufficient to cause death.

99. We are also conscious that in a criminal case, the standard of proof remains one of proof beyond reasonable doubt. In ***Sujit Biswas v. State of Assam,*** (2013) 12 SCC 406, the Supreme Court held that suspicion, however strong, cannot take the place of proof and the prosecution must establish its case beyond reasonable doubt. The cumulative assessment undertaken herein, however, is not founded upon suspicion. The prosecution evidence comprises of direct eye-witness accounts, duly corroborated by medical evidence and prompt initiation of the investigation and in case of appellant Shyam Lal, additionally, an incriminating recovery of weapon of offence, supported by forensic evidence. These circumstances, when read together, form a coherent evidentiary chain.

Conclusion:

100. The Court, accordingly, finds that prosecution has established

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the guilt of both the appellants beyond reasonable doubt. The infirmities urged by the defence, do not create a reasonable doubt regarding the involvement of the appellants. The findings of the learned Trial Court, convicting appellants Vinod @ Toni and Shyam Lal under Section 302/34 of the IPC, therefore, do not suffer from any perversity or mis-appreciation of evidence, warranting interference in appeal. The sentence imposed is proportionate and commensurate with the offence committed.

101. We, therefore, find no ground to interfere with the learned Trial Court's Judgment dated 24th March, 2003 and Order on Sentence dated 25th March, 2003.

102. The appeal is, accordingly, dismissed.

103. Both the appellants are directed to surrender before the Jail Superintendent within a period of two weeks.

104. Copy of this judgment be sent to learned Trial Court and the Jail Superintendent with direction to take appropriate measures to ensure that the appellants are taken into custody and are made to serve the remaining sentence.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

NOVEMBER 27, 2026/*AK*

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