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

Reserved on: 09.04.2026
Pronounced on: 26.05.2026

\+ **CRL.A. 581/2002**

RAJINDER & ORS. .....Appellants
Through: Mr.Manoranjan Kumar, Adv.

versus

STATE N.C.T. OF DELHI .....Respondent
Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. and Insp. Anand Prakash, SI Pardeep Kumar, PS K. M. Pur for State
Mr.Raj Aryan Singh, Adv. for the complainant

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

J U D G M E N T

NAVIN CHAWLA, J.

1. The present appeal has been preferred by the appellants, challenging the Judgment of conviction dated 28.05.2002 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as, the 'Trial Court'), in Sessions Case No. 187/1999, arising out of FIR No. 309/1999, registered at Police Station Kotla Mubarakpur, convicting them of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. The appellants further challenge the Order on sentence dated 30.05.2002 passed by the learned Trial Court, sentencing them to undergo life imprisonment along with a fine of Rs. 5,000/- each for the offence under Section 302 read with Section 34 of the IPC. In default of payment of the said fine, they have been sentenced to undergo further rigorous imprisonment for a period of six months.

3. At the outset, it is noted that appellant no. 4/Jasvinder @ Sunny passed away on 27.04.2010. Accordingly, as recorded in the order dated 10.12.2015, the present appeal stands abated *qua* appellant no.4.

CASE OF THE PROSECUTION

4. Briefly stated, it is the case of the prosecution that:

(a) On the day of the incident, that is, in the night intervening 23.06.1999 and 24.06.1999, at about 12:30 a.m., the deceased-Rakesh Kumar went to check whether the tractor-trolley he had hired to remove the debris of his dismantled house had arrived or not. When he did not return for some time, PW-1/Suresh Kumar, the brother of the deceased, went in search of him.

(b) Upon reaching outside the *gali*, PW-1/Suresh Kumar saw that the deceased, who had his back towards PW-1, was surrounded by the appellants, namely, Rajinder (appellant no.1), Ravi Kumar @ Raju (appellant no.2), Mangal Khatri (appellant no.3) and Jasvinder @ Sunny (appellant no.4). He saw that the appellant no.1/Rajinder had restrained the deceased by holding his hands behind his back, while the appellant no.2/Ravi Kumar was stabbing him from the front side and was saying that he would not leave him alive today. On his right

side was appellant no.3/Mangal Khatri, who was exhorting '*maar saale ko*' (kill the scoundrel). On the right side of the deceased was appellant no.4/ Jasvinder @ Sunny, who was holding a knife and was saying, 'Raju, he (Rakesh) is not to be spared today'.

(c) On witnessing the incident, PW-1/Suresh Kumar cried to save his brother and rushed towards the deceased, upon which the appellants ran towards the broken wall of pump house, jumped the wall and fled into the park. The deceased fell in injured condition. On hearing their cries, PW-3/Gopal Kumar, brother of PW-1 and deceased, and some neighbours gathered at the place of the incident.

(d) PW-3 informed the police at 100 number of the incident, using the phone at their residence. The same was recorded *vide* DD No. 22A at 1:06 a.m.

(e) Thereafter, PW-1/Suresh Kumar and PW-3/Gopal Kumar immediately took the deceased to AIIMS, where he was declared brought dead. Information of the same was received from the Duty Constable and was recorded as DD No.23 at 1:20 a.m.

(f) The police, after receiving the information of stabbing, went to the spot and learnt that the injured was removed to hospital. The police then went to AIIMS. As the deceased had died, statement of PW-1 was recorded in the hospital itself by the I.O. and the *rukka* was sent to the Police Station for registration of FIR at 03:10 a.m.

(g) The FIR was registered on 24.06.1999, at around 03:25 a.m., on the basis of the statement of the complainant, PW-1/Suresh Kumar, in which all the appellants were named by him as the assailants.

(h) PW-2/Dr. T. Millo conducted the post-mortem examination of the deceased and found seven stab wounds and three incised wounds on the chest region of the deceased. The death of the victim was opined to have taken place due to haemorrhagic shock caused due to injury nos. 1 to 5, which were opined to be sufficient to cause death in the ordinary course of nature. It was also opined that the injuries were inflicted by a sharp and pointed weapon.

(i) During the course of investigation, appellant no.1/Rajinder was arrested in the evening of 24.06.1999, from outside his house. The remaining three appellants moved an application before Court, seeking to surrender on 29.06.1999, however, they did not do so and were later apprehended on the same day from Sarai Kale Khan bus-stand, when they were allegedly attempting to leave Delhi.

(j) It is further the case of the prosecution that upon their arrest, the disclosure statements of the appellants were recorded. Pursuant thereto, appellant no.2/Ravi @ Raju led the police to his meat shop and got three blood-stained knives and one blood-stained T-shirt recovered. He also got recovered his pants which he was wearing on the day of the incident. At the instance of appellant no.1/Rajinder, a scooter was recovered, which was allegedly used by the appellants for running away after commission of the offence. Further, at the instance of appellant no.4/Jasvinder @ Sunny, a shirt is stated to have been recovered, which was allegedly worn by him at the time of the incident, though later washed.

(k) The said recovered scooter belonged to one- Subhash Chander, who had given it to appellant no.2/Ravi @ Raju.

(l) From the disclosures of the appellants, it was further discovered that the appellants had taken shelter after commission of the offence at the house of one- Nem Singh.

(m) It is also the case of the prosecution that there was a history of enmity between the appellant no.2/Ravi @ Raju and the deceased. This enmity arose about eight to nine months prior to the alleged incident, when the appellant no.2, along with one friend, Sudesh, picked a fight with PW-5/Narender Kumar @ Bittoo with a view of vacating him from the house of his paternal uncle (*tau*). The deceased, along with PW-1/Suresh Kumar and PW-3/Gopal Kumar, had intervened in the said altercation and had opposed the appellant no.2/Ravi @ Raju. It is also stated that a police complaint in this regard was also registered, pursuant to which the appellant no.2/Ravi @ Raju and Sudesh were arrested. It is alleged that since happening of this incident, appellant no.2 had become inimical towards the family of the deceased and had also extended threats to them on several instances.

5. Upon completion of investigation, chargesheet was filed against the appellants for the offence under Section 302 read with Section 34 of the IPC. Subhash Chander and Nem Singh were charged for the offence under Section 201 and Section 212 of the IPC, respectively.

6. The learned Trial Court, *vide* order dated 09.02.2000, framed the charge against the appellants as under:

> *"That on 24.6.99 at about 12.30 a.m. on the road near Sheetla Mandir, Bapu Park, within the jurisdiction of P.S. Kotla Mubarakpur you all in furtherance of your common intention caused the death of Rakesh and thereby*

committed his murder and thus you committed an offence punishable u/s 302 r/w 34 IPC and within the cognizance of this court.
And I hereby direct you to be tried by this court of Sessions on the above charge."

7. The appellants pleaded not guilty and claimed trial.

8. As far as Subhash Chander is concerned, Charge was framed under Section 201 of the IPC. Against Nem Singh, Charge under Section 212 of the IPC was framed. They also pleaded not guilty to the charges.

9. In support of its case, the prosecution examined 17 witnesses, including PW-1/Suresh Kumar, who is stated to be the sole eye-witness of the incident, as well as the concerned public and official witnesses.

10. Thereafter, the statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') on 10.09.2001, wherein they denied all the allegations made against them and claimed false implication in a concocted case registered on the basis of false testimonies of interested witnesses. The appellant no.1/Rajinder stated that PW-1/Suresh Kumar had come to his house in the evening of the day following the incident, and asked him to depose against the other appellants. He refused, and that is why he has been falsely implicated in the present matter. He also stated that he had suffered hysterical convulsion and was lying in his bed at the time of the incident. The appellant no.2/Ravi @ Raju stated that their false implication stemmed from a misplaced suspicion of PW-1/Suresh that the appellants had beaten PW-5/Narender Kumar @ Bittoo, who used

to run auto rickshaw for PW-1/Suresh. Appellant no.3/Mangal further stated that he was falsely implicated in the present case only because he was the servant of appellant no.2/Ravi @ Raju.

11. In their defence, the appellants examined 4 witnesses, contending that the appellant no.1/Rajinder was present at his house on the night of the incident. DW-1/Kanhaiya Lal, DW-3/Babu Lal and DW-4/Subhash Chander deposed that on the day of the incident, they were present with appellant no.1/Rajinder at his house from about 11:00 p.m. till 2 a.m., as appellant no.1/Rajinder had suffered an epileptic fit and was unconscious. They also stated that there was no electricity in the area from around 11:30 p.m. to 12:30 a.m. Further, DW-2/M.P. Singh, Jr. Engineer, DESU stated that a mechanic left at around 11:30 p.m. and returned at 12:30 a.m. after repairing the fault in electricity.

12. Upon appreciation of the evidence, the learned Trial Court held that the prosecution had proved its case beyond reasonable doubt against the appellants and convicted them under Section 302 read with Section 34 of the IPC. The learned Trial Court concluded as under:

> *"**14.** Considering the testimony of PW-1, CFSL report, recovery of knives and T-shirt at the instance of accused Ravi, and the fact that all accused persons were absconding after the murder, they made application before the magistrate for surrender but did not surrender and were trying to abscond, show that they were involved in the murder of deceased Rakesh Kumar.*
>
> *xxxx*
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> ***18.** It is argued by counsel for accused persons that accused Rajendar and Mangal have not been assigned any role of inflicting knife blows*

to Rakesh. Knife blows have been inflicted, as per the prosecution, by accused Ravi and Jasvinder @ Sunny. There-fore, these accused persons had no role in the murder and their mere presence on the spot should not be considered that they participated in the murder. The prosecution has proved that accused Rajendar Kumar was holding the hands of deceased Rakesh on his back, when other two accused persons i.e. Jasvinder @ Sunny and Ravi @ Raju had given knife blows. Mangal was also crying and calling for killing Rakesh. It is to be noted that not two but three meat cutting knives have been recovered at the instance of Ravi @ Raju. The presence of accused Mangal and Rajendar on the spot has been proved by PW Suresh. All the four had come to the spot in search of deceased Rakesh in order to kill him. Murder had taken place at 12.30 a.m. in the night. It has also been proved on record that Rakesh deceased was himself facing some criminal trials and copies of charge sheets and judgments have been placed on record. It has been argued by counsel for accused Rajendar that Rakesh was a hefty strong person and accused Rajendar was a lean and thin person. It would not have been possible for Rajendar to hold his hands. I consider that since deceased Rakesh was a strong and hefty man, planning to kill him must have been made by accused persons collectively. Accused Rajendar has been appearing in court and I do not find him a lean and thin person. He is an ordinary built-up person. All the four accused persons collectively had killed Rakesh with the common intention of murdering him and to ensure this, they chose the time of midnight and attacked him. The deceased was alone in the gali. Since they were living in the same area, they knew the habits of deceased and the fact that he would be available at that hour of the night. It has come on record that the deceased made complaint to DESU at 11.30 p.m. and got the electricity rectified and that

> *shows that deceased was very much available at that time and was in the gali for rectification of electricity and for getting the malba (debris) picked-up and this fact was known to accused persons, who had pre-planned to murder him. I consider that the four accused persons viz. Rajendar, Ravi @ Raju, Mangal and Jasvinder @ Sunny, with common intention killed Rakesh and are guilty of offence u/s 302 r/w sec. 34 IPC. They all are convicted accordingly.*

13. Thereafter, the Order on sentence dated 30.05.2002 was passed, imposing the sentence as noted hereinabove on the appellants.

14. As far as accused Nem Singh and Subhash are concerned, they were acquitted of the charges.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE APPELLANTS:

15. The learned counsel for the appellants submits that the learned Trial Court has erred in relying upon the testimony of PW-1/Suresh. On account of him being an interested and related witness, his testimony had to be scrutinized with great caution. He points out that there were material inconsistencies in his statement, inasmuch as, in the *rukka*, he had stated that the stab injuries were inflicted by appellant no.2/Ravi @ Raju, however, at the time of his examination-in-chief he deposed that the injuries were inflicted by appellant no.2/Ravi @ Raju and appellant no.4/Jasvinder @ Sunny, and finally, in his cross-examination, he testified that he had not actually seen the appellants inflicting stabs on the deceased but had only seen knives in the hands of appellant nos. 2 and 4. Relying on the judgment of the Supreme Court in ***Ramu Appa Mahapatar v. State of Maharashtra***,

(2025) 3 SCC 565, he submits that these omissions amount to a contradiction, making PW-1/Suresh Kumar an unreliable witness. He submits that if the eye-witness is not found reliable, his testimony cannot form the basis of conviction of the appellants. In support, he places reliance on the judgments of Supreme Court in ***George v. The State of Tamil Nadu & Ors.***, 2024 INSC 974; ***Harvinder Singh alias Bachhu v. State of Himachal Pradesh***, 2023 SCC OnLine SC 1347; ***Mahendra Singh & Ors. v. State of Madhya Pradesh***, (2022) 7 SCC 157; ***Arjun Marik & Ors. v. State of Bihar***, 1994 Supp (2) SCC 372; ***Kannaiya v. State of Madhya Pradesh,*** 2025 SCC OnLine SC 2270; ***Saheb, S/o Maroti Bhumre etc. v. State of Maharashtra***, 2024 SCC OnLine SC 2580; ***Amar Singh v. State (NCT of Delhi)***, (2020) 19 SCC 165; and of this Court in ***Manoj Shukla @ Prem v. State (Govt. of NCT of Delhi),*** ILR (2012) 2 Del 782.

16. The learned counsel further submits that the testimony of PW-3/Gopal Kumar also cannot be relied upon as he was not an eye-witness to the incident. The evidence brought in by him is merely hearsay evidence, as he was only apprised of the incident by PW-1/Suresh Kumar on the way to the hospital. He further submits that the prosecution's case also becomes doubtful from the fact that, PW-3/Gopal Kumar, while informing the police, only mentioned that "*ek ladke ko chaaku maar diya hai"* (a boy has been stabbed), which seems unnatural considering that the deceased was his own brother.

17. He submits that there is also an unexplained delay in the registration of the FIR, as the same was not recorded at the time of the first receipt of information, that is, the call received about the stabbing

or about the deceased being brought dead in the hospital, but only at 3:25 am on the basis of an alleged statement made by PW-1. He submits that the first information of the offence was received at around 01:00 a.m., *vide* DD No. 22A (Ex. PW-16/A), when PW-3/Gopal Kumar had informed the police of the offence. However, the FIR was registered only at 03:25 a.m. on the statement of PW-1/Suresh. He submits that the delay in registration of the FIR casts a doubt on PW-1 or PW-3 being witness to the incident and the case being concocted later against the appellants. In support, he places reliance on ***Allarakha Habib Memon & Ors. v. State of Gujarat***, (2024) 9 SCC 546; ***Amitbhai Anilchandra Shah v. Central Bureau of Investigation & Anr.***, (2013) 6 SCC 348; ***Anju Chaudhary v. State of Uttar Pradesh & Anr.***, (2013) 6 SCC 384; ***B. N. John v. State of U.P. & Anr.***, 2025 SCC OnLine SC 7; ***Surender Kaushik & Ors. v. State of Uttar Pradesh & Ors.***, (2013) 5 SCC 148; ***Ramesh Baburao Devaskar & Ors. v. State of Maharashtra***, (2007) 13 SCC 501; ***Mahesh v. State***, 2019 SCC OnLine All 3595 and, ***Sekaran v. State of Tamil Nadu***, (2024) 2 SCC 176.

18. He submits that there is also non-compliance with the mandate of Section 157 of the Cr.P.C., which also creates a doubt on the case of the prosecution. In support, he places reliance on ***Arjun Marik*** (supra) and ***Usha R. Patwari v. Karnataka Lokayuktha***, 2016 SCC OnLine Kar 6899.

19. The learned counsel also disputes the prosecution's case regarding enmity being the motive behind the offence and contends that even if the animosity is assumed to exist *qua* appellant no.2/Ravi

@ Raju, no motive has been attributed to appellant nos. 1, 3 and 4, who are also alleged to have participated in the offence.

20. Relying on the judgment of the Supreme Court in ***Aslam @ Imran v. State of Madhya Pradesh***, 2025 SCC OnLine SC 670, he further submits that personal enmity is a double-edged sword and cannot assist the prosecution case, rather shows a possibility of false implication.

21. He submits that though it is the case of the prosecution that PW-1/Suresh Kumar and PW-3/Gopal Kumar had removed the deceased to the hospital, their clothes, which would have been blood-stained, were not seized. This creates a serious doubt as to the presence of PW-1 or PW-3 at the place of incident. In support, he places reliance on the Judgment in ***Khima Vikamshi & Ors. v. State of Gujarat***, (2003) 9 SCC 420.

22. He submits that even though as per the prosecution witnesses, there were independent witnesses present at the spot, none of them were examined or produced before the learned Trial Court, thereby, again raising a doubt on the case of the prosecution. In support, he places reliance on ***Khima Vikamshi*** (supra).

23. The learned counsel contends that the weapons of offence, that are, the knives, were recovered from an open space with no public witnesses, thereby making the recovery in itself doubtful and not credible. He submits that the presence of knives at the shop of appellant no.2/Ravi @ Raju is not unnatural as the same was a meat and chicken shop. To dilute the credence of the recovery, he relies on

the judgment in ***Kattavellai @ Devakar v. State of Tamil Nadu***, 2025 SCC OnLine SC 1439.

24. He further argues that the prosecution has failed to connect the said weapons to the offence, as the knives were neither shown to the doctor who conducted the post-mortem, nor were any fingerprints lifted from them. He submits that mere match of blood group does not *ipso facto* connect the weapon to the offence. Further, he contends that the recovery, in itself, is doubtful on account of the long period of time between the incident and the disclosure. In support, he places reliance on ***Ishwar Singh v. State of Uttar Pradesh***, (1976) 4 SCC 355; ***Kartarey & Ors. v. State of Uttar Pradesh,*** (1976) 1 SCC 172; ***Harvinder Singh alias Bachhu*** (supra); ***Ashish Batham v. State of Madhya Pradesh***, (2002) 7 SCC 317; ***Allarakha Habib Memon*** (supra) and, ***Khima Vikamshi*** (supra).

25. He further submits that the recovery of the weapon is only at the instance of the appellant no.2 and is insufficient to convict the other appellants. In support, he places reliance on ***Pancho v. State of Haryana***, (2011) 10 SCC 165 and ***Manoj Kumar Soni v. State of Madhya Pradesh***, (2024) 17 SCC 401.

26. He submits that the learned Trial Court has erred in drawing an adverse inference of guilt from the allegation that the appellants had absconded. He submits that this conduct is not unnatural and may be out of a fear of arrest and harassment. In furtherance, he places reliance on the judgments in ***S.K. Yusuf v. State of West Bengal***, (2011) 11 SCC 754; ***Harvinder Singh @ Bachhu*** (supra); ***Narayan Yadav v. State of Chhattisgarh***, 2025 INSC 927; and ***Bipin Kumar***

Mondal v. State of West Bengal, (2010) 12 SCC 91. He further submits that even on facts, such an observation is incorrect, inasmuch as appellant no.1 did not abscond and was arrested from outside his house.

27. The learned counsel points out that the role assigned to appellant no.3 is that of mere presence and generic exhortation. He submits that the same is insufficient for conviction under Section 302 read with Section 34 of the IPC. In support, he places reliance on ***Vijai @ Babban v. State of Uttar Pradesh***, 2025:AHC:134249-DB.

28. The learned counsel also raises doubts on the credibility of the MLC Report. He submits that the same fails to mention the names of the alleged assailants. He further contends manipulation in the Report, inasmuch as in the column for 'name of relative or friend', 'SURESH KUMAR' and 'Brother' has been written in a different handwriting. He submits that the MLC Report also fails to mention the nature of the weapon used.

29. The learned counsel submits that the prosecution has also failed to show that there was sufficient light on the spot of the incident, and contends that it is hard to believe that the eye-witness, PW-1, could have accurately identified the appellants and the weapons being used by them. He submits that even the site plan (Ex. PW-17C) is not reliable as it fails to mention the source of light. For the same, he relies upon the judgment in ***Kannaiya*** (supra).

30. He further submits that even trails of blood, house of the deceased, and the route of the deceased, have not been shown in the site plan.

31. He submits that in view of the above, and considering the testimony of the defence witnesses, the benefit of doubt has to be given to the appellants. He submits that conviction cannot be based on conjectures and surmises. In support, he places reliance on ***Vaibhav v. State of Maharashtra***, (2025) 8 SCC 315 and ***Krishnegowda & Ors. v. State of Karnataka***, (2017) 13 SCC 98.

32. He submits that the learned Trial Court has not given due credence and weightage to the witnesses produced in defence of the appellant no.1. He submits that such defence witnesses are entitled to equivalent credence as those produced by the prosecution. In support, he places reliance on ***Mahendra Singh*** (supra) and ***Vaibhav*** (supra).

33. The learned counsel prays that the judgment of conviction and the order on sentence, therefore, deserve to be set aside, and the appellants deserve to be acquitted of all charges and allegations.

SUBMISSIONS ON BEHALF OF THE LEARNED ADDITIONAL PUBLIC PROSECUTOR

34. Mr. Aman Usman, the learned APP for the State, submits that there are no infirmities in the conviction and sentence awarded to the appellants, and the same do not warrant any interference by this Court.

35. He submits that the testimony of the sole eye-witness, PW-1/Suresh Kumar, who is also the brother of the deceased, is trustworthy and well corroborated by the surrounding circumstances, that is, the other witness testimonies and DD entries. It is contended that minor discrepancies, if any, are inconsequential and cannot

affect the prosecution's case, rather, they prove the *bona fide* of PW-1/Suresh Kumar. He submits that the testimony of PW-1 cannot be disregarded only on the ground that he is related to the deceased. In support, he places reliance on the judgment of the Jammu and Kashmir High Court in ***Pritam Singh v. State,*** 2022:JKLHC-JMU:2885-DB.

36. On the question of PW-1/Suresh Kumar not seeing the actual stabbing, he submits that the same does not go against the prosecution's case, inasmuch as it was merely due to the deceased's back being towards the witness and the injuries being inflicted on the front side. He submits that the testimony of PW-1/Suresh Kumar, in fact, clearly establishes active participation of the appellants. The learned APP also argues that had the prosecution wanted to falsely implicate the appellants in the present case, it could have projected the other witnesses also as eye-witnesses.

37. The learned APP further submits that there is no infirmity in the registration of the FIR, which was lodged promptly, that is, by 03:25 a.m. He emphasises that the FIR, in fact, furthers the prosecution's case, as the names of all the four appellants were disclosed at the earliest opportunity, thereby ruling out the possibility of false implication as an after-thought. In view of this, he contends that the absence of appellants' name in the MLC Report is irrelevant, especially considering the state of shock PW-1/Suresh Kumar and PW-3/Gopal Kumar would have been in.

38. The learned APP also refutes the contention that the recovery at the instance of appellant no.2/Ravi @ Raju was effected from an

open space and therefore, cannot support the prosecution's case. He submits that although the place of recovery may have been open to sky, the articles were recovered from a concealed place, that is, under a *takht* in the junk area within the boundaries of the meat shop of appellant no.2.

39. He points out that PW-2/Dr. T. Millo categorically opined that that the injuries on the deceased were caused by a sharp cutting object. Further, the knives recovered at the instance of appellant no.2/Ravi @ Raju were found to contain blood of the same blood group as that of the deceased. He contends that thus, the recoveries establish an unbroken forensic link connecting the appellants to the offence and lending corroboration to the direct evidence given by PW-1/Suresh Kumar. In view of the above, he submits that no adverse inference can be drawn for the non-production of the recovered knives to the doctor for opinion, as it does not dilute the prosecution's case which is based on direct evidence. Reliance to this effect is placed on the judgment of the Supreme Court in ***Ghanshyam Mandal & Ors. v. The State of Bihar (Now Jharkhand),*** 2026 INSC 194 and the Jharkhand High Court in ***Doman Murmu @ Ramdhu Murma v. The State of Jharkhand,*** 2024:JHHC:21102-DB.

40. He submits that the prosecution has also proved the motive of the offence which involved a quarrel leading to appellant no.2 harbouring a deep grudge against the deceased and his family.

41. He further submits that though the appellant nos. 2, 3 and 4 moved a surrender application, they never appeared in Court. They

were, in fact, apprehended when they were attempting to abscond. He submits that this conduct reveals their consciousness of guilt and is a strong incriminating circumstance in favour of the prosecution.

42. The learned APP submits that, in view of the above, the conviction and sentence awarded by the learned Trial Court is based on the corroborated testimony of the eye-witness PW-1/Suresh Kumar, the recoveries made at the instance of the appellants, their conduct after the incident and the CFSL Report, and hence, deserve to be confirmed.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE COMPLAINANT

43. Mr. Ramesh Kumar Mishra, the learned counsel for the complainant, while adopting the submissions advanced by the learned APP, further emphasizes that the testimony of PW-1/Suresh Kumar is trustworthy and unshaken, with no material contradictions. In support, he places reliance on ***State of Himachal Pradesh v. Hukum Chand @ Monu,*** 2026 SCC OnLine SC 462 and ***Gurcharan Singh & Anr. v. State of Punjab***, 1962 SCC OnLine SC 42.

44. He further supports the submission of the learned APP that the FIR was registered promptly and without any delay, having been registered at 03:25 a.m. on the basis of the statement of PW-1/Suresh Kumar, which was recorded within 2 hours of the incident from the hospital itself, thereby ruling out the possibility of false implication of the appellants.

45. The learned counsel also submits that the testimony of a related

witness cannot be considered to be tainted evidence and cannot be discarded on that ground alone. He submits that it also does not require corroboration as a rule, and can form the basis of conviction, if found to be credible. In furtherance, he places reliance on the judgment of the Supreme Court in ***Sarwan Singh & Ors. v. State of Punjab,*** (1976) 4 SCC 369. He further submits that a related witness cannot be termed as an interested witness *per se.* He submits that a related witness, particularly a family member, may be a natural witness in cases taking place around the vicinity of the victim and the witness. In this regard, reliance is placed on the judgments in ***Rajesh Yadav & Anr. v. State of Uttar Pradesh,*** (2022) 12 SCC 200 and ***State of Rajasthan v. Kalki & Anr.,*** (1981) 2 SCC 752.

ANALYSIS AND FINDINGS

46. We have considered the submissions made by the learned counsels for the parties and have also perused the records of the learned Trial Court.

47. The case of the prosecution rests primarily on the testimony of PW-1/Suresh Kumar, who has given a detailed account of the assault, including the specific role attributed to each of the appellants. He stated that on the night intervening 23rd and 24th June 1999 at about 12-12:30 a.m., a vehicle had come to lift *malba* from the house of witness which was under construction. As he came out of the *gali*, he saw that the appellants had surrounded the deceased. Appellant-Rajinder had caught hold of the hands of the deceased on his back. On the right hand side of the deceased was appellant no. 4-

Jasvinder while on front was the appellant no. 2-Ravi @ Raju. On his side, appellant no. 3- Mangal was standing. Raju and Mangal were shouting "*Maro Salley Ko Chorana Nahai*". Jasvinder was also giving similar calls. Appellant no.2/Ravi @ Raju and appellant no.4/ Jasvinder @ Sunny inflicted knife blows on the deceased. By the time he reached to the deceased, the deceased had already fallen on the ground. The appellants, on seeing the PW-1 approaching the deceased, ran away towards the park side. PW-1 then called for PW-3/Gopal Kumar and other persons from neighbourhood also gathered there. He asked PW-3/Gopal Kumar to inform the police. Thereafter, the deceased was taken to AIIMS.

48. PW-1/Suresh also testified that the appellant no.2 was holding a grudge against the deceased and his family for the past 8-9 months, on account of their intervention in a quarrel between PW-5/Narender and appellant no.2/Ravi @ Raju, which resulted in an FIR and subsequent arrest of appellant no.2. He states that on 24.06.1999, at about 8 or 8:30 pm, he had noticed Appellant-Rajinder pass from the *gali* and he immediately informed the SHO. SHO accompanied him to the house of Rajinder from where Rajinder was arrested.

49. In his cross-examination, he stated that the deceased had gone to the *malba* site and when he did not come for about 10 minutes, he had gone from his room to see the deceased. He stated that the tractor trolley which had to lift the *malba* had not come for lifting the same and the deceased had gone to check if it has come or not. To a specific question asked, he stated that there was light in the gali and on the road. He stated that as far as appellant no.1/Rajinder is

concerned, he or his family had no quarrel or enmity with the deceased prior to the incident. He stated that he was just 20-25 yards away from the place where appellant-Rajinder was holding the hands of the deceased. He further admitted that he did not actually see the inflicting of stab wound by appellant Ravi @ Raju and appellant Jasvinder @ Sunny, though he had seen knives in their hands.

50. The testimony of PW-1/Suresh Kumar is corroborated by the testimony of PW-3/Gopal Kumar, who deposed that on the night of the incident, upon hearing cries of PW-1/Suresh Kumar, he went to the *gali* and saw the deceased lying on the ground in an unconscious state and PW-1 crying near him. PW-1 told him to give a call to police from the house. He immediately went to the house and called the police, whereafter, he returned and took the deceased to the hospital along with PW-1/Suresh Kumar. He further stated that on the way to the hospital, PW-1/Suresh Kumar named the appellants as the assailants of their brother. He also stated that the appellants had inimical relations with them for 8-9 months preceding the incident.

51. The statements of PW-1/Suresh Kumar and PW-3/Gopal Kumar are further corroborated by the testimony of PW-4/Gauri Devi, the mother of the deceased, as also of PW-1 and PW-3. She stated that on the fateful day, PW-3 had called at 100 number from the telephone installed at her home and she had heard him telling the police that his brother had received stab injuries. This call is corroborated by DD No. 22 (Ex. PW12/A) and by DD No. 22A (Ex. PW16/A) recording the factum of the call received from the telephone number installed in the house of PW-4.

52. From the above testimonies, the presence of PW-1 and his witnessing the incident stands proved. He has deposed of the exact role of each of the appellants. Minor contradictions, if one may even call them contradictions, do not in any manner detract from his statement or cast an iota of doubt on the same.

53. The testimony of PW-1 gets further corroborated by the MLC Report (Ex. PW15/A), wherein the deceased is reported to have been brought to the hospital by PW-1. The submission of the learned counsel for the appellants that the name of PW-1 has been subsequently added to this report, does not hold much water, as the name, age and address of the deceased is recorded in the MLC Report, which could have been given only by PW-1. The relationship of the person bringing the deceased is described as 'brother'. Even if the name of PW-1 is written later, it is because the first concern of the doctor has to be to check the patient and not to complete all the formalities in the form.

54. Much emphasis has been laid by the learned counsel for the appellants on the non-seizure of the blood-stained clothes of PW-1 and PW-3. He submits that this shows that the deceased was not shifted to the hospital by them. We do not find any merit in the said submission. While it would have been better for the prosecution to have seized the blood-stained clothes of PW-1 and PW-3, however, mere non-seizure of the same cannot be said to be fatal to the case of the prosecution or as casting a doubt on its case, especially where, from the evidence on record, the PW-1 and PW-3 come out to be wholly reliable witnesses. The DD No. 23 (Ex.PW-12/B) records the

information received from AIIMS at 1:20 a.m. from Duty Constable Narender Kumar regarding a boy being brought by his brother, PW-1/Suresh, with stab injuries, and having been declared as 'brought dead' by the doctors. This itself shows that it is the PW-1 who had shifted the deceased to the hospital.

55. In ***Khima Vikamshi*** (supra), the Supreme Court found the alleged eye-witness therein, the daughter-in-law of the deceased, to be unreliable. It was held that her presence at the spot and the manner she described the incident, was doubtful. Similarly, the presence of the brother of the deceased at the spot was doubted and his sudden appearance was found to be "*too much of a coincidence to accept"*. In the light of these doubts, the Supreme Court also laid emphasis on the non-seizure of the clothes of these witnesses. The said judgment is therefore, distinguishable on facts inasmuch as, in the present case, the presence of PW-1 and PW-3 gets corroborated from other evidence as well.

56. The submission of the learned counsel for the appellants that PW-1/Suresh Kumar cannot be believed as he is an interested witness, does not impress us. Though PW-1/Suresh Kumar is the brother of the deceased, this, in itself, is not sufficient to discredit his testimony, especially when it stands corroborated by the other evidence on record.

57. In ***Kalki*** (supra), the Supreme Court rejected the submission that the testimony of the wife of the deceased could not be relied upon as she was 'highly interested' witness, by observing that 'related is not equivalent to interested'. A witness may be called

'interested' only when he/she derives some benefit from the result of a litigation; a witness who is the natural one and is the only possible eye-witness in the circumstances of the case, cannot be said to be 'interested'. On the plea of there being discrepancies in the evidence of the witnesses, the Supreme Court clarified that material discrepancies are those which are not normal and not expected of a normal person. Normal errors of observation, normal errors of memory due to lapse of time or due to mental disposition, such as shock and horror at the time of the occurrence, and the like, cannot be said to be material discrepancies so as to discard the testimony of the witness.

58. In ***Sarwan Singh*** (supra), 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 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.

59. In ***Rajesh Yadav*** (supra), the Supreme Court reiterated the above test of examining the testimony of a so-called 'interested witness', as under:

> *"31. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstood the rigour of cross-examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose.*
>
> *32. When the court is convinced with the quality of the evidence produced, notwithstanding the classification as quoted above, it becomes the best evidence. Such testimony being natural, adding to the degree of probability, the court has to make reliance upon it in proving a fact. The aforesaid position of law has been well laid down in Bhaskarrao v. State of Maharashtra…*
>
> *xxx*
>
> *33. Once again, we reiterate with a word of caution, the trial court is the best court to decide on the aforesaid aspect as no mathematical calculation or straitjacket formula can be made on the assessment of a witness, as the journey towards the truth can be seen better through the eyes of the trial Judge. In fact, this is the real objective behind the enactment itself which extends the maximum discretion to the court."*

60. In ***George*** (supra), the Supreme Court reiterated that merely because a witness is an interested witness, it cannot be a ground to discard the testimony of such a witness; only the testimony of such a witness has to be scrutinised with greater caution and circumspection.

61. We need not multiply the authorities on the above proposition. In the present case, as we have noted hereinabove, PW-1/Suresh has stood out as a "wholly reliable" witness, whose testimony stands corroborated by the other evidences on record. We find no reason to disbelieve him because of the minor contradictions that have been pointed out by the learned counsel for the appellants.

62. Though in a case where the incident is proved through an eye-witness, the presence of a motive for the crime may not be essential. In the present case, even motive stands proved through the testimony of PW-5/Narender Kumar, who used to run auto rickshaw for PW-1/Suresh Kumar. He stated that he used to reside in the house of one Bhagwana, who is the paternal uncle (*tau*) of the appellant no. 2/Ravi @ Raju, and was located opposite to the house of the deceased and his brothers. He stated that on 13.09.1998, in order to get the house vacated, appellant no.2, along with a friend, Sudesh, was assaulting him, when the deceased, PW-1/Suresh Kumar and PW-3/Gopal Kumar intervened, pursuant to which the appellant no.2 was arrested. He also stated that appellant no.2 had, on various occasions, asked him to bring the deceased at some place to which he had refused.

63. The submission of the learned counsel for the appellants that as there was enmity between the deceased, PW-1 and PW-3, on the one side, and the appellants on the other, the testimony of PW-1 and PW-3 cannot be relied upon, also cannot be accepted. As rightly contended by the learned counsel for the appellants, enmity is a double-edged sword and, therefore, while proof of motive for the offence may support the prosecution's case, at the same time, it may

also give rise to a possibility of a false implication. Therefore, in such circumstances, the testimony of the witness needs to be examined more carefully. In the present case, when so examined, PW-1 and PW-3 come out to be reliable witnesses. In this regard, we would also note that there is no true enmity between the two parties. It is, in fact, the appellant who carried a grudge against the deceased, PW-1 and PW-3, for taking the side of PW-5/Narender Kumar in an alleged fight between the appellant no.2/Ravi @ Raju and PW-5.

64. We may herein also note that PW-3/Gopal Kumar has not been set up by the prosecution as an eyewitness to the incident. It is on hearing the hue and cry of PW-1/Suresh Kumar that he had come out of his house and was informed by PW-1/Suresh Kumar that the deceased has been stabbed. He ran back to the house to give a call to the police. Merely because in the PCR complaint, instead of writing the name of the deceased, it is written '*ek ladke ko chaaku maar diya hai*', it cannot be said that the incident as described by PW-1 and PW-3, cannot be accepted. The manner in which the entry is recorded in the PCR register, cannot undermine the otherwise corroborated testimonies of these witnesses. It could be the manner in which PW-3 informed the police in his anxiety seeing the state of the deceased or the casual manner in which the information was recorded by the concerned police officer. In either way, it does not undermine the manner in which the incident has been described by the prosecution witnesses, and rather, renders a ring of truth on the same. If the PW-1 was to be set up as a false eye-witness, nothing stopped the prosecution to also set up PW-3 as the same, along with

PW-1. In fact, this itself shows that PW-1 alone was the eye-witness, whose testimony gets corroborated with the testimony of other witnesses and contemporaneous documents.

65. As far as the non-examination of public witnesses is concerned, the same is certainly desirable, however, the case of the prosecution cannot be doubted only because the police, in its lackadaisical approach did not choose to record the statement of the public witnesses, or because the public witnesses, not wanting to be involved in criminal cases, especially of this nature, do not volunteer to stand as witness. In the present case, the track record of the deceased was not stellar, as is coming out from the cross-examination of PW-1. In such a case, it would not be uncommon for the public witnesses to stay away from the deceased's family, the accused and the police. In fact, the motive in the present case itself is that the deceased had stood as a witness/complainant against the appellant no. 2 in his case against PW-5. Therefore, the case of the prosecution cannot be doubted only because the public witnesses, who, as per the prosecution, were not the eye-witness, were not examined.

66. This now brings us to the submission of the learned counsel for the appellants that there was a delay in registration of the FIR, which in his submission is sufficient to create a doubt on the case of the prosecution. As noted hereinabove, DD No.22 (Ex.PW-12/A) was recorded on the call received at 01:06 a.m. of a boy being stabbed. The mere fact that the name of the deceased was not written therein, would not cast a doubt on the case of the prosecution as the

phone number from which the call was made was duly mentioned in the report. The person writing the information may or may not have written the name of the injured. The said information was thereafter communicated to the concerned police station *vide* DD No. 22A (Ex.PW-16/A). The DD No. 23 (Ex.PW-12/B) records the information received from AIIMS at 1:20 a.m. from Duty Constable Narender Kumar regarding a boy being brought by his brother, PW-1/Suresh Kumar, with stab injuries, and having been declared as 'brought dead' by the doctors. PW-16/SI Raghunath (Retd.) states that he had been handed over DD No. 22A for investigation. He reached the spot of the incident and after leaving Constable Prem Kumar there, he went to AIIMS, where he met Constable Kamaljeet, who, in turn, handed him over DD No.23A (Ex. PW-16/B) and the MLC Report. He states that thereafter PW-17/Insp. Greesh Kumar, SHO at P.S. K.M. Pur, recorded the statement of PW-1/Suresh Kumar (Ex.PW-1/A) and sent Constable Nasib Singh with the *rukka* for registration of the FIR. The FIR (Ex. PW-12/D) was then registered at 03:25 a.m. on 24.06.1999. There is, therefore, no delay in registration of the FIR. In fact, we must herein note that in Ex.PW-1/A, that is, the statement of PW-1/Suresh Kumar, the entire incident was narrated by him by naming the appellants as the assailants. The time gap between the incident, the shifting of the deceased to the hospital, the reaching of the SHO there, and the recording of the statement of PW-1 is so short that it rules out making out of a false case against the appellants.

67. In ***Allarakha Habib Memon*** (supra), the Supreme Court found

serious discrepancies in the registration of the FIR. It found that the police constable had seen the incident and had also brought the crime weapon to the police station. However, his statement was not recorded by the police, nor was any entry made regarding the factum of presentation of the weapon in the daily diary (*roznamcha*) of the police station. There was a further discrepancy in the statement of the witness, on basis of which the FIR was registered, as to whether it was recorded at the hospital or in the police station. The Court also found that there was also a discussion held amongst the relatives as to the manner in which the complaint was to be drafted and lodged. In the present case, as we have noted hereinabove, the initial call made by PW-3/Gopal Kumar could not be the basis of the registration of the FIR. On the police party reaching the place of incident, it came to know that the deceased had been removed to the hospital. At the hospital, the statement of PW-1/Suresh Kumar was recorded, on the basis of which the FIR was registered. We find no infirmity in the same. We also find that there was no time gap or delay in registration of the FIR which could have cast a doubt on the version of PW-1/Suresh Kumar or on the contents of the FIR.

68. In ***Amitbhai Anilchandra Shah*** (supra), the second FIR was registered for different offence committed as part of a single conspiracy, and in the same transaction. The Supreme Court held that under the scheme of the relevant provisions of the Cr.P.C., only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirement of Section 154 of Cr.P.C. and, therefore, there can be no second FIR, and

consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident, giving rise to one or more cognizable offences. It was held that a second FIR (which is not a cross-case) in respect of an offence or different offences committed in the course of the same transaction, is not only impermissible, but it also violates Article 21 of the Constitution of India. The said judgment will have no application to the facts of this case.

69. We, again, need not multiply the authorities on the above proposition which is well-settled, however, in the facts of the present case have no application.

70. The aspect of alleged delay in registration of the FIR has also been considered by the learned Trial Court in detail, and has been rejected by observing as under:

> *"7. ...There is some timing difference, in the time of murder stated by witness Suresh and recording of DD Ex.PW.12/A, which is DD.No.22A. This time difference has been explained by the prosecution and it is submitted by ld. APP that Gopal made call to police control room and there is a procedure followed at police control room that a form is filled after receipt of the call, then this form is sent to wireless message room and from there, wireless message is sent to the nearest PCR van and direction is given to come into action and then the report is made to the local police and this process takes 10-15 minutes. The gap in time can also be explained from the fact that deceased was examined by the doctor in casualty at 1.09 hours. It must have taken sometime in removing the deceased from Kotla Mubarakpur in a three wheeler scooter and then taking him to AIIMS in the Casualty and*

then the doctor examined him and the fact that doctor examined him at 1.09 hours in the night, shows that deceased must have been removed from the place of incident around 12.45/12.50 a.m. as 20 minutes is the approximate time, which would have been spent in removing the person from a place at K. M. Pur till taking him to AIIMS' Casualty. I, therefore, consider that the time given of the incident by witness Suresh was the correct time."

71. We concur with the above opinion of the learned Trial Court.

72. The learned counsel for the appellants has urged that there was non-compliance with Section 157 of the Cr.P.C. Even this submission of the appellants cannot be accepted. PW-12/Head Constable Karan Singh, had stated that after recording the FIR, he sent a special messenger- Constable Pramod Kumar (PW-9) for taking a copy of the FIR to senior police officers and the concerned Magistrate. His testimony stands corroborated with the statement of PW-9/Constable Pramod Kumar, who stated that on being handed over the copy of the FIR in a sealed envelope, he delivered the same to the Area Magistrate and other senior police officers. He was not cross-examined on this.

73. This now brings us to the recovery of the knives and the T-shirt at the behest of the appellant no.2/ Ravi @ Raju. PW-13/Head Constable Satbir Singh deposed that on 29.06.1999, SHO received an intimation that the accused persons were attempting to leave Delhi from bus stand Sarai Kale Khan. They went to Sarai Kale Khan, where they found appellant no.2, whom he knew from before, standing at the Ring Road bus stand. He told the SHO about the same

and the SHO, with the help of the other police staff, including PW-13, apprehended the appellant no.2, appellant no.3 and appellant no.4 and their disclosure statements were recorded (Ex.PW-17/E, 17/F and 17/G). He further states that thereafter they took the said appellants with them to the shop of appellant no.2/Ravi @ Raju. While the other two appellants were left in the vehicle, the appellant no.2 led them behind a shop and from there, under a wooden *takht*, where other junk material was lying, he pulled out a white polythene containing one white T-shirt, and three knives (*chhuriya)* which were having blood stains. The T-shirt was also having blood stains. Similar is the testimony of PW-17/Insp. Greesh Kumar. The appellants have assailed the said recovery by stating that even accepting the case of the prosecution, the knives have been recovered from an open space behind the shop of appellant no.2 and, therefore, no reliance can be placed on the same. We are unable to accept the said submission, as the knives have been recovered from under the *takht* behind the shop of the appellant no.2, kept concealed in a polythene bag along with other junk material. It was, therefore, not lying in the open.

74. The appellant nos.1 and 3 have also contended that as these knives were recovered at the pointing of the appellant no.2/Ravi @ Raju, they can be used only in evidence against the said appellant. While we do find merit in the same contention, in our view, in the presence of direct eye-witness testimony, and other evidence in form of testimonies of other witnesses and documents, the recovery of knives is also one of the circumstances which connects the appellants

with the crime.

75. The learned counsel for the appellants is also correct in his submission that ideally the knives should have been shown to PW-2/Dr.T. Millo, who had conducted the post-mortem on the deceased, for obtaining an opinion on whether the injuries could have been caused by the same. However, in the present case, the prosecution has tried to connect these knives with the crime through the CFSL Report (Ex.PW-7/B), which opined that two of the three knives, that is, Ex.11 and Ex.12, as also the T-shirt (Ex.10), recovered at the behest of the appellant no.2, had human blood of AB group, which is also the blood group of the deceased. Suggestions were given by the appellants to PW-17/Insp. Greesh Kumar that he had picked up the meat-cutting *chhura* from the meat shop of appellant no. 2/Ravi @ Raju and had poured blood collected by him from the hospital. However, the suggestion was denied and there is also no material to support such suggestion of the appellants. Therefore, in our view, the prosecution has also been able to connect the recoveries made at the behest of the appellant no.2 to the crime.

76. In ***Ishwar Singh*** (supra), there were two accused who were alleged to be carrying two different kinds of weapons, one a *ballam* and the other a *bhala.* In these facts, the Supreme Court held that not obtaining an opinion of the medical expert as to which weapon caused the injury, casts a doubt on which of the accused had given the fatal blow and therefore, conviction of one of them under Section 302 of the IPC cannot be sustained. The Supreme Court relied upon its earlier judgment in ***Kartarey*** (supra), wherein it was held as

under:

> *"26. We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined injuries of the victim, more specifically on this point, for the proper administration of justice. particularly in a case where injuries found are forensically of the same species. e.g. stab wounds, and the problem before the Court is whether all or any of those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may, sometimes, cause aberration in the course of justice. Fortunately, in the instant case, the number, nature and dimensions of the injuries of the deceased, as deposed to by Dr. Sohan Lal, afford a sure indication that they were caused with three different weapons."*

77. Therefore, if there are other evidence by which the weapon can be connected with the injury, mere non-examination of the doctor on the same would not be fatal to the case of the prosecution.

78. In ***Gurcharan Singh*** (supra), the Supreme Court has clarified that it is not an inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an impeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of an expert may not be

regarded as essential.

79. The learned counsel for the appellants has further contended that the only role ascribed to the appellant no.3/Mangal Khatri is that of exhortation and, therefore, he cannot be said to be sharing a common intention with the other appellants to kill the deceased. The said submission can also not be accepted. The entire incident has been described by PW-1/Suresh Kumar. He had seen at least two appellants stabbing the deceased, that is, the appellant no.2 and the appellant no.4, with the appellant no.1 holding the deceased from the back. There is also a recovery of a third knife at the behest of the appellant no.2, which also contains human blood as per the CFSL Report (Ex.17/B). The appellant no.3/Mangal Khari was not a mere bystander, but when the appellant no.2 and the appellant no.4 were inflicting the knife blows on the deceased, he was exhorting them to do so. He clearly shared the common intention with the other appellants to kill the deceased. We, therefore, do not find any merit in the above submission of the learned counsel for the appellants.

80. As regards the submission of the learned counsel for the appellants that the post-offence conduct of the appellants would not be relevant against them, we may only note that the appellants have absconded from the crime scene and were untraceable. While the conduct of appellants cannot, by itself, be sufficient to bring home a charge against the appellants, however, it may be considered by the Court as one of the circumstances against them, along with the other direct or circumstantial evidence on record. In ***Harvinder*** (supra), Supreme Court held that a subsequent conduct would be a relevant

fact under Section 8 of the Evidence Act, though it may by itself not constitute the sole factor to convict a person. In the present case, the charge is proved against the appellants beyond reasonable doubt, through the testimony of the eye-witness and other corroborating circumstances.

81. The submission of the learned counsel for the appellants that the evidence given by the defence witnesses has been ignored by the learned Trial Court, also cannot be accepted. The learned Trial Court has considered the defence set up by the appellants and the testimonies of the defence witnesses at length, and we may reproduce the same as under:

> *"16. Accused Rajendar produced defence evidence to show that he was present at his house on that evening. He had suffered epilepsy fit and was in his house from 11/11.30 p.m. to right upto 2.30 a.m. DW.1 is Kanhiya Lal, a neighbour of Rajendar. He in his examination-in-chief testified that when he was at his shop, a child came to him to call him to reach at the house of Rajendar as Rajendar was not feeling well. It has come in the evidence that Rajendar was having three brothers and all the three were living in the same house. When other brothers of accused Rajendar were living in the same house with their families, I do not find why this witness would have been called, if Rajendar had suffered epilepsy fit. It is a case of accused himself that he was patient of epilepsy since long. If a patient of epilepsy suffers fit at his house, he recovers from the fit after sometime and it is not something, for which messengers are rushed to different places to call the persons. Moreover, Kanhiya Lal is not a doctor, who would have gone and given some medicine, neither when he came, had taken Rajendar to any doctor. DW.3 is Babu Lal,*

> *who also deposed about accused Rajendar suffering from epilepsy and he stated that he went to the house of Rajendar and kept sitting there upto 2 a.m. in the night. Rajendar was given some medicine. I consider his testimony also most unnatural since those, who suffer from epilepsy, do get fits occasionally and when the fit is over, after sometime they become normal. There is no reason for anybody to remain upto 2 a.m. at the house of such a person. These witnesses seem to have been produced only to take the plea of alibi. Similarly, DW.4 is also a witness of sitting with Rajendar on that night upto 5/5.30 a.m. as Rajendar had suffered epilepsy sit. I consider that none of these witnesses are believable on the point that they remained at the house of Rajendar because he had suffered a fit of epilepsy…"*

82. For the reasons stated hereinabove, we find no merit in the present appeal. The same is, accordingly, dismissed.

83. We, again, note that unfortunately the appellant no.4 has since passed away and, therefore, his appeal has abated.

84. As far as the remaining appellants are concerned, they shall surrender before the learned Trial Court within two weeks from today, failing which the respondent shall ensure that they are taken into custody for undergoing their remaining sentence.

85. A copy of this judgment be sent to the concerned Jail Superintendent and the learned Trial Court for information and ensuring compliance.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

MAY 26, 2026/sg/ns/**Yg**