

Delhi High Court

Babu Lal vs State on 24 February, 2012

Author: Pratibha Rani

*IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON: 08.02.2012
PRONOUNCED ON: 24.02.2012

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CRL. APPEAL No. 173/1998

BABU LAL

..... Appellant

Through: Ms.Arudhanti Katju,
Advocate.

versus

STATE

..... Respondent

Through: Mr.Sanjay Lao, APP for State.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT MS. JUSTICE PRATIBHA RANI % MS. JUSTICE PRATIBHA RANI

1. „Lagta Hai Shaher Me Naye Aaye Ho, Ruk Gaye Ho Raah, Haadsa Dekhkar .

2. The above couplet reflects the general insensitivity in the Metropolitan city whenever a heinous crime is committed in full public view in broad day light. Most of such cases remain „untraced as the eye witnesses prefer not to come forward leaving the police with no clue about the occurrence or the offender.

3. This growing trend in the society has not gone unnoticed and the situation is so alarming that even the Apex Court, in the case State of A.P. v. S. Rayappa & Ors.(2006) 4 SCC 512, commented upon the reasons for reluctance of public persons to join as witnesses in criminal cases. In para 7 of the report, it was observed as under :

„7. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross examination.

4. This case seems to be an exception to this general insensitivity and kindles hope that at least some members in the society are cautious of their social responsibilities and do not hesitate in coming forward to seek justice for the victims and bringing the offenders to book.

5. This appeal is directed against the judgment and order on sentence dated 29.01.1998 passed by the learned trial court by which he was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- under Section 302 IPC and in default of payment of fine, to further undergo R.I. for a period of six months.

6. The appellant before us is the son-in-law of the victim. He was sent to face trial on the basis of statement (Ex.PW- 1/A) of Jag Parvesh, who also happened to be an eye witness, resulting in the registration of case FIR No.470/95 (Ex.PW 15/A).

7. Shorn of unnecessary details, the facts leading to filing of chargesheet against the appellant are that on 06.11.1995, at about 9:45 AM, at Gali No.9, Ragerpura, Karol Bagh, Delhi, complainant Jag Pravesh and PW 2 Hira Lal (who were working as „Beldar in MCD) were going to repair a „Chabutara around a Neem tree. They were carrying cement, „rodi , „bajri , „tasla etc. in a hand cart which was being pulled from the front by them. They were followed by Shanti Devi, who was behind them. At about 9:45 AM, on hearing the shrieks of Shanti Devi they turned and saw a person stabbing her repeatedly. When they tried to apprehend him, while wielding his knife, he told them that it was his personal affair and that she was his mother-in-law. Shanti Devi also cried that he was her son-in-law Babu Lal. They kept themselves away due to fear as Babu Lal was armed with a knife. After stabbing he managed to escape towards the Sant Nagar side. The deceased was removed to the hospital by the PCR and accompanied by Hira Lal. When the police met him at the spot, he made the above statement.

8. On being taken to RML hospital, Shanti Delhi was declared brought dead and an autopsy was conducted. At the pointing out of complainant Jag Pravesh, appellant Babu Lal was apprehended on the same day from near Jhandewalan. During investigation, apart from recording the statements of other eye witnesses, the exhibits were sent to CFSL. After completion of investigation a chargesheet was filed in Court.

9. After the case was committed to the Court of Sessions, charge for committing offences punishable under Section 302 IPC and 27 Arms Act was framed against the appellant.

10. In order to bring home the guilt to the appellant, the prosecution examined 20 witnesses. When he (the appellant) was examined under Section 313 Cr.P.C to afford him an opportunity to explain the evidence appearing against him, he preferred to simply deny the case of prosecution and pleaded his innocence and claimed his false implication at the instance of his wife who was inimical towards him.

11. After considering the testimonies of material prosecution eye witnesses i.e. PW 1 to PW 5, testimonies of PW 6 Premwati and PW 8 Manohar Lal on the motive and the autopsy report, the learned Additional Sessions Judge convicted the appellant for committing the offence punishable under Section 302 IPC and 27 of the Arms Act and sentenced him to undergo the terms of imprisonment mentioned above.

12. Out of the 20 prosecution witnesses examined, since the testimonies of the eye witnesses i.e. PWs No.1 to 5 as well as that of PW-6 Smt. Premwati - daughter and PW-8 Sh.Manohar Lal - son of the deceased are material to decide this appeal, we would refer them briefly.

13. PW 1 Jag Pravesh made a statement to the effect that he was working as Beldar in MCD and PW 2 Hira Lal was his colleague, whereas Shanti Devi was working as Coolie in the MCD. He further stated that on 06.11.1995, he, Hira Lal, and the deceased Shanti Devi were going to make a „Chabutra near Gali No.40, Raigerpura, Karol Bagh around a tree. He and Hira Lal were pulling the cart (thela) from the front, and Shanti Devi was pushing it from behind. At about 9:45 AM when they reached Gali No.9, Raigerpura, on hearing the shrieks of Shanti Devi they put the handcart (thela) on the road and saw that she had fallen after sustaining knife injuries. The accused Babu Lal had given a number of blows to Shanti Devi who was lying on the road after receiving initial injuries, and she pointed towards Babu Lal, saying that he was her son-in-law. When they tried to intervene to save Shanti Devi, Babu Lal showed them the knife and they got scared. While Babu Lal started running towards Sant Nagar, many persons gathered there. The police was informed and Shanti Devi was removed to hospital by a PCR, accompanied by Hira Lal. The police again arrived at the spot and conducted the investigation. They seized the blood stained rehri and broken bangles, and two teeth of Shanti Devi vide memo Ex.PW 1/B to PW 1/F.

14. This witness was associated during further investigation also and accompanied the police to his place of work, i.e., Jhandewalan Nursery where Babu Lal was not found present. However, when they were returning from there, he spotted Babu Lal at Jhandewalan turning. On his identification, Babu Lal was apprehended and arrested by the police in relation to this case. On the basis of interrogation made by the police, Babu Lal also got the knife recovered from bushes near some broken earthen flower pots and garbage. A knife too was seized; it was sealed.

15. PW-1 Jag Pravesh is a witness not only to the occurrence but also to nabbing of the appellant, his disclosure statement, the recovery of the knife at his instance, as well as the investigation carried out at the spot and has identified his signatures on all the memos prepared by the police.

16. PW 2 Hira Lal who was also pulling the cart along with Jag Pravesh, deposed on identical lines about witnessing the stabbing of Shanti Devi by the appellant. He has also deposed that he got scared on seeing the accused giving knife blows to Shanti Devi. He stated that he witnessed the fleeing of the accused from the spot, and arrival of the police; and that Shanti Devi was removed to hospital accompanied by him. He stated that thereafter he left for his office to inform about the occurrence and returned to the spot at 5:30 PM when the police met him at the spot along with accused who was duly identified by him.

17. PW 3 Babu Lal Tori is a property dealer who is physically handicapped to the extent that he could walk only with the help of crutches. About the occurrence, he stated that at the time of occurrence he was sitting with Yad Ram (PW 4), when he saw an MCD trolley being pulled from Vishnu Mandir side by two persons and pushed by a lady from behind. Then he saw the accused coming from the Gali No.9 side and giving knife blows to the lady. That lady was crying „Jawai Babu Lal . Being physically handicapped, he sent his partner to look into the matter. Yad Ram tried to chase Babu Lal

but was threatened and thereafter the PCR reached there and removed Shanti Devi to hospital. In the evening he saw the police with Babu Lal at the spot; he went there and identified Babu Lal as the assailant of Shanti Devi. Another shopkeeper Kewal Kishan also went there and identified Babu Lal as the person who stabbed Shanti Devi.

18. PW 4 Yad Ram was present at the shop with PW 3 Babu Lal Tori and corroborated his statement to the extent that he was sent by Yad Ram to inquire about the matter. He deposed that though he did not see the actual occurrence of the lady being stabbed by the accused, he and members of the public tried to apprehend the accused. Thereafter the PCR vehicle took that lady Shanti Devi to hospital. In the evening the police came along with the assailant who was identified by the public persons present there to be the same who stabbed the lady in the morning. As this witness did not support the prosecution case to the extent that he did not depose to witnessing the occurrence, he was cross- examined by learned APP for the State, but without much success.

19. PW 5 Kewal Kishan is another eye witness, he stated that on 06.11.1995 at about 8:30 AM he opened his shop situated at 4960/2, Shiv Nagar, Karol Bagh. The business was under the name & style "Bombay Paints". At about 9 or 10 AM, on hearing the noise „Mar Diya Mar Diya from the corner of Gali No.9, Ragerpura, which is opposite to his shop, he looked towards that side and found that a crowd had gathered and one person was holding a knife saying that nobody should come forward as it was his personal affair (uske ghar ka mamla hai). Some public persons tried to apprehend that man but could not do so and thereafter he saw the lady lying there, bleeding with stab injuries. One MCD hand cart was also parked there with 2/3 MCD employees who were going with that lady. He stated that subsequently he came to know the name of the victim as Shanti Devi and that of the assailant as her son-in-law Babu Lal. He identified the assailant when he was brought to the spot by the police.

20. PW 16 is Dr.D.Harish, who conducted postmortem on the body of Shanti Devi on 08.11.1995 and as per postmortem report Ex.PW 16/A, 15 external injuries were found of which injuries No.2,6,7, 9 and 13 were sufficient either singly or collectively to cause death in the ordinary course of nature. He also deposed that on 04.12.1995 a dagger alongwith its sheath was produced before him for opinion. As per the opinion given by him, injuries No.1, 5, 10, 6, 7, 13, 8, 9, 11, 12 found on the body of the deceased Shanti Devi could be caused by the said weapon examined by him. He also prepared the sketch of the dagger and of the sheath and his original report in this regard is Ex.PW 16/C. He identified the dagger as Ex.P-1 stating that its blade also bore the postmortem examination number. During cross- examination as to whether remaining injuries could be caused by this weapon, he stated as under:- "Injuries No.1, 5 and 10 as per my opinion were caused by a sharp edged weapon while injuries No.2-4, 6, 7, 8, 11, 12 and 13 were caused by a double edged and cutting stabling weapon. Both types of injuries could be caused by the same weapon being used in two different method of inflicting the injuries basically an incised wound whose depth is greater than its length is a stab wound and if a sharp edged weapon is cut across the body, it would cause an incised wound and if the same weapon is thrust into the body, it would cause a stab injury."

21. He specifically denied the suggestion that two different types of weapons were used in this case, since a single weapon can cause both types of injuries described in the report.

22. PW-6 Prem Wati, wife of the appellant and PW 8 Manohar Lal, brother of Prem Wati were examined about appellant's motive to kill his mother-in-law. PW-6 Prem Wati stated that matrimonial relations between her and the appellant were so strained that she left his house and started living in a rented accommodation near the house of her mother. Even a divorce case had been filed by the appellant against her, he used to threaten to kill her mother, even in her presence. As per PW 6, the appellant had ill will towards her mother as she used to intervene in her favour which was to the disliking of her husband. However, before the divorce case filed by her husband could be heard, her mother was murdered. She too stated that the accused wrote letter Ex.P1 (the knife was exhibited as Ex.P1) containing threats to her mother and brother, a copy of which was given to the police.

23. The statement of PW 8 Manohar Lal is on identical lines about the motive of the appellant to kill his mother-in-law.

24. PW 11 Satish Kumar is an important witness of the prosecution, who proved the attendance record of the appellant Babu Lal of the relevant date, wherein his attendance has been marked at 10:40 AM. First of all we would like to appreciate the strict administrative control of PW 11 Satish Kumar that he did not allow the appellant to mark his presence without endorsement of actual time of his arrival in the office. A slight laxity on the part of PW 11 Satish Kumar in not maintaining the attendance record in order, would have led the appellant to plead alibi. As per PW 11 Satish Kumar the excuse given by the appellant for coming late and his permitting him (appellant) to mark his attendance without mentioning his late arrival or the time of arrival in the attendance record, has gone a long way in appreciating the testimony of the eye witnesses as well as ruling out any possibility of his (accused) false implication in the present case.

25. PW-7 Yudhvir Singh is the photographer; he proved photographs Ex.PW 7/5 to PW 7/10, of the spot immediately after the occurrence. PW-9 ASI Kailash Kumar was posted with the PCR at the relevant time and on receiving the message, he reached the spot and took the injured to RML Hospital. PW-10 Ct. Naushad Haider, PW-12 Ct. Gabbar Singh and PW-13 HC Ranbir Singh were associated with Inspector Vijender Singh (PW-18) at the relevant time during the investigation of the case. PW-14 Dr.D.Behl, Sr. Medical Officer, RML Hospital has proved the MLC of Shanti Devi as Ex.PW14/A which was prepared by Dr. Soma under his supervision and also the death summary as Ex.PW14/B prepared by him. PW 15 SI Jai Shree is the Duty Officer; he has proved the carbon copy of the FIR as Ex.PW 15/A and also sent the special report to the senior officers including Ilaqa Magistrate through Motor Cycle rider Ct. Parveen Kumar. PW 15 also asked the crime team and photographer to reach the spot. PW 17 HC Rajesh Kumar took the exhibits to FSL, Malviya Nagar and deposited them, while PW 19 HC Ramesh Kumar was working as MHC(M) at P.S. Karol Bagh with whom various exhibits were deposited and he had also sent the exhibits to FSL, Malviya Nagar.

26. Since the case of the prosecution hinges on the testimony of eye witnesses as well as the cause of death, to be ascertained from the post mortem report, we do not want to enter into any discussion on credibility of other witnesses who remained associated with the investigation.

27. On behalf of the appellant, a doubt has been tried to be created in the creditworthiness of the testimonies of prosecution eye witnesses and of PW-6 and PW-8, who were examined to prove motive. It has been submitted that the prosecution case suffers from various infirmities. It has been urged that while enmity is the ground to falsely implicate the appellant in this case, the mere fact that PW-4 Yad Ram was declared hostile is sufficient to give the benefit of doubt to appellant. Referring to the material discrepancies in the testimonies of prosecution witnesses who claimed themselves to be eye witnesses, it has been contended that these alleged eye witnesses are wholly unreliable. Pointing out to the discrepancy in the statement of PW-3 Babu Lal Tori and PW-4 Yad Ram, it has been submitted that despite PW-3 being physically challenged, and hence unable to reach the spot, he still claimed himself to be an eye witness and narrated the incident: and PW 4 Yad Ram who was sent to know the details of what was going on, had not seen the lady being stabbed and on his latter part of the statement, states that public persons were saying "apni saas ko mar diya", and that this is inadmissible being „hearsay . This witness also claimed to be having poor vision which makes him unreliable.

28. Another contention on behalf of the appellant is that none of the witnesses stated that the deceased used to have artificial jaw or teeth and there is no evidence to connect the recovery of artificial jaw and teeth with that of the deceased. It has been urged that though other exhibits were sent to FSL, the knife was not sent to the FSL for ascertaining whether it contained blood of the deceased. In view of the testimony of the autopsy Surgeon, there is possibility of two types of weapons having been used in the occurrence. However, none of the eye witnesses claimed that the accused was armed with two types of weapons i.e. double edged and sharp edged weapons or he caused injuries with two different types of weapons, which create a dent in the case of prosecution.

29. The failure of the prosecution to join independent public witnesses at the time of recovery of knife from an open place is claimed as another ground to suspect the recovery of Ex.P-1 at the instance of the appellant. It has been submitted that the Court failed to take note of the fact that the appellant was marked present in the attendance register on that day. He was also arrested from near his place of work and it is highly improbable that after committing such a gruesome murder, he would have reported for duty or linger near his place of work, waiting for the police to apprehend him.

30. For the above reasons, the learned counsel for the appellant urged that the prosecution witnesses are interested witnesses, being either related to, or colleagues of the deceased, who made a false statement to settle scores for the ill-treatment meted out to PW-6 Premwati by appellant. Counsel for the appellant claimed acquittal of the appellant on the above grounds.

31. For the purpose of assessing the credibility of a witness, the Court has to consider the evidence to find out how the witness has fared during cross-examination and the overall impression it creates in the context of the facts of the case. There are tests to show that the evidence of a witness could be termed unreliable i.e. (i) Witness's statement is inherently improbable and contrary to natural course of human conduct. (ii) His testimony is mutually contradictory and inconsistent. (iii) The witness has a history of enmity towards the opponent and is actuated with malice and motive to cause harm to him or falsely implicate him. (iv) The witness is not found to be a credible. (v) The

demeanour of the witness during examination was noticed to be abnormal or unsatisfactory.

32. Enmity may be a cause for false implication and if it has surfaced on record, the Court is under an obligation to scrutinize such evidence with more care and caution.

33. Minor discrepancies or inconsistencies which are sought to be highlighted by learned counsel for the appellant are bound to occur, if the witness deposes in a natural manner after the lapse of sufficient time. The reason behind these discrepancies appears to be the difference in the powers of observation and the capacity of retention of different persons in respect of events that take place all of a sudden, initially causing horror and shock in the mind of the observer and thereafter, due to lapse of time, a certain amount of forgetfulness. There can also be a difference in perceptic of the witnessed events by witnesses who saw the incident from different angles. The reason for these discrepancies were summarized in the case of *Bharuda Broginbhai Harjibhai vs. State of Gujarat* AIR 1983 SC 753 as under:-

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

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

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

By and large people cannot accurately recall a conversation and reproduce the very words used by them on heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorded.

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

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

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

by him, perhaps it is a sort of psychological moment."

34. In the light of the above if we consider the testimony of material eye witnesses i.e. PW1 to PW5, the sequence of events narrated by them are natural without much inconsistency except to the extent it is likely to occur depending on when, at what stage, and from which angle the incident was viewed. The facts narrated by the witnesses are probable in the course of natural human conduct, and which take place in the ordinary course of events. So far as testimony of Yad Ram and Babu Lal Tori is concerned, while PW Babu Lal Tori has stated that he saw the occurrence and sent his partner Yad Ram to have a closer view, whatever he could see at the spot was deposed by him in a natural manner. It is not sufficient to undermine his credibility, merely because he was cross-examined by learned APP. The Court can look into his testimony so far as it renders corroboration to other witnesses. In 2003 SCC (Crl.) 112 Balu Sonba Shinde v. State of Maharashtra, the Supreme Court held that the declaration of a witness to be hostile does not result ipso facto in the rejection of the evidence. The portion of the evidence being advantageous to the parties used, but the Court should be extremely cautious and circumspect while doing so.

35. In the instant case, the testimony of PW Babu Lal Tori has also been tested on the anvil of ordinary human conduct and to the extent it supports the case of prosecution, there is no reason to discard it completely. While observing this, we have to keep in mind that when someone is in a situation like the present one, when in the broad day light, on a public street, in the presence of the public, the deceased Shanti Devi was stabbed by the appellant, how the public persons present there react, varies from person to person. On seeing Shanti Devi being stabbed repeatedly by the appellant who threatened others present, to keep themselves at distance, the first thought in their mind would be to look for themselves to save themselves. In such situation, while a courageous man may jump to intervene and save the victim or apprehend the offender and in turn risk his life, a person who is not so bold may keep himself at a distance waiting for either the assailant to leave the spot or other public persons and law enforcing agencies to take stock of the situation.

36. A witness may be called as interested witness only when he or she derives some benefit from the result of litigation; in the decree in a civil case or in seeing an accused person punished. The witness who is a natural eye witness, in the circumstances of the case, cannot be said to be interested. (See: State of Rajasthan v. Smt. Kalki and Anr. (2) SCC 752 1981)

37. We notice here that in the instant case none of the material prosecution witnesses fall in the category of interested witnesses. Here, Jag Pravesh and Hira Lal were working as Beldars in MCD and were going along with the deceased in discharge of their official duties, were strangers to the appellant and had absolutely no knowledge even about the strained relationship between the daughter of the deceased and the appellant and the grudge, if any, that the appellant had against the victim. PW-3 Babu Lal Tori and PW-4 Yad Ram, who were carrying on their business as property dealers in the nearby area, were also similarly placed i.e. having no acquaintance either with the accused or the deceased or any knowledge of their strained relations. PW 5 Kewal Kishan is another businessman who happened to be present at his shop in the course of his business and his attention was drawn towards occurrence on hearing "mar diya mar diya". Thus, we have witnesses from different walks of life who deposed without any fear or favour in a natural manner, to the extent that

they could recollect about the occurrence.

38. PW-1 Jag Pravesh and PW-2 Hira Lal were colleagues of the deceased Shanti Devi. They were Beldars and she was a coolie in the MCD, and were going together to repair the chabutra around a tree. Their presence at the spot is not in doubt. They cannot be termed as partisan witnesses, as they had nothing to do with the domestic affairs of the deceased or her daughter and did not know of the strained relations between her daughter and the appellant. While PW Hira Lal accompanied the deceased to the hospital, Jag Pravesh was associated with the investigation and fully supported the prosecution case in all material particulars. He led the police to the place of work of the appellant and while returning from there, on spotting him in the way, got him arrested. He is a witness to the disclosure as well as the recovery of the knife Ex.P-1.

39. The legal position is well settled that evidence of a panch witness cannot be thrown out on account of his neighbourly relations with the family of the deceased, when nothing is brought out in cross-examination to shake the intrinsic value that has to be attached to his evidence. Even in the cross-examination of the investigating officer nothing has been elicited from him for the Court to infer that the choice of this witness as a panch witness was deliberate, with a view to enlist his support to the prosecution case. The mere fact that he was a witness to all the panchnamas prepared by the investigating officer would not by itself be sufficient to discard his deposition. Even an interested witnesses evidence cannot be overlooked merely on that ground; at the most it must receive careful scrutiny. On the question of recovery of the weapon, there is hardly any effective cross-examination, nor has the appellant offered any explanation in his statement recorded under Section 313 Cr.P.C. of the Code. In these circumstances, the evidence of this witness cannot be rejected on the specious plea of his being an interested witness. The evidence of this Panch witness is, therefore, acceptable [See: (1991) 3 Supreme Court Cases 627 Khujji @ Surendra Tiwari vs. State of Madhya Pradesh].

40. In State, Govt. of NCT of Delhi vs. Sunil & Anr., (2001) 1 SCC 652, it was held that there is no requirement in law either under Section 27 of the Indian Evidence Act or under Section 161 Cr.P.C. to obtain signatures of independent respectable persons of the locality on the statement made by the accused. We would like to extract Para 19 of the report hereunder:-

"19. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code."

41. Though there was no requirement to join any independent witness at the time of recovery on the basis of disclosure, the recovery has been witnessed by Jag Pravesh, who was associated throughout with the police during investigation on that day.

42. The appellant's counsel's contention that no TIP was conducted before the appellant's arrest is without any substance as no TIP was required in this case. The appellant was apprehended at the instance of eye witness PW-1 Jag Pravesh.

43. We do appreciate the submissions made by learned counsel for the appellant that the prosecution should have sent the knife to FSL to ascertain its use in the occurrence and whether the blood on it was that of the deceased. Also, it would have been advisable for the IO to connect the recovered jaw and two teeth with the deceased and get the handwriting of the appellant proved through independent source/expert opinion that the letter Mark-X (also exhibited as Ex.P1 and knife is also exhibited as Ex.P1) addressed to PW 6 Premwati, his wife, containing various threats to the deceased and her family, was written by the appellant. But the question is whether inaction on the part of the Investigating Officer in this case is sufficient to give benefit of doubt to the accused and acquit him when testimonies of as many as 5 public witnesses prove his involvement in the crime. Not only that, the testimony of the autopsy Surgeon (PW 16) giving detailed reasons how the weapon could cause the injuries on the body of the deceased during postmortem clears the doubt, if any, in the mind of the Court about use of the weapon Ex.P1 in this case.

44. We are of the view that the appellant cannot be acquitted merely because of some lapses on part of the IO, in not sending the weapon of offence or specimen and subsequent handwriting of the appellant to compare it with the writing of letter Ex.P1. Our view is fortified by the reports 2003 (12) SCC 516 Gyasuddin Khan vs. State of Bihar and 2000(8) SCC 382 State of West Bengal Vs. Mir Mohd. Omar .

45. The contention of the appellant's counsel that enmity and strained relations between him and PW 6 was the motive to falsely implicate him in this case has to be rejected for the simple reason as in that situation PW 6 would not have appeared as a witness only to depose about such strained relationship; or about the threats given by him from time to time and cruelty caused to her during her stay. In that case PWs 6 & 8 could have been shown to be eye witnesses. It is a case where natural eye witnesses have been put forward by the prosecution to prove its case. They deposed before the Court in a natural manner without having any knowledge about the relationship between the appellant and the deceased or motive behind the murder.

46. Even if we assume that the testimony of PW 6 is not sufficient to prove strained matrimonial relations as motive for the offence or that the appellant had no motive to commit the murder of his mother-in-law, that is insufficient to render the evidence of this eye witnesses untrustworthy. The law is well settled that when direct evidence has established the crime, motive pales into insignificance. In Bipin Kumar Mondal vs. State of West Bengal (2010) 12 Supreme Court Cases 91, the Supreme Court held as under:-

"24. It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular

testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shanker v. State of UP, Bikau Pandey v. State of Bihar and Abu Thakir v. State of T.N.)

47. The testimonies of the prosecution witnesses and postmortem report are sufficient to prove the case of the prosecution beyond reasonable doubt. While the testimonies of eye witnesses prove that it was the appellant Babu Lal who repeatedly stabbed his mother-in-law in full public view on a public street, the postmortem report corroborated the testimonies which shows that as many as 15 injuries were found on the person of the deceased and injuries no. 2, 6,7,9 and 13 were sufficient, either singly or collectively, to cause the death of Shanti Devi in the ordinary course of nature. Thus, there is no escape from the conclusion that the appellant committed the offence for which he has been charged and convicted by learned Addl. Sessions Judge.

48. We do not find any error or infirmity in the impugned judgment as the matter has been considered by the learned trial court in its correct perspective. The impugned judgment and order on sentence convicting the appellant for the period specified above, calls for no interference. The appeal is hereby dismissed.

49. The appellant is absconding. The Registry is directed to send the trial court record alongwith a copy of this order to the Trial Court to take necessary steps for procuring the presence of the appellant and send him to jail to serve the remainder of the sentence.

PRATIBHA RANI (JUDGE) S. RAVINDRA BHAT (JUDGE) February 24, 2012 „dc