

Delhi High Court Chander Prakash @ Chander vs The State (Delhi Admn.) on 16 March, 1995 Equivalent citations: 1995 CriLJ 3028, 58 (1995) DLT 238 Author: P Bahri Bench: P Bahri, S Pandit JUDGMENT P.K. Bahri, J. (1) These three appellants-S/Shri Chander Prakash @ Chander, Smt-Charneli Devi and Azmuddin have challenged their conviction and sentences awarded to them by an Additional Sessions Judge, Shahdara, vide judgment and order dated 30/03/1991, by which they were convicted of an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and also convicted under Section 120B of the Indian Penal Code which was termed as forming part of the main offence under Section 302 of the Indian Penal Code. The appellants-Chander Prakash and Azmuddin were also convicted for an offence punishable under Section 460 of the Indian Penal Code. All the appellants were awarded imprisonment for life for the offence punishable under Section 302 / 34 read with Section 120B of the Indian Penal Code. The appellants-Chander Prakash and Azmuddin were further sentenced to undergo rigorous imprisonment for two years each for offence punishable under Section 460 of the Indian Penal Code. (2) Facts of the case, in brief, are that Sia Ram, husband of Chameli Devi-appellant was having a crockery shop at Sanjay Market. At the time of the occurrence, there were three daughters of the said couple living in house No. 169-170, Block No. 13, Kalyan Puri. The said house comprised of only two rooms and a compound in front of the same. Each room measured about 10' x 8'. Mahipal PW3 was real brother of Sia Ram-deceased. He was also living with the family but he used to sleep at the shop of Sia Ram. Sia Ram remained abroad for earning more income for about three years prior to the occurrence and he had come to India in 1986 and had again gone back abroad and returned in April 1987. Even before going abroad he had let out one room in his house to Chander Prakash-appellant who lived there with his brother for some time. However, he had got vacated the said room from Chander Prakash sometime earlier to the occurrence. Sia Ram was murdered in one of the rooms of his house at about 11 p.m. on 25/01/1987. The Daily Diary Report was recorded at serial No. 15A at about 12.10 a.m. during the intervening night of 25th & 26/01/1987, copy of which is Ex. PW24/A mentioning that Head Constable Mahavir Singh, Wireless Reporter, had got recorded that wireless information had been received that Asi Noor Mohd., in charge of the Police Control Room Van, who informed that a person resident of house No. 12/170, Kalyan Puri, had been stabbed with a knife and he had brought him to Swami Dayanand Hospital where the doctor had declared him as 'brought dead'. Copy of this report was given to Si Dayanand PW24 who proceeded along with Si Ram Chander PW6, Constables Randhir Singh and Davinder Singh to the place of occurrence. Mlc Ex. PW16/A was prepared by Dr. Tej Singh Vimal PW16 wherein he recorded that Sia Ram s/o Bhoj Raj, aged about 35 years r/o 12/169-170, Kalyan Puri, Delhi, had been brought by Asi Noor Mohd. at 12.45 a.m. and on examination he found him dead having the following injuries: 1. Incised wound about 1.5 cm long over left side of neck depth up to carotid artery and vein about 5 cms. 2. C.L.W. over right temporal region size 3 X 2 cms. (3) In the Medico Legal Certificate he did not record as to with what weapon the injuries had been caused.

He did not record that the injuries were caused by firearm. PW18 Asi Noor Mohd. had disclosed that he was in charge of the Pcr Van on that night and had reached Sanjay Market when Head Constable Khajan Singh gave information that some miscreant had injured a person with knife at premises No.12/170, Kalyan Puri and on reaching the spot he found Sia Ram bleeding profusely from his injuries and he removed him to the hospital and Mahipal PW3, brother of Sia Ram, accompanied him and Sia Ram was declared 'brought dead' at the hospital and he gave this information to the Control Room. In cross-examination he disclosed that at the time he reached the said house he found one constable present at the spot. Head Constable Khajan Singh has not been examined in the case. Apparently it appears that he was the first police official who had come to know about the occurrence and he admittedly belonged to the Police Station Kalyan Puri. So, evidently the Police Station of Kalyan Puri must have come to know about this occurrence prior to Sia Ram being admitted in hospital at 12.45 a.m. and that is the reason that Daily Diary Report at the Police Station had been recorded at 12.10 a.m. It is also evident that the local police had come into action even prior to Asi Noor Mohd. came to the place of occurrence as he had found one constable already present at the spot before he removed Sia Ram from the house in question and took him to the hospital. We are referring to these facts at this very stage as they have a lot of bearing on the merits of the case which we shall discuss after narrating the facts. We may emphasize that even before any Fir was recorded the police had already almost formed the opinion that Sia Ram was stabbed with knife because that stands mentioned in Daily Diary Report No. 15A referred above and the MLCEx. PW16/A also presumably gave the indication that injuries were caused by some sharp-edged weapon. (4) Mahipal PW3 claims that he was informed about the occurrence by Chameli Devi who came running to the shop which is five minutes walk from the house of Chameli Devi and he had gone to inform the police. He claims to have met the patrolling police stationed at the market and had brought the police to the house and police took his injured brother to the hospital. (5) PW24 Si Daya Nand, who was then posted at Kalyan Puri, on being deputed to inquire into the matter, had come to the place of occurrence and according to him, he met Smt. Chameli Devi and recorded her statement Ex. PW24/B and he made endorsement Ex. PW24/C and had sent the same for recording of the Fir, copy of Fir Ex. Public Witness 17/A. He claims to have prepared the sketch Ex. PW24/D and got the scene of occurrence photographed and had lifted blood from the spot, so also control earth. He found that blood was there also on the wall, sample of which he lifted. He lifted the blood stained bed-sheet, pillow, foam mattress and other blood stained clothes and the wooden takhat-posh on which the murder had been committed and prepared the memo Ex. PW6/A. He had gone to the hospital and prepared the inquest papers and had sent the dead body for post mortem vide application dated Ex. PW14/B. In the application also, he recorded that Sia Ram had been stabbed inside his house. In the inquest form Ex. PW24/F, he recorded that the injuries were caused by knife. Dead body was identified by Mahipal in the inquest proceedings and in that connection his statement Ex. Pa was recorded where he was mentioned

that Sia Ram was stabbed to death with a knife. The postmortem on the dead body of Sia Ram was performed on 26/01/1987, at about 12 Noon by Dr. Bharat Singh. He found the following two injuries: 1. One punctured wound over the right temporal area, size of the wound was .2 cm. X .3 cm. X ? There was area of tattooing size 2.5" X 2" around the wound. Blackening and charring were present on the wounds. Hair in the area was also singed. Clotted blood was present over and around the wound. 2. One lacerated wound on the left side of the neck 1.5 cm below the left angle of mandible. Size of the wound was .5" X .4" X ?. There was no bruising around the wound. Marginals were averted. Blood had oozed out from the wound. There was no blackening and charring and tattooing around the wound. There was no other injury over the body. (6) Internal examination carried out by the doctor showed presence of clotted blood in the shaft tissues of scalp around the external injury No. 1 in an area of 2" X 1.5". Wound was found to be continuous on the right temporal bone which was having a rounded whole about .3" in diameter with radiating fissures fractures. Wound was found to have entered the cranial cavity after lacerating the lower portions of the right temporal lobe, then it had shattered the middle cranial fossa and the first cervical vertebral body and going towards left side with the downward direction. Major blood vessel on the left side of the neck was found lacerated and finally the track was found going, to the external injury No. 2 which is the exit of wound No. 1. He did not find any bullet or any foreign material in the body. He opined that the injuries were ante-mortem in nature caused by fire-arm from a close range. Injury No. 1 was entry wound and injury No. 2 was exit wound. Death was opined due to shock and comma resulted from injuries which were sufficient to cause death in the ordinary course of nature. Time of the death was about 12 hours and he gave his report as Ex. PW14/A. (7) The case of the prosecution is that Chameli Devi had given a false statement which was the basis of the Fir and later investigation revealed that the occurrence had not taken place in the manner stated by Chameli Devi and in fact Pwi Kumari Geeta, daughter of deceased, who was aged about 10 years at the time of the occurrence, was an eye witness of the occurrence and her statement was recorded soon after the post mortem report and it revealed that appellants and one Rajesh (absconding accused) had conspired to kill Sia Ram and on that night all the appellants and the accused-Rajesh had caused the death of Sia Ram who was shot dead by Azmuddin from point blank range with a gun which he carried away. According to the prosecution, statement of Chameli Devi which was first in time which was the basis of the Fir Ex. PW24/B gave the facts that as Chameli Devi with her husband and three children were sleeping in that room, Chameli Devi woke upon hearing the noise of opening of the door and on her husband also awakening and making inquiry as to who there was that a person entered the room and had switched on the light and she found that he was Ved who was accompanied by another person and Ved had complained that Sia Ram had not paid him the full amount for arranging the job for his brother and he wanted him to clear out the balance amount on which Sia. Ram pleaded that he had no money and he would give the money later on and they then searched the pockets of the shirt of Sia Ram and found no amount and the other

person who accompanied Ved had stabbed SiaRam on his neck with a knife and threatened Chameli Devi if she raised alarm she would be also stabbed with knife and some of their companions were also standing outside the house and Ved and his companions tied Sia Ram's hands with a cloth and her husband was again stabbed with a knife by the said person and head of SiaRam was struck against the wall and thereafter both the persons ran away and she mentioned that the other person was aged about 20-23 years of whitish complexion whom she could identify if shown to her. She disclosed that Ved had taken about Rs. 3500.00 for getting employment to Mahipal who was also known as Pappu and about 7-8 days earlier Ved had taken Mahipal @ Pappu to Dadri (UttarPradesh) and had beaten him and who was admitted in the hospital and it is on account of this money matter her husband had been stabbed by Ved and his companion. (8) After the doctor, who performed the post mortem, had opined that fatal injuries had been caused by fire arm, the Investigating Officer is stated to have then recovered a bullet from the room which was embedded in between the bricks on the floor near the said wooden takhat-posh which was also converted into seaedparcel. Vide memo Ex. PW6 / B which was signed by Si Ram Chander and witnesses Ramphal and Mahipal Singh. (9) According to the prosecution, Kumari Geeta had disclosed that her father was having a job outside the country and about 5-6 months earlier to the occurrence had come back and earlier Chander Prakash was living as a tenant in one of the rooms in her house but her father had got vacated that room from him and thereafter Chander Prakash continued to visit her house and on that score her parents used to quarrel and sometime her father used to beat her mother and on the night of occurrence she Along with her sister were sleeping on one bed and her mother was sleeping with younger daughter Pooja on the other bed while her father was sleeping on the third bed and on hearing the noise she woke up and found that electricity in the room was on and she saw Kallu and another boy present in the room whereas Chander Prakash was seen by her just outside the door and Kallu and his companion asked her father to give money. Her father told them that he had no money with him and Kallu was having a pistol and his companion was having a knife. They both of them tied the hands of her father at his back with a green coloured cloth and Kallu fired a shot from that pistol on the right temporal region of her father and her father collapsed on receiving the said injury and the said three assailants went away and that during this occurrence her mother kept sitting quietly on her bed and after the assailants had gone away her mother went away to call her uncle from the shop and after she brought her uncle, her uncle had raised the alarm which attracted many people and thereafter some police came who took her father to the hospital. She also disclosed that at the time Chander Prakash was living as a tenant in her house, Kallu had visited him some times. She would be in a position to identify the companion of Kallu also. (10) On finding the story given by Chameli Devi as false and on the basis of the eye witness account given by Geeta, the police on 4/02/1987, arrested Chameli Devi and on the same day had arrested Chander Prakash. Azmuddin @ Kalli was arrested on 18/02/1987. The police had not been able to seize the weapon of offence. (11) Mahipal is also stated to have

given the version that Chameli Devi was having illicit relations with Chander Prakash which he had resented and Chameli Devi had asked him not to come to her house and after Sia Ram had come from abroad he had apprised Sia Ram about the illicit relationship between Chameli Devi and Chander Prakash and Sia Ram used to have a quarrel with Chameli Devi and he had seen Chander Prakash visiting Chameli Devi even after Chander Prakash was evicted from the house and he had heard Chander Prakash saying to Chameli Devi about 3-4 days prior to the occurrence that he would do the job soon. (12) It may be also mentioned at this stage that Chameli Devi was pregnant at the time she was arrested and PW3 Mahipal Singh when he came into the witness box had brought some prescription of the doctor which was exhibited as PW3/DAMark which only indicated that Chameli Devi was pregnant. The only object of Mahipal in producing such a document during evidence for the first time was to show perhaps that Chameli Devi was having a child not conceived from her husband but no importance could be attached to such a document because Chameli Devi's husband admittedly had come back about 4-5 months prior to the date of occurrence and it could not be said with any rationality that a child which was conceived and was born after the arrest of Chameli Devi was not from the loins of Sia Ram. The learned Additional Sessions Judge has brought home the offences to the appellants on placing implicit reliance on the statement of the child witness and also on the ground that Chameli Devi's conduct which indicated her complicity in the crime as she had given a false story to the police with a view to mislead the police. (13) The learned Counsel for Chander Prakash-appellant has vehemently contended that conviction of the appellants including Chander Prakash is totally misplaced inasmuch as there has been effort of the police to introduce false child witness at belated stage and moving finger from the very first day of the occurrence has been Mahipal who had the motive to implicate Chameli Devi in order to grab the house and the shop of Sia Ram. He has urged that in fact Chameli Devi had not given any version that Sia Ram was stabbed with knife and she had, in fact, mentioned about the fire arm injury but the police on its own brought in the story of stabbing by knife which police persisted even after the police had seen the MLC. The police had itself in the inquest papers and other documents mentioned that Sia Ram had stab injuries caused by knife. He has also urged that Geeta being a child witness had been tutored to give statement in favor of the prosecution in as much as she had been under the influence of her uncle since the date of the occurrence and in Court she had made vital improvements in the story which do not find mention in the alleged statement given by her to the police initially. He has urged that it would not be safe for the Court to convict the appellants on the uncorroborated and contradictory and prevaricated statement of a child witness. (14) The learned Counsel appearing for the other appellants also adopted the same arguments and Mr. Akhtar Hussain appearing for Chameli Devi had also urged that the whole story concocted by the prosecution is totally improbable. He has pointed out that if Chameli Devi was not having any good relations with Mahipal, there could be no occasion for Chameli Devi to have gone and called Mahipal to the spot soon after the occurrence. It is further argued by the learned Counsel that

in case Chameli Devi had conspired with some assailants to kill her husband and her husband had been killed by use of fire arm, she could not have given a story that in fact her husband was killed with stab injuries caused by a knife because such statement could be easily found to be false the moment the postmortem was performed on the dead body. He has argued that in case Chameli Devi had really conspired to kill her husband she would have given the story of a fire arm injury on her husband and not an injury caused by knife. He has pointed out that facts show that injuries caused to Sia Ram had led to profuse bleeding that the blood had even sprouted up to quite a height on the wall, the clothes of the deceased, the bed sheet and the other clothes lying near the bed were all drenched with blood and lot of clotted blood was found around the wounds which appear to have misled not only the Investigating Officer but also the doctor who prepared the Mlc in thinking that injuries had been caused by use of a sharp-edged weapon like knife and it was the police who introduced the story of knife in the statement of Chameli Devi in order to show her in bad light and he has argued that no other person except Mahipal would have been interested in involving Chameli Devi for this gruesome murder of her husband in order to deprive her the inheritance to the property left by her husband. (15) Shri Irshad Ahmed, Advocate, who appeared for Azmuddin, has also argued that there is not an iota of evidence to show that Azmuddin was in any manner involved in the murder of Sia Ram and he had no enmity against Sia Ram and he could have no motive to kill Sia Ram. He has urged that because of his friendly relations with Chander Prakash that he has been roped in as an accused in this case. (16) Shri P.S.Sharma, Counsel for the State, however, has contended that the Additional Sessions Judge, was right in convicting the appellants on the truthful version given by the child witness who was the natural witness and there could be no reason for the child to have involved her mother in such a case of murder of her father unless she was speaking the truth. He has argued that conduct of Chameli Devi in not raising any alarm and attracting the neighbours during the course of the occurrence and remaining quiet till the assailants had made their escape and giving a false version to the police to mislead the police is also sufficient to show that she of conspiring to cause the death of her own husband. (17) We have to at first examine the statement of Kumari Geeta, the star witness of the prosecution, in order to determine whether the Additional Sessions Judge was right in putting full faith in her testimony. As already mentioned above, Geeta was hardly 10 years of age at the time of the occurrence. According to the Investigating Officer, he had recorded her statement soon after the post mortem was performed on the dead body of Sia Ram. It is quite evident from the record that Investigating Officer has not taken any steps to arrest the appellants soon after recording the statement of the said child. It was being urged before us that in fact, this child witness's statement was not recorded on the date and the time on which it is purported to have been recorded by the Investigating Officer. We examined the case diary maintained by the Investigating Officer and we had to recall the Investigating Officer in the witness box to get some clarifications with regard to the glaring discrepancies appearing in the case diary maintained by him in respect of this case during the investigation and it was put to him that

the case diary had been issued to him having the Book No. 6073 and having the serial numbers printed on the case diary. He admitted this fact that the case diary was written by him on printed outer page No. 1 and he wrote the case diary on printed internal pages from pages 427501 to printed pages 427506 up to paragraph 24. The printed page 427507 was found missing and in its place another paper of different texture having no printed serial number and the portion which should have been there as printed serial number being torn off was found and the said page also found to have been written with a different ink. Subsequent to this page, again printed pages appear from serial Nos-427508 to 427514. Then again the printed serial numbered page 427515 was found missing and in its place two leaves having no printed serial numbers and the portions at the top which would have the printed serial numbers being torn off were found and these two leaves were also of different texture from the other leaves of the printed diary and were also found to be written with different ink and the subsequent pages again had the printed serial numbers 427516 and 427517. This was the case diary written on 26/01/1987. Significantly enough, statement of Geeta was found written on the said suspicious leaf having no printed number and having different ink and having different texture and similarly the recording of the diary pertaining to recording of the statement of Geeta was also on that inserted page of different texture having different ink. On being questioned as to why it has so happened in respect of not only the recording of the case diary pertaining to the statement of Geeta but also with regard to the recording of the statement of Geeta that the papers of different texture and different ink and having no printed serial number stand inserted in the case diary, the Investigating Officer could not give any explanation. The learned Counsel for the State, who was also shown these unusual features of this case diary, could give us no explanation as to how it happened that the crucial statement of Geeta which is the main basis of the prosecution case was not recorded in normal manner in the case diary. The case diary also indicated that appellants were not shown as suspect or accused in the opening sheet of the case diary of 27/01/1987. And till the case diary of 4/02/1987, the appellants were not being shown as culprits or accused. It is only when appellants-Chander Prakash and Chameli Devi were arrested on 4/02/1987 that they were shown as accused. (18) In *Mukund Lal v. Union of India & Another.*, the Supreme Court has clearly laid down that under Sub-section 2 of Section 172 of the Code of Criminal Procedure the Court has the unfettered power to examine the entries in the diaries as it is a very important safeguard. It was emphasized that Legislature has reposed complete trust in the Court which is conducting the inquiry or the trial and it has empowered the Court to call for any such case diary if there is any inconsistency or contradiction arising in the context of the case diary the Court cause the entries for the purpose of contradicting the Police Officer as provided in Sub-section (3) of Section 172 of the Code of Criminal Procedure. It was further laid down that ultimately there can be no better custodian or guardian of the interests of justice than the Court trying the case and no Court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the police officer with reference to the contents of the

diaries and in view of this safeguard, it cannot be said that unless an unfettered right is conferred and recognised, the embargo engrafted in Sub-section (3) of Section 172 of the Code of Criminal Procedure would fail to meet the test of reasonableness. (19) A Division Bench of this Court in the case of Om Parkash v. The State, 1979(16) Dlt 281, has also held that entries in the case diary cannot by themselves be taken as evidence of any date, fact or statement therein contained, and it may be used for the purpose of contradicting the police officer who made it or it can be used by the police officer who made it. In the said case, the Court had found that the case diaries of the said case did not have any book number and serial number printed on them and the space after the words book number and serial number was found blank. The explanation given by the Investigating Officer was that the case diaries were being supplied to the Police Station having no book numbers and serial numbers. This practice of issuing case diaries without printed book number and serial number was criticised by the Court. (20) In the present case, however, we find that case diaries have been issued with printed book number and printed serial number but the crucial pages which pertain to the statement of Geeta had no printed number at all and were recorded with different ink on paper having different texture from the other papers of the case diary having printed numbers. The Investigating Officer could give no explanation. So, a doubt is raised in the mind of the Court that in all probability statement of Geeta was not recorded on 26/01/1987 as stated by the Investigating Officer and most probably the same was recorded near about 4/02/1987 and had been shown to be recorded in the case diary on 26/01/1987. Keeping in view these facts, we have to examine the statement of Geeta which was given in Court in order to appreciate whether she could be termed as a truthful witness and had not been tutored to give the statement by anyone. (21) Coming as PW1 Geeta stated that Chander Prakash even after having left residing in their house used to visit and tease her mother and was having good relations with her mother and on that score her father used to quarrel with her mother and her mother had even threatened the father that she would get him butchered like a dog. In cross-examination, she stated that she did not remember when her statement was recorded by the police. She was confronted with her police statement, copy of which is Ex. Pw1 /DA wherein it was not recorded that Chander Prakash used to tease her mother and that her mother had threatened her father that she would get him butchered like a dog. In Court she made very vital improvements in her statement by deposing that on the night of the occurrence she saw Chander Prakash and Kallu and one more person present in the room when she woke up on hearing the noise of quarrel and found her mother catching hold of her father from hair whereas Chander Prakash had caught hold the hands of her father and Chander Prakash had tied the hands of her father with a green coloured cloth and had also gagged the mouth of her father by putting a cloth. All these facts were not found mentioned by her in her police statement with which she was duly confronted. She had not assigned any such active role to Chander Prakash in the police statement. She had only mentioned the presence of Chander Prakash outside the room when the whole occurrence took place but she denied having stated such facts to the



police when she was again confronted with the police statement with regard to the said version. Admittedly this young girl has been living with Mahipal since after the occurrence and it is obvious that she could not have of her own concocted these vital improvements in her Court version and thus inference is that she must have been tutored to depose to such facts by Mahipal and no one else. Admittedly, she has been coming to the Court for giving her statement accompanied by her uncle Mahipal. (22) In *State of Bihar v. Kapil Singh*, , the Supreme Court had the occasion to deal with the evidence of child witness aged about 12 years. It was held that while a child witness of about 12 years can often be expected to give out a true version because of its innocence, there is always the danger in accepting the evidence of such a witness that, under influence, she might have been coached to give out a version by persons who may have influence on her. Because of such peculiar facts appearing in that case the Supreme Court held that it was unsafe to rely on the girl's evidence as her statement implicating the accused was obtained belatedly so she could not, therefore, be held to be reliable witness. In that case the child witness had not disclosed the names of the accused at the earlier stage. (23) Keeping in view the facts appearing in this case, it is quite evident that this child's statement was not recorded promptly by the Investigating Officer and possibility of her being tutored to give any statement against her mother by Mahipal cannot be completely over-ruled. Her statement is also not truthful when we find that she under tutoring had made vital improvements in her statement given in Court from what she stated to the police. It would not be safe to place any implicit reliance on her testimony unless we find some corroboration from any other independent evidence. (24) The learned Counsel for the State has argued that at least Chameli Devi is definitely involved in the murder of her husband because of her unusual conduct. He has placed reliance on *Gulam Majibuddin & Another v. The State of West Bengal*, 1972 Cr.L.J. 1342, wherein it has been held that the evidence of false explanation is not only relevant under Section 8 of the Evidence Act but is of considerable importance when it was given soon after the alleged occurrence and was apparently designed to give to the facts an appearance favorable to the accused. (25) Statement of Mahipal has been strongly relied upon by the prosecution to show that there existed illicit relations between Chander Prakash and Chameli Devi and that conduct of Chameli Devi was abnormal when she narrated the manner in which the occurrence took place involving the murder of her husband. According to this witness, he had objected to Chander Prakash visiting Chameli Devi and Chameli Devi got annoyed with him and required him not to come to her house and thereafter he had stopped coming to the house of Chameli Devi and he informed the deceased about the illicit relations being there between Smt. Chameli Devi and Chander Prakash. In case his statement is true then Chameli Devi, who was not on good terms with this witness, would not have gone to him to tell him about the occurrence. He had made certain improvements in his statement in Court by introducing the story that he had overheard Chander Prakash telling Chameli Devi that the work would be done by him soon which fact he had not told to the police and he was duly confronted with the copy of his police statement Ex. PW3 /DA.

He has also not told the police in his statement Ex. PW3/DA with which he was confronted that Chameli Devi had got annoyed with him and had asked him not to visit her house in future. Mahipal had admitted that he had already applied forgetting succession certificate in the name of one of the daughters of the deceased pertaining to the estate of the deceased. The suggestion given to him in cross-examination that he had the motive to grab the property of deceased by falsely implicating Chameli Devi in the murder of her husband was, of course, denied by him but the conduct of this witness does not appear to be above board. As already discussed, the prosecution case does not appear to be based on any reliable and convincing evidence bringing home the offences to the appellants beyond shadow of reasonable doubt. (26) While giving the facts we have noticed that this story of Sia Ram being stabbed with knife was being brought into existence much before Chameli Devi allegedly gave statement to the police. The question is who could be the person circulating this story that Sia Ram was stabbed with knife ? Head Constable Khajan Singh, who was the first person to be approached in all probability by Mahipal and who had got recorded Daily Diary report giving the story of stabbing of a person by knife has not been examined in Court. It is also clear that it was Mahipal who got in touch with the police initially and it was he who brought the police to the spot. It is also significant to mention that PW6 Ram Chander who was then working as police officer in the same Police Station and in whose presence admittedly various articles were lifted from the place of occurrence who has since, however, retired from the police, had categorically stated that the bullet was recovered by the Investigating Officer around 12.30 in the night and that is much before the postmortem performed on the dead body of Sia Ram. It is evident that even before Sia Ram was taken and got admitted in the hospital, the Investigating Officer had come into picture and had recovered the bullet but still for unexplainable reasons the story was adhered to that the injuries had been caused on the deceased by knife. It becomes rather doubtful to believe that Chameli Devi could have given this version that she had seen her husband being stabbed with a knife. It is also surprising that a Doctor who examined Sia Ram initially in the hospital should have not been asked to write on the MLC as to the weapon which had been used for causing the said injuries. It is also surprising that Doctor would not have noticed the telltale evidence of fire arm injury present on the body of Sia Ram when he examined him. Again the mystery surrounds as to why efforts were being made from the very beginning and by whom to show that injuries on the person of the deceased were caused by a knife. Chameli Devi is not a literate lady and she had no family members of her own to give her support when the police recorded her statement. We again find that Mahipal was the only person who was associating with the police even before Chameli Devi was examined. In case in reality or in fact Chameli Devi had conspired to kill her husband, it is impossible to believe that she would give such a version to the police which could be found to be false immediately on dead body being subjected to post-mortem. It is also significant to mention that in the plan Ex. PWIS/A which was prepared to scale later on on the instructions of the Investigating Officer by police draftsman Davinder Singh PW13 it

is indicated that Geeta had woken on hearing the fire arm shot. If that is so, it is not understood how Geeta could have seen as to what transpired with her father at the hands of the assailants prior to being shot. So, it is quite doubtful that the conduct of Chameli Devi was in any manner suspicious and she had tried to mislead the police by giving statement that her husband was stabbed with knife. The version given by her that her husband was killed due to money matter by Ved and his companion had not been thoroughly investigated with due promptness by the Investigating Officer. Only an eye-wash of investigation was carried out by a Head Constable who visited the native place of Ved, whose real name is Tej Singh and an alibi was found for Tej Singh from the statements of Public Witness 11 Ram Chander and PW12 Prem Pal Singh, the residents of Village Dadarpur. Tej Singh was also examined as PWIO. Money transaction between Tej Singh on the one hand and Mahipal Singh on the other hand was indeed not even denied by Tej Singh. Mahipal also admits that Tej Singh had earlier beaten him on account of money transaction. These facts find mention in the statement given by Chameli Devi to the police. The prosecution case, in our opinion, against the appellants bristles with certain falsehood and efforts to introduce false child witness and not carrying out any fair investigation which lead us to doubt the involvement of the appellants in the ghastly murder of Sia Ram. None of the neighbours had come in the witness box to depose that they heard any fire arm shot or had seen any assailants either entering the house or escaping from the house. PW2 Smt. Madhu, who is one of the neighbours, did state that Chander Prakash who was earlier living as tenant in the house of Chameli Devi had vacated the house but was visiting the said house almost every day. It may be possible that Chander Prakash may be having some sort of relationship with Chameli Devi but that circumstance, in our view, is not sufficient to show that he and Chameli Devi along with others had entered into any conspiracy to kill Sia Ram. Another neighbour Sham Babu PW9 deposed about having come to know about the occurrence when he found Mahipal had brought the police and Mahipal was weeping. Neither Smt. Madhu nor Sham Babu, who were the neighbours, had referred to Chameli Devi's actions soon after the occurrence which could show that Chameli Devi was behaving in any abnormal manner showing that she had any guilty mind. In view of the above discussion, we conclude that it would not be safe to sustain the conviction of the appellants on such shaky evidence appearing in this case. We allow the appeals and set aside the judgment and order of the Additional Sessions Judge convicting and sentencing the appellants and acquit the appellants of all the charges and direct that they be set at liberty if not required to be detained in any other case. The police file be kept in a sealed cover with the record and be not returned to any one.