

AMAR SINGH

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v.

THE STATE (NCT OF DELHI)

(Criminal Appeal No. 335 of 2015)

OCTOBER 12, 2020

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**[SANJAY KISHAN KAUL, ANIRUDDHA BOSE
AND KRISHNA MURARI, JJ.]**

Penal Code, 1860 – s.302 r/w. s. 34 – Murder – Prosecution case is that when the victim/deceased along with his two brothers, PW-1 and PW-11 was moving on foot towards a taxi stand at about 10.00 pm. – Three accused persons attacked the victim with hockeys and a knife – When PW-1 and PW-11 tried to rescue their brother, all the three accused persons brandished their hockeys and knife and warned that whosoever will come to save victim will also be killed – Later, victim was taken to hospital and he was declared dead by the doctor – The trial Court convicted the accused persons u/s.302 IPC r/w. s.34 IPC and sentenced them to life imprisonment – Before the High Court, inter-alia, it was contended that the prosecution case was based on eye witness on account of the incident, however, PW-11 and PW-5 did not support the prosecution case and thus it was not safe to rely upon the solitary evidence of the sole remaining eye witness PW-1 – However, the High Court found that the trial Court did not suffer from any infirmity or perversity and dismissed the appeal – On appeal, held: PW-11 and PW-5 turned hostile – The finding of guilt of the accused appellants is based on sole testimony of eye witness PW-1 – The assailants were only armed with hockey sticks and a knife and not with any firearms – The two brothers (PW-1 and PW-11) present on the spot did not make slightest attempt to intervene and save their brother when he was getting assaulted – This unnatural conduct against natural human behaviour casts a serious doubt of shadow on the presence of eye witness on the spot at the time of occurrence – Further, doctor who prepared the MLC stated in his evidence that one dead body was brought in the casualty of hospital by a head constable, which casts doubts on the prosecution story that two brothers of deceased accompanied him to the hospital – Also, there is material discrepancy between ocular testimony and medical

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- A *evidence – As there were 15 injuries inflicted on the victim as per medical report and PW-1 stated that whole incident lasted 5 minutes – It is practically impossible to inflict 15 injuries within a short span of 5 minutes – This fact coupled with the fact that two brothers remained mute spectators when the third brother-victim was being assaulted in clear indication that PW-1 was not present on the spot and not an eye-witness to the incident – Therefore, the reasons given by the Courts below for convicting the appellants for the alleged offences are not convincing – The appellants must be given benefit of doubt – Thus, the impugned orders of the Courts below are set aside.*
- B *Allowing the appeals, the Court*
 - HELD:**
 - 1. The assailants were only armed with hockey sticks and a knife and not with any firearms. It seems very unnatural that two brothers present on the spot will not even make slightest attempt to intervene and try to save the other brother being assaulted, merely on the threat extended by the assailants armed with hockey sticks and a knife. This unnatural conduct totally against natural human behaviour casts a serious doubt of shadow on the presence of eye witness on the spot at the time of occurrence. Moreover, the facts stated by PW-1 in this regard, as already discussed above, has not been corroborated by the other brother PW-11. [Para 20][761-E-F]
 - 2. The other unnatural conduct of two brothers PW-1 and PW-11 just after the incident again makes their presence on the spot extremely doubtful. There was a medical clinic just nearby the place of incident and the first endeavour of the two brothers would have been to take injured brother to the clinic for immediate medical aid or try and get some medical aid from the clinic. Admittedly, according to the statement of PW-1 PCR Van arrived after about 15 minutes. During this period no effort was made to either take the injured brother to the clinic or to call the doctor for some first aid. This is totally against normal human behaviour. [Para 21][761-G-H; 762-A-B]
 - 3. According to the prosecution story the two brothers, PW-1 and PW-11 accompanied the injured to the Hospital in the PCR Van and were present during his medical examination.
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However, a perusal of the MLC Ex. PW-17/A filed in Volume-II of additional document goes to show that in the column meant for recording name initially unknown is mentioned and subsequently name of the victim has been recorded. Likewise in the column made for recording the name of relative or friend initially the name of a Head Constable is entered and after recording the words 'V/C' V-89 PCR No. 1008/PCR in the second line words 'and brothers' appears to have been added. [Para 23][762-E-F]

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4. This in itself casts serious doubts of shadow on the prosecution story that two brothers of the deceased, PW-1 and PW-11 were present on the spot and accompanied the injured in PCR Van to AIIMS. Had it been so, naturally, they would have given the name of the deceased and their own names which would have been recorded in the MLC Ex. PW-17/A at the first instance. Doctor-PW-17/A who prepared the MLC stated in his evidence that one dead body was brought in the casualty of AIIMS by Head Constable having multiple sharp deep injuries all over the body and he prepared the MLC PW-17/A. [Para 24][762-G-H; 763-A]

5. Further, there is material discrepancy between ocular testimony and medical evidence. Thus, there are total 15 injuries inflicted by three assailants, two having hockey sticks and one knife as per prosecution story. PW-1 emphatically stated that whole incident barely lasted five minutes. It would be practically impossible to inflict 15 injuries of the type by three assailants simultaneously attacking the deceased within a short span of 5 minutes particularly when the victim being a normal healthy person naturally must have offered resistance. Inflicting 15 injuries on the body of the deceased by three accused persons would require a considerable amount of time. This itself suggests that the three accused had sufficient time at their disposal to conduct the crime and the entire incident could not have taken place within five minutes as stated by eye witness PW-1. This fact coupled with the fact that two brothers of the deceased remained mute spectators when the third brother was being assaulted is clear indication of the fact that PW-1 was not present on the spot and not an eye witness of the incident. [Paras 26 and 27][763-C; 765-B-E]

- A *Kartarey and Ors. v. State of U.P. (1976) 1 SCC 172 : [1976] 2 SCR 199 ; Ishwar Singh v. State of U.P. (1976) 4 SCC 355 – relied on.*
- B *Sunil Kumar v. State Government of NCT of Delhi (2003) 11 SCC 367 : [2003] 4 Suppl. SCR 767 ; Selvaraj v. The State of Tamil Nadu (1976) 4 SCC 343 – referred to.*

CASE LAW REFERENCE

	[2003] 4 Suppl. SCR 767	referred to	Para 16
C	[1976] 2 SCR 199 (1976) 4 SCC 355	relied on relied on	Para 30 Para 31
	(1976) 4 SCC 343	referred to	Para 32

- D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 335 of 2015.
- D From the Judgment and Order dated 09.05.2014 of the High Court of Delhi at New Delhi in Crl. Appeal No. 544/1998.

With

- E Criminal Appeal No. 336 of 2015.
- E Ms. Aishwarya Bhati, ASG, Dushyant Dave, Sr.Adv., Nikhil Goel, Ms. Naveen Goel, Dushyant Sarna, Vinay Mathew, Rishi Malhotra, Ms. Rashmi Malhotra, Sachin Sharma, S.K.Tyagi for B. V. Balaram Das, V.K.Malik, Rahul Raj Malik, Aftab Ali Khan, Advs. for the appearing parties.

- F The Judgment of the Court was delivered by

KRISHNA MURARI, J.

- G 1. These two appeals are directed against the impugned judgment and order dated 09.05.2014 passed by the **High Court**¹ dismissing the criminal appeal filed by the appellants challenging the order of conviction against them whereby the appellants were convicted under Section 302 IPC r/w Section 34 IPC. One of the accused-appellant, Inderjeet Singh, was also held guilty and convicted under Section 27 of the Arms Act and were sentenced to undergo imprisonment for life and a fine of

H ¹ High Court of Delhi

Rs.5000/- each, in default of payment to undergo Simple Imprisonment for 3 months. Accused-appellant, Inderjeet Singh, was also sentenced to Rigorous Imprisonment for one year under Section 27 of the Arms Act and this sentence was to run concurrently with the sentence already awarded to him under Section 302 IPC.

2. In brief the prosecution case is that on 03.08.1990, on receipt of DD No. 18-A, SI Joginder Singh along with SI Gian Singh, Constable Jai Singh and Constable Narender Pal reached Sukhdev Market on the street which goes to Qumayun Restaurant, where near House No. H-801 a crowd was gathered and they came to know that injured had been removed to AIIMS in a PCR vehicle. Leaving Constable Narender Pal at the spot, SI Joginder Singh along with other police officials reached AIIMS, where he came to know that injured Devinder Singh @ Ladi was declared as 'brought dead'. Two brothers of the deceased, namely, Parminder Singh and Amar Singh, were found present in the hospital. Parminder Singh gave his statement to SI Joginder Singh to the effect that he has six brothers and his three brothers, namely, Harinder Singh, Ravinder Singh and Rajinder Singh reside with his mother Smt. Prakash Wati at House No.826/5, Arjun Nagar. His eldest brother Amar Singh resides at House No.15/88, Geeta Colony along with his family and he along with his family resides at 53/F, D-12 Area, Sector 4, Bangla Sahib Marg, New Delhi. His sister Saroj resides at 98-A Baba Kharak Singh Marg along with her family. About three years ago, one person namely Khazan Singh had been murdered and his brother Devinder Singh @ Ladi had been arrested for his murder and a case for murder was pending against him. He was released on interim bail from the Court and used to reside with his sister Saroj. On 3.8.1990 Devinder Singh @ Ladi came to the house of his mother and his other brother Amar Singh also reached there and they had their meals together. At about 10:00 PM, Parminder Singh along with his brothers, Devinder Singh @ Ladi and Amar Singh left the house for going to their respective houses. They were moving on foot towards taxi stand situate in Sukhdev Market. He and Amar Singh were about ten paces ahead of Devinder Singh @ Ladi. At about 10:10 PM, when they reached near the corner of Sukhdev Market, they heard Devinder Singh @ Ladi raising an alarm 'Bachao-Bachao' and on turning back, they saw that Amar Singh, S/o Likhi Chand and Shiv Charan, S/o Pooran Chand were giving hockey blows and one Inder Singh, S/o Khazan Singh was giving knife blows to Devinder Singh @ Ladi. His brother

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- A Devinder Singh@ Ladi fell on the ground and Inderjeet Singh gave him many knife blows. When they tried to rescue their brother, all the above three accused persons brandished their knife and hockeys and warned that whosoever will come to save Devinder Singh, they will also kill him. Thereafter all of them ran towards Bhisham Pitamah Marg, his
- B brother Devinder Singh became unconscious. Many persons including Sujan Singh, S/o Ram Singh assembled there. After sometime, PCR van came and removed Devinder Singh to AIIMS, where he was declared dead by the Doctor.
 - 3. On this statement, a case was got registered and investigation was conducted by Inspector Richpal Singh. During investigation, Inspector got the spot photographed, prepared site plan, seized one broken piece of hockey, one pair of dirty white shoes, one steel strip, sample blood, blood stained earth, sample earth from the spot. Inspector also seized the blood stained clothes of Amar Singh and Parminder Singh, got conducted the post mortem on the dead body of the deceased,
 - D recorded the statement of witnesses and collected the post mortem report. Inspector arrested the accused persons and recorded the disclosure statement of accused Inderjeet Singh @ Inder, who got recovered the knife, which was used to commit the murder. Inspector also recorded the disclosure statements of accused Amar Singh and Shiv Charan, who got recovered the hockeys, used in commission of offence. The recovered items were sealed separately in pulandas and were sent to CFSL. After completion of investigation, challan under Section 302/506/34 IPC was filed in the Court of concerned Metropolitan Magistrate, who committed this case to the Court of Sessions. All the accused persons pleaded not guilty to the charge
 - E framed against them and claimed trial. Accused Inderjeet Singh was separately charged for an offence under Section 25 and 27 of Arms Act.
- G 4. In order to substantiate its case, prosecution had examined 27 witnesses in all. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 Cr.P.C., wherein they totally denied the case of the prosecution.
- H 5. The Trial Court came to the conclusion that the prosecution had brought home the guilt of the accused persons and accordingly convicted them for murder punishable under Section 302 IPC r/w Section 34 IPC and sentenced them to Life Imprisonment. Aggrieved

by the same, the accused appellants filed an appeal before the High Court. However, during the pendency of the appeal before the High Court, appellant Shiv Charan, expired on 12th April, 2008 and accordingly the proceedings against him were abated.

6. The case set up by the appellants before the High Court was that there was unexplained delay not only in the lodging of the First Information Report but also in despatching a copy of the same to the jurisdictional magistrate. In the absence of any cogent and acceptable explanation for the delay, the prosecution case was rendered doubtful. It was further contended that although prosecution case is alleged to be based on eye witness on account of the incident, however, Amar Singh PW-11, and PW-5, did not support the prosecution case and thus it was not safe to rely upon the solitary evidence of the sole remaining eye witness Parminder Singh PW-1. It was further pleaded that the conduct of Parminder Singh PW-1 is highly unnatural which makes his presence on the spot at the time of the incident doubtful. It was pointed out that no effort was made to take his injured brother to the clinic of Doctor Bhardwaj, which was just nearby. Amar Singh PW-11, who was declared hostile stated in his evidence that there was darkness at the time of the incident and nobody recognised the accused persons who have been falsely implicated. It was also contended that another eye witness Sujan Singh PW-5 has also not supported the prosecution case at all. The defence also drew the attention of the Court to MLC of the deceased Ex. PW-17/A to show that first the name of the injured was written as unknown and thereafter the name of Devinder Singh has been written by overwriting and in the column maintained for recording the name and relation of who brought the injured, name of Head Constable, Dharam Singh PCR is mentioned and again later on 'brothers' has been added. It was also submitted that the solitary eye witness is a close relation of a deceased and thus it is not safe to rely upon his sole testimony which is not corroborated.

7. It was further submitted that father of the appellant Inderjeet Singh was murdered and deceased Devinder Singh was facing trial for the murder and was out on bail and since the victim was accused of murdering the father of the appellant, the brothers of the deceased victim had clear motive to falsely implicate the appellants in this case.

8. Arrest of the accused persons and subsequent recovery at their instance was also challenged on the ground that there is no

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- A independent witness to the recovery and police officials are giving different versions. The defence also pointed out that the knife which was recovered had a blunt tip, as such, the injuries as mentioned in the post mortem report were not possible to be caused by the said knife. Even, this knife was not shown to the doctor to seek his opinion whether
- B injuries were possible by the said blunt knife or not. Recovery of hockey at the instance of the appellant was not even believed by the Trial Court.

9. However, the High Court finding that the impugned judgment does not suffer from any infirmity or perversity which calls for interference, dismissed the appeal.

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- 10. We have heard learned counsel for the appellants, learned counsel for the State-Respondent and learned counsel for the respondent.

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- 11. Shri Dushyant Dave, Learned Senior Counsel for the appellants submitted that the entire incident appears to be inherently improbable. It is also pointed out that conduct of PW-1 alleged eye witness either at the time of the incident or immediately thereafter is not natural and does not inspire confidence which makes his presence on the spot extremely doubtful. The other two eye witnesses have turned hostile and nothing could be elicited from their cross-examination
- E by the prosecution. It was further submitted that the conviction and sentence of the appellants based upon the sole testimony of one eye witness, whose conduct was unnatural and inconsistent with the ordinary course of human nature making his presence at the site of incident extremely doubtful, is highly unsafe without corroboration from other
- F piece of evidence.

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- 12. Ms. Aishwarya Bhati, Learned Senior Counsel appearing for the State vehemently contended that two Courts have recorded concurrent finding of guilt of the accused appellants based on the testimony of an eye witness which they found to be reliable and there exists no legal impediment for conviction on the basis of the same. She further submitted that evidence of a hostile witness is not to be discarded as a whole and relevant parts thereof which are admissible in law can be relied upon by the prosecution. She further submitted that the conviction cannot be assailed merely because of some lacuna in investigation and any failure or omission of the investigating officer
- H cannot render the prosecution case doubtful or unworthy of belief, in a

case where the prosecution case is fully established by direct testimony A
of eye witness duly corroborated by medical evidence.

13. We have considered the rival submissions and carefully perused the record.

14. The prosecution apart from other formal witnesses produced three eye witnesses in support of its version, namely, Parminder Singh PW-1, Amar Singh PW-11, the two brothers of the deceased and Sujan Singh PW-5. PW-11 and PW-5 turned hostile. PW-11 was cross-examined by the prosecution. He simply denied having seen the accused persons giving blows to his brother. He also denied having stated to the police that he saw accused appellant Inderjeet Singh inflicting knife blows. He also denied having stated to the police that he ran to rescue his brother. He also stated that he was not able to see the faces of the culprits because of the darkness and thus cannot say, if, the accused persons are the same person, who killed his brother. This alleged eye witness specifically denied having told the police that the three accused had murdered his brother and he had identified them as culprits. B
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15. Similarly, the other eye witness PW-5 produced by the prosecution denied having seen two boys armed with hockey sticks and one boy holding knife attacking another boy. He also denied having identified the three accused. He stated that while he was passing outside the house of Doctor Bhardwaj there were 4-5 persons standing there and it was from them he came to know that person outside the house of Doctor Bhardwaj was dead. This eye witness also denied having seen the incident. He was cross-examined by the prosecution but nothing could be elicited therefrom. E

16. Thus the finding of guilt of the two accused appellants recorded by the two Courts below is based on sole testimony of eye witness PW-1. As a general rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony Courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, F
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- A is cogent, credible and trustworthy or otherwise (*see Sunil Kumar V/s State Government of NCT of Delhi*)².

17. This case primarily hinges on the testimony of sole eye witness, Parminder Singh PW-1, brother of the deceased. As already discussed above conviction can be based on the testimony of a single eye witness so long he is found to be wholly reliable. In the light of the settled legal principles we proceed to examine the testimony of Parminder Singh PW-1 and also his conduct at the time of the incident.

18. According to his own testimony on the fateful night at about 10:00 PM, the three brothers (Parminder Singh PW-1, Amar Singh PW-11 and deceased Devinder Singh @ Ladi) left the Mother's house for their respective houses. Parminder Singh and Amar Singh were walking a few paces ahead of Devinder Singh @ Ladi when they heard him shouting 'Bachao-Bachao' when they turned around they found three persons attacking their brother Devinder Singh @ Ladi. Accused Inderjeet Singh was armed with a knife while accused Amar Singh and Shiv Charan were armed with hockey sticks. He further stated that he recognised all the three accused from before and when they try to intervene all the three persons aimed their weapons at them and threatened to kill. Due to assault Devinder Singh @ Ladi fell down on the ground and became unconscious and thereafter the accused persons fled from the place. He also stated that while they were taking care of the injured brother the police van arrived at the spot in which Devinder Singh @ Ladi was removed to the Hospital where he was declared brought dead. During the cross-examination he stated that entire incident barely lasted five minutes and they did not make any complaint to the police but the police came of its own after about 15 minutes of the incident. He had also admitted in the cross-examination that he did not inform his mother though she was living nearby. He also stated that he and his brother Amar Singh went to the Hospital with injured Devinder Singh @ Ladi in the PCR van. He also stated that he informed the Doctor who examined Devinder Singh @ Ladi as to the manner in which he sustained injuries. He also stated that Devinder Singh @ Ladi sustained injury on his head on account of hockey blows however he did not bleed from his head.

19. The unnatural conduct of Parminder Singh PW-1 and Amar Singh PW-11 the two brothers of the deceased which we have noticed

H ² (2003) 11 SCC 367

from record is that though they claim to be present at the time of occurrence no attempt was made by them to save their brother from assault. Though PW-1 has tried to explain in his examination in chief that when they tried to intervene and save their brother Devinder Singh @Ladi all the three accused persons aimed their weapons at them and threatened that in case they intervened they would also be killed. It may be relevant to notice that Amar Singh PW-11 neither in statement in chief nor in his cross-examination by the prosecution after being declared hostile stated about any efforts made either by him or by PW-1 Parminder Singh to save their brother Devinder Singh @ Ladi when he was attacked. On the contrary PW-11 stated in his examination in chief that he was not able to run because of his spinal injury. In the cross-examination he categorically stated that he never told the police that when they tried to rescue Accused Inderjeet Singh brandished the knife and accused Amar Singh and Shiv Charan brandished hockey towards them threatening to kill anyone who comes to rescue Devinder Singh @ Ladi. He also denied in the cross-examination having ever being given any statement to the police that he had identified the culprits or accused Inderjeet Singh has stabbed with knife and accused Amar Singh gave hockey blows and the front portion of the hockey had broken because of assault and the 3rd accused Shiv Charan also gave hockey blows.

20. The assailants were only armed with hockey sticks and a knife and not with any fire arms. It seems very unnatural that two brothers present on the spot will not even make slightest attempt to intervene and try to save the other brother being assaulted, merely on the threat extended by the assailants armed with hockey sticks and a knife. This unnatural conduct totally against natural human behaviour casts a serious doubt of shadow on the presence of eye witness on the spot at the time of occurrence. Moreover the facts stated by PW-1 Parminder Singh in this regard, as already discussed above, has not been corroborated by the other brother Amar Singh PW-11.

21. The other unnatural conduct of two brothers PW-1 and PW-11 just after the incident again makes their presence on the spot extremely doubtful. There was a medical clinic of Doctor Bhardwaj just nearby the place of incident and the first endeavour of the two brothers would have been to take injured brother to the clinic for immediate medical aid or try and get some medical aid from the clinic

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- A of Doctor Bhardwaj. Admittedly, according to the statement of Parminder Singh PW-1 PCR Van arrived after about 15 minutes. During this period no effort was made to either take the injured brother to the clinic or to call Doctor Bhardwaj for some first aid. This is totally against normal human behaviour.
- B 22. Further no effort is alleged to have been made to either shift the injured to any hospital or even inform the police. It is highly unnatural that two real brothers made no efforts to save the life of third brother who was severely injured if they were present at the place of the incident. The PCR van is stated to have arrived after 15 minutes on
- C the basis of information given by some unknown person regarding a person lying injured in front of Qumayun Hotel. PW-20 lady constable Renu in her evidence stated that on the fateful night she was posted at PCR Van when at about 10:27 PM an unknown person made a call to inform that one man was lying unconscious near Qumayun Hotel, Defence Colony which was registered as DD No.-493. It was on the
- D information given by an unknown, the PCR Van reached at the site of the incident and shifted the injured to AIIMS where he was declared brought dead.

23. According to the prosecution story the two brothers, namely, Parminder Singh PW-1 and Amar Singh PW-11 accompanied the injured
- E to the Hospital in the PCR Van and were present during his medical examination. However, a perusal of the MLC Ex. PW-17/A filed in Volume-II of additional document goes to show that in the column meant for recording name initially unknown is mentioned and subsequently Devinder Singh @ ladi has been recorded. Likewise in the column made for recording the name of relative or friend initially Head Constable F ‘Dharam Singh’ is entered and after recording the words ‘V/C’ V-89 PCR No. 1008/PCR in the second line words ‘and brothers’ appears to have been added.

24. This in itself casts serious doubts of shadow on the prosecution story that two brothers of the deceased, namely, Parminder G Singh PW-1 and Amar Singh PW-11 were present on the spot and accompanied the injured in PCR Van to AIIMS. Had it been so, naturally, they would have given the name of the deceased and their own names which would have been recorded in the MLC Ex. PW-17/ A at the first instance. Doctor Romesh Lal PW-17/A who prepared H the MLC stated in his evidence that one dead body was brought in the

casualty of AIIMS by Head Constable Dharam Singh having multiple sharp deep injuries all over the body and he prepared the MLC PW-17/A. A

25. The facts discussed hereinabove makes the presence of eye witness at the place of occurrence all the more doubtful and highly improbable. Since there are serious doubtful aspects in the conduct of PW-1 Parminder Singh and his conduct does not appear to be natural it would not be safe to accept his evidence without corroboration more particularly when two other eye witnesses, one being a real brother of the deceased has turned hostile. B

26. Further, there is material discrepancy between ocular testimony and medical evidence. Post-Mortem on the dead body of the deceased Devinder Singh @ ladi was conducted by Doctor M. S. Sagar PW-21. On external examination following anti mortem injuries were noticed:- C

1. Multiple contusions and abraded contusions over both forearms, both arms and dorsum of both hands. D
2. CLW on right periauricular region of size 3 cm x 2 cm x 0.5 cm.
3. Contusions right mandibular region extending to neck of size 6 cm x 3 cm. E
4. Incised wound on the right side of forehead 1 cm below hairline ofsize 1.5 x 1 cm superficial.
5. Incised wound left upper limb vertically placed of size 1.5 x 1 cm xmuscle deep with clean cut inverted margins. F
6. Incised wound left knee of size 5 cm x .5 cm x bone deep with cleancut inverted margins.
7. Incised wound left forearm round elbow of size 1 cm x 1 cm marginsclean cut and everted. G
8. Incised wound left forearm placed 6 cm below elbow joint of size 2.5x lx bone deep, with clean cut inverted margins, with cutimpressions present on the olecraenon.

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- A 9. Incised wound left forearm antero-medical aspect placed 5 cm below cubital fossa of size 1.5cm x 1cm x muscle deep with clean cut inverted margins underline subcutaneous tissue and muscle clean cut.
- B 10. Incised wound right side of abdomen placed 10 cm below costal margins in mid axillary plane 3 cm x 1 cm into muscle deep obliquely placed, margins clean cut, not penetrating the abdominal cavity.
- C 11. Stab wound right side of chest anterior axillary plane obliquely placed of size 3.5 cm x 1 cm, 22 cm below clavicular with clean cut everted margins passing through 7th intercostal plane entering into left lower lobe of lung going into pericardium with presence of hemo-pericardium and incised wound left ventricle around apex of size 2 cm x 1.5 cm x whole thickness of ventricle.
- D 12. Stab wound of size 4 cm x 1 cm x skin deep placed transversely 8 cm below injury no. 11.
13. Incised wound 1 cm x 1 cm with clean cut inverted margins placed 2cm lateral and 1.5 cm below injury no. 12.
- E 14. Stab wound left side of abdomen in posterior axillary line placed 25 cm below clavicular margins of size 4 cm x 1 cm going into abdominal cavity producing multiple incised wound of small and large intestines.
- F 15. Incised wound of size 4 cm x 1.5 cm in left side of abdomen 6 cm below and 2 cm medial to injury no. 14.
Internal examination of the deceased revealed:-

G There were homo-thorax on left side with about 500 cc of blood being present. There was stab wound of left lung lower lobe of size 3 cm x 1.5 cm x 4 cm. Hemo-cardium was also present with 400 cc of blood and blood clots. There was stab wound of heart over apex of size 2.5 cm x 1cm x whole thickness of left ventricular wall with cutting of cordae- tendinae. In the abdominal cavity, there was hemo-peritoneum about 400 cc of blood and blood clots with multiple incised wound of small and large intestines.
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It was opined that cause of death was shock as a result of multiple ante mortem injuries produced by sharp edged weapon.

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Injury no.11 and 14 are sufficient to cause death in the ordinary course of nature individually as well as collectively.

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27. Thus, there are total 15 injuries inflicted by three assailants, two having hockey sticks and one knife as per prosecution story. Parminder Singh PW-1 emphatically stated that whole incident barely lasted five minutes. It would be practically impossible to inflict 15 injuries of the type by three assailants simultaneously attacking the deceased within a short span of 5 minutes particularly when the victim being a normal healthy person naturally must have offered resistance. Inflicting 15 injuries on the body of the deceased by three accused persons would require a considerable amount of time. This itself suggest that three accused had sufficient time at their disposal to conduct the crime and the entire incident could not have taken place within five minutes as stated by eye witness Parminder Singh PW-1. This fact coupled with the fact that two brothers of the deceased remained a mute spectator when the third brother was being assaulted is clear indication of the fact that PW-1 Parminder Singh was not present on the spot and not an eye witness of the incident.

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28. Dr. M.S. Sagar in his Post-Mortem report has opined that the cause of death was due to shock due to multiple ante mortem injuries caused by sharp edged weapon and injuries No. 11 and 14 were individually and collectively sufficient to cause death in ordinary course of nature. He further opined in his statement that injuries have been caused by sharp edged weapon and since no weapon was shown to him, he has not given any opinion. Admittedly the tip of knife which was recovered on the disclosure statement of accused appellant Inderjeet Singh was broken and it was not pointed but blunt. Whether the type of stab and incised wound found on the body of the deceased could have been inflicted by a knife with a broken tip, is in our opinion, extremely doubtful. The opinion of the Doctor has not been obtained as to whether such injuries could have been caused by knife with a broken tip by showing him the same.

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29. In the facts and circumstances of the case this was serious lapse on the part of the investigating officer. Though normally minor

- A lapses on the part of the investigating officer should not come in the way of accepting eye witness account, if otherwise reliable. But in the circumstances of the case at hands where the conduct of sole eye witness is unnatural and there are various other surrounding circumstances which make his presence at the site of incident doubtful,
- B such a lapse on the part of the investigating officer assumed significance and is not liable to ignored.

30. While emphasizing the importance of eliciting the opinion of medical witness in such circumstances this Court in the case of ***Kartarey and Ors. V/s State of U.P.***³

- C has observed as under:-

"We take this opportunity of emphasizing the importance of eliciting the opinion of the medical witness, who had examined the 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, example stab wound, and the problem before of the Court is whether all or any 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 of the course of justice".

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31. The same has been again asserted by this Court in ***Ishwar Singh V/s State of U.P.***⁴ by observing as under:-

"It is the duty of the prosecution, and no less of the Court, to see that the alleged weapons of the offence, if available, is shown to the medical witness and is opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so sometimes, cause aberration of the course of justice. On the basis of the evidence on record it is difficult to say whether the injury to the deceased was caused by the knife with a broken tip which

³ (1976) 1 SCC 172

H ⁴ (1976) 4 SCC 355

*was ceased. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye witness "cannot be accepted at its face value", as observed by this Court in **Mitter Sen and others V/s State of U.P.**"⁵*

32. The conviction of the appellants rests on the oral testimony of PW-1 who was produced as eye witness of the murder of the deceased. Both the Learned Sessions Judge, as well as High Court have placed reliance on the evidence of PW-1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there are inherent improbabilities in the prosecution story and the conduct of eye witness is inconsistent with ordinary course of human nature we do not think it would be safe to convict the appellants upon the incorroborated testimony of the sole eye witness. Similar view has been taken by a Three Judge Bench of this Court in the case of **Selvaraj V/s The State of Tamil Nadu**⁶. Wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature concurrent findings of guilt recorded by the two Courts below was set aside.

33. On the facts of the present case it can be said without hesitation that prosecution has miserably failed to prove the alleged offences beyond doubt by adducing cogent and trustworthy evidence.

34. In view of the forgoing discussions, we are not able to appreciate the reason given by the Courts below for convicting the appellants for the alleged offences. On the contrary, we are of the considered view that prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The incident does not appear to have happened in the manner in which the prosecution wants the Court to believe it had happened.

35. Since, the prosecution has miserably failed to prove the guilt of the accused beyond doubt the appellants therefore must be given benefit of doubt. In the circumstances, we set aside the impugned orders of the Courts below and allow these appeals. The appellants are directed to be released forthwith unless required in any other case.

⁵ (1976) 1 SCC 723

⁶ (1976) 4 SCC 343