IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.A. No. 714/2004

Judgment pronounced on 31st July, 2013

STATE …. Appellant
Through: Mr.Pawan Sharma, Standing Counsel for State

Versus

$ BANSI DHAR & ORS. .... Respondent s
Through: Mr. Ramesh Gupta, Sr. Adv. with Mr. B. Sharma, Mr. Anil Kumar Verma and Mr. Vinay Bishnoi, Adv. for the respondents.
Mr. H.S. Phoolka, Sr. Adv. with Mr. Braham Singh and Mr. Mohit, Advs. for the complainant.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI

G.S. SISTANI, J.

1. Present appeal has been filed by the State under Section 377(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as, "Cr.P.C.") for enhancing the sentence awarded to the respondents by the Additional Sessions Judge vide Judgment dated 20.3.2004 and the order on sentence dated 22.3.2004 in Sessions Case No.302/2002.
2. Brief facts of the case, as noticed by learned Additional Sessions Judge in the judgment dated 20.3.2004, are that on 11.7.1995, duty Constable Dinesh, posted at AIIMS Hospital, telephonically informed Police Station Mehrauli that one, Sh. Raj Kumar, resident of Mehrauli had been admitted by his brother, Sh. Suresh Kumar, at AIIMS Hospital in an injured condition on account of a quarrel. SI Ombir Singh along with Constable Nawal Singh reached the said hospital and obtained MLC of the injured,

Sh. Raj Kumar. The injured person had been declared unfit for making a statement. No eye-witness was present at the hospital. On the basis of the MLC of the injured and the condition of his body, SI Ombir Singh got the case registered under Section 307 IPC. The place of occurrence was photographed, site plan was prepared at the instance of the eye-witness, Sh. Suresh Sharma, his statement was recorded. On 14.7.1995, the injured, Sh. Raj Kumar, was found fit for making a statement, which was recorded. In his statement, Sh. Raj Kumar levelled allegations against three persons, namely, Bansi Dhar @ Pappu; Kulbhushan; and Laxmi Narain @ Babloo, respondents herein, for beating and subsequently almost simultaneously Raj Kumar having been stabbed by respondent, Bansi Dhar, with a knife, while he was held by the respondents, Kulbhushan and Laxmi Narain, on account of some minor altercation that had taken place between the parties. Raj Kumar also narrated the instances of previous civil and criminal litigations pending between the parties. Charge sheet was filed and all the three accused persons (respondents herein) faced trial for the offence punishable under Sections 307/34, Indian Penal Code.

3. Trial court convicted the three respondents and held them guilty for the offence punishable under Sections 307/34 of the Indian Penal Code, 1860, (hereinafter referred to as "IPC") and all the three respondents were sentenced individually for the period already undergone by them in judicial custody (approximately 30 days) during the course of trial and to pay a fine of Rs.1.00 lakh, each, and in default of payment of fine they were directed to undergo Simple Imprisonment for a period of one year.
4. Arguments have been addressed in this case by counsel for the appellant, respondents as also the counsel for the complainant.

5. It is submitted by counsel for the appellant that the order passed by the trial court is manifestly wrong and while awarding the sentence, trial court has failed to appreciate the nature of offence committed by the respondents, which is grave in nature, and the trial court has failed to award the sentence prescribed under the law.
6. Counsel for the appellant has strenuously urged before this Court that the order on sentence passed by the trial court is against the law laid down by the Supreme Court. It is further submitted that awarding the sentence by the trial court shows complete non-application of mind as the learned trial court has failed to state the exact period undergone by the respondents and the sentence which has been awarded is not commensurate to the offence committed.
7. Per contra, learned counsel appearing for the respondents has submitted that the judgment of the trial court is based on conjectures and surmises and on the basis of evidence on record the respondents were liable to be acquitted. The trial court has failed to consider that no offence under Section 307, IPC is made out against the respondents and that the prosecution has failed to establish its case beyond any shadow of doubt. Counsel submits that even the doctor has not given any categorical finding that a knife had caused the injury on the victim. It is also submitted that the evidence of the eye-witness is neither reliable nor truthful and the eye-witness has simply been introduced to falsely implicate the respondents herein. It is submitted that even otherwise, injury suffered by the complainant was not dangerous.
8. Learned counsel for the respondents has also submitted that as per the statement of the complainant only, Bansi Dhar had caused injury on the victim and, thus, the judgment and order on sentence against the other two respondents is liable to be set aside. Counsel further submits that even

otherwise the entire case of the prosecution revolves around the testimony of PW-3, 9 and 12, who are interested witnesses and, thus, no reliance can be placed on their testimony.

9. Counsel for the respondents has urged before this court that the motive is a double-edged weapon and the complainant has falsely implicated the respondents. Counsel further submits that the trial court has failed to consider the evidence led by the defence and the trial court has also not considered the settled position of law that equal weightage is to be given to the defence witnesses as against the prosecution witnesses. Counsel further submits that DW-1, Pawan Kumar, has deposed in his statement that on the date of occurrence Bansi Dhar was away to Sadar Bazar for making purchases for his shop. Similarly, DW-2, Anil, has deposed that Laxmi Naraian had gone to Nai Sarak on the date of occurrence to make certain purchases. Counsel for the respondents has further drawn the attention of the Court to the evidence of DW-3, Rajan Singh, Assistant Ahlmad; DW-4, HC Kallan Singh; DW-5, Record Clerk, Khan Singh; DW-6, Ranbir Singh, to show that litigation was pending between the parties, which shows that there was a motive for the complainant to falsely implicate the respondents. Mr.Gupta has also submitted that no case under Section 307 IPC is made out and at best a case under Section 324 IPC would be made out against the respondents. Alternatively, counsel for the respondents has argued that adequate punishment has been awarded by the trial court to the respondents, duly keeping in mind all the facts and circumstances and there is no reason for this court to interfere in the reasoned order on sentence passed by the trial court.

10. Prosecution has examined fifteen (15) witnesses. Statement of accused persons (respondents herein) was recorded under Section 313, Cr.P.C. Seven (7) witnesses were examined by the defence. In order to appreciate

the rival submissions made by counsel for the parties, it would be useful and necessary to reproduce the evidence of some of the material witnesses.

11. PW-1, Raj Kumar Sharma (injured) deposed as under:

> "Examination-in-Chief
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> On 11.7.1995 at about 11.30/12.00 noon, I was going towards a park from my house alongwith my friend Mahinder Pal. When I reached in front of the shop, all the three accused persons present in the court today met me there. Accused Bansi Dhar stopped me there and angrily asked me whether I would get the shop repaired to avoid leakage of water or not. The accused Bansi Dhar was a tenant of the shop which was belonging to me. I showed my helplessness by saying that as he had already obtained a stay from the court. Upon this accused Bansi Dhar stated that he would teach me a lesson and thereafter caught hold of my collar and started beating me. The other accused persons also started beating me. When the accused persons were giving beating to me accused Kulbhushan gave a threat to kill me. Accused Bansi Dhar took out a Churi from beneath his socks and gave me a blow on my chest upto stomach. Thereafter I raised alarm for help upon which the accused persons fled away towards bungalow. As I was bleeding, so I immediately went towards police station. Nobody try to save me. On the way to the police station collapsed near a school and became unconscious. When I regained consciousness, found myself in the hospital. I remained in the hospital for 8-9 days. I was medically treated there. My statement was recorded in the hospital.

PW-1, Raj Kumar Sharma, (recalled for further examination-in-chief).

> At this stage one sealed pulanda sealed with CFSL seal is opened. On opening the same, a torn shirt having blood stains, and torn baniyan having blood stains were taken out. The witness correctly identified the same, the same are Ex.P1

and P2."

Cross-examination by learned defence counsel:

"There are two shops in the house where I live. In one of the shop, accused Bansi Dhar is the tenant, while the other shop is lying vacant/closed. The tenancy is in the name of Jagan Nath Parshad, while the same is run by accused Bansi Dhar alias Pappu. It is incorrect to suggest that we want to get the aforesaid shop vacated. It is correct that Jagan Nath Prasad has taken a stay from Civil Court in respect of the aforesaid shop.

It is incorrect to suggest that in order to get the shop vacated we had made a hole on the roof of the shop and throw water in the said shop through the said holes so that out of harassment the accused vacate the shop.

It is incorrect that the entire Bazar is closed on Tuesday in Mehrauli, volunteered although the Government has declared as holiday for the Bazar in Mehrauli for Tuesday but 80% of the shops remain open on Tuesday. The place of the incident is about 15 ft. from our house. The secondary school is about 200/300 yards from the place of the incident. I do not know who removed me to the hospital as I had become unconscious. Mahinder my friend lives 500/600 yards from my house. He is my friend for the last 5/7 years. Suresh who is a witness of this case is my elder brother.

I regained consciousness in the hospital in the evening. When I regained consciousness in the hospital, my brother Suresh and friend Mahinder was not there, vol. only my wife was there at that time. I do not know at what time the police came to the hospital, however, the police met me in the evening when I had regained consciousness. Police recorded my statement in the hospital, after I had regained consciousness. My friend Mahinder met me at the corner of the street, near the gate of my house. The gate of the house does not open towards the side of the shop. It is correct that the gate of the house is not visible from the shop in the occupation of the accused Bansi Dhar. My friend Mahinder had not come to my house on that day. He had met me outside the gate of the house as already stated above.

Again said, I had stated in my statement to the police that my friend Mahinder had come to my house and both of us went out together. When I was going towards the police station and collapsed near the school and became unconscious, at that time Mahinder was not with me. At that time my brother Suresh was also not with me. I do not know if accused Bansi Dhar keeps his shop closed on Tuesday and go to the market to purchase goods. It is incorrect to suggest that on the day of the incident, none of the accused were present at the spot and further none of the accused stopped me and gave me beatings and stabbing as stated in my examination in chief. It is incorrect that I have planted this case upon the accused with the help of Mahinder and my brother Suresh with a view to force accused Bansi Dhar and his father to vacate the shop."

12.PW-2, Mahinder Pal deposed as under:

"Examination-in-Chief

On 11.7.95 at about 11:30 A.M. I called Raj Kumar from his house and were proceeding towards bungalow. When we were passing in front of the shop of accused Bansi Dhar, he stopped Raj Kumar and asked him whether he would get the leakage of the roof repaired or not. Upon this Raj Kumar stated that as they had taken stay from the court so he was helpless to get the same repaired. On this accused Bansi Dhar and his two brothers namely, Laxmi Narain and Kulbhushan grappled with Raj Kumar and started giving him slaps and fist blows. While beating accused Kulbhushan stated to accused Bansi Dhar that he should finished Raj Kumar (KAAM TAMAM KAR DEY). Thereafter Accused Bansi Dhar took out a 'Churi' from the side of his right leg and gave a blow on the chest of Raj Kumar. Raj Kumar cried loudly by saying *Bachao Bachao* and blood started coming out of the wounds. Since, I am a diabetic patient so I also got frightened and I sat on a nearby Chabutra. The accused persons fled away towards the Bunglow after the incident and Raj Kumar proceeded towards Bazar. Later on in the evening on the same day, police recorded my statement. The accused persons present in the court today

are the same (witnesses has correctly identified the accused.)"

Cross-Examination by the learned defence counsel:

"It is correct that officially the bazaar at Mehrauli is supposed to be closed on every Tuesday, volunteered, but the bazaar never closed on Tuesday. On the date of the incident, the shop of Bansi Dhar was open and all the three accused were standing outside the shop. Again said the other two brothers of accused Bansi Dhar were inside the shop and all the three accused present in court today were standing outside the shop. It is correct that the shop of the accused is of readymade garments and is generally called by the name of Readymade garment gali. The door of the house of Raj Kumar does not open towards the shop of the accused in the readymade garments gali. The gate of the house of Raj Kumar is at a distance of 15 – 20 ft. from the readymade garments gali's corner. There was no prior programme to go to the house of Raj Kumar on that day, vol. whenever we are free, either I used to go to his house, or he used to come to me. My house is at a distance of half a kilometer from the house of Raj Kumar.

I did not accompany Raj Kumar when he proceeded towards the police station in injured condition. My statement was recorded by the police. I had stated in my statement to the police that after the incident, as I was frightened, so I sat at the Chabutra.

On the date of the incident I started from my house at about 11.20 or 11.25 a.m. I know that the litigations are pending between the accused and the injured, but I cannot tell the number of the same.

Raj Kumar wants to get his shop vacated from the accused. I have no money dealings with Raj Kumar. It is incorrect to suggest that I have been cited as a witness because Raj Kumar wanted me to stand as a witness to support a false charge of stabbing and beatings against the accused person. It is incorrect that the shop of the accused persons was closed. It is also incorrect that being Tuesday, the accused

was not found at the shop. It is correct that the shopkeepers on Tuesday do go to the whole sale market for making purchases. It is incorrect to suggest that I am deposing falsely. It is incorrect that I had gone to the hospital or to the P.S. with Raj Kumar because none of the accused had done any act giving rise to the present case."

13.PW-6, Constable Nawal Singh deposed as under:

"On 11.07.1995 I was posted at P.S. Mehrauli. On that day I accompanied S.I. Ombir to AIIMS hospital where one Raj Kumar was admitted there. He was not fit to make statement as opined by doctor. I.O. collected MLC of the injured and made his endorsement mark-A which I took to the P.S. for registration of the case on the basis of which a FIR copy of which is Ex. PW6/A was recorded. I returned to the spot after the registration of the case. On the spot knife and blood/spit was lying. I.O. prepared the sketch of knife Ex.PW 6/8 which bears my signatures. I.O. had also taken into possession the clothes of the injured vide memo Ex. Pw6/C from the hospital. Blood stains, Bajri with blood stains and earth control sample were lifted from the spot and sealed with the seal of DSP and same were taken into possession vide memo Ex.PW6/D which also bears my signature. Knife was measured and sealed in a packet with the same seal and taken into possession vide memo Ex. PW6/E which also bears my signatures."

Cross-Examination by learned defence counsel:

"There were four or five persons from the public present at the spot when the spot was inspected, Bajri sample, blood sample and knife was taken into possession. I do not remember how many persons from the public had signed the seizure memos, but the same was signed by the public persons. Mark A was handed over by the I.O. to me but the same was not written in my presence. It is correct that on Ex. PW6/C no public witness is cited as witness. It is incorrect to suggest that I am deposing falsely."

14.PW-9, Suresh Sharma deposed as under:

> "Examination-in-Chief
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> On 11.07.1995 at about 11.45 a.m. I was sitting on the projection of our shop which is situated in Readymade Garment Market. My brother Raj Kumar and his friend Mahinder were going towards Bangla. As soon as my brother Raj Kumar reached in front of the shop on the roof/projection on which I was sitting, all the three accused persons present in the court today stopped my brother. They asked my brother whether he would make arrangement for stopping the leakage in the roof of the shop or not. Upon which my brother told them that as they had already obtained a stay, he was not able to help. On this accused Bansi Dhar stated that he would have to teach a lesson. Thereafter accused persons started beating my brother Raj Kumar. Accused Kul Bhushan asked the accused persons "Bhai is ka kaam tamaam kar de". On this accused Bansi Dhar took out a knife from inside the socks of his right foot and assaulted my brother with the knife. When my brother try to save himself, accused Kul Bhushan and Laxmi Narain caught him from both the sides and accused Bansi Dhar gave him knife blow on his chest. When I raised alarm alongwith other persons all the three accused persons ran away towards Bangla and my brother started running towards the police station. I followed him when my brother reached near the wall of the school in front of the gate of the school, he fell down and collapsed. I took him to the hospital, in a TSR, and got him admitted there. Thereafter I informed my relatives on telephone. Police reached in the hospital. I accompanied them to the spot and showed them the place of occurrence. Police lifted blood stains and earth control etc. from the spot, after putting the same in small bottles, and sealed the same in a cloth pulanda with the seal of DSP. Naveen was also present there at that time. Police had also recovered a knife at a distance of about five paces where the blood was lying. There was a hole in the handle of the knife and a rubber band was on the handle of the knife. The blade of the knife was having blood stains. Police measured the knife. The total lengh of the knife was 21.5 c.m. The blade

of the knife was 10.5 c.m. The knife was also sealed by the police with a seal.

The accused persons were tenant in a shop which was being owned by my brother Raj Kumar and dispute was regarding the leakage of water from the ceiling of the shop in which they were tenant."

Cross-Examination by learned defence counsel:

"It is correct that in a case FIR No. 200/1992 between us I am an accused under Section 325 IPC and the present accused are the complainant in the aforesaid case FIR volunteered about the same date of the incident of the case FIR No. 200/92 another case FIR No. 254/92 was registered in which the accused of this case are also the accused in the said case. It is incorrect to suggest that in order to get the tenanted premises evicted from the accused, the present case has got been registered against the accused in order to pressurise them.

I am working as a Teacher in Govt. School for the last about 20 years. At present I am posted at Govt. Senior Secondary School, MM Pur, Faridabad. In July, 1995 I was on leave on 11th July, 1995 from the school. I did not tell the aforesaid fact to the police in my statement. My statement was recorded by the police at my house. My statement was recorded by the police perhaps within a week of the incident. But I cannot tell the exact date. Police was informed by the duty constable of the hospital AIIMS. I remained in the hospital on the day of the incident upto 1.30 p.m. I do not remember the number of the three wheeler scooter in which I removed my brother to the hospital The police did not record the statement of the TSR driver. I had also not informed the police that I removed my brother to the hospital in a TSR. The doctors had written my name in the record as to who had brought the injured to the hospital.

The quarrel first of all took place in front of the shop of the accused but my brother was stabbed at a distance of about 10-15 paces from the shop of the accused. I was sitting at the balcony over the shop at the time of the incident and came down after my brother was stabbed.

I did not sign any of the documents prepared by the police which included the site plan and seizure memo. I did not sign any of the document of the day of the incident. I do not remember if I signed on my statement given to the police or not. The site plan was prepared in my presence but I did not sign the same. The length and breadth of the place of incident was also mentioned in the site plan. I do not remember if in the site plan, the place of the quarrel and place of stabing were shown or not."

15.PW-12, Naveen Sharma has deposed as under:

"Examination-in-Chief

I know all the accused persons present in the court today, as they are my neighbours. I also know Raj Kumar and his brother Suresh as they also reside near my shop. On 11.07.1995 at about 11:30/12:00 noon Raj Kumar and Mahinder were coming towards my shop from their house. The shop of accused Bansi Dhar is situated between my shop and house of Raj Kumar. When Raj Kumar reached in front of the shop of accused, Bansi Dhar, all the three accused present in court had an altercation with Raj Kumar. They started beating Raj Kumar. After that accused Bansi Dhar took out a knife which was placed under his right foot sock and gave a blow to Raj Kumar. Raj Kumar warded off the blow with his hands. Thereafter accused Kul Bhushan and accused Laxmi Narain caught hold of Raj Kumar and accused Bansi Dhar gave a knife blow on the chest of Raj Kumar. I as well as Mahinder was present. Thereafter all the accused persons ran towards Bangla and injured Raj Kumar started running towards the Police Station. I also followed Raj Kumar. Suresh, who had also reached there after hearing the noise, also followed Raj Kumar. When Raj Kumar reached near the school, in the main bazaar, he fell down. His brother, Suresh took injured Raj Kumar in a and removed him to the Hospital. I went to the school to inform the wife of Raj Kumar, who is a teacher. When I came back from school, after informing the wife of Raj Kumar, Police had already reached the spot. In my presence Police had lifted the blood stains, blood stained Bajri and earth control,

after breaking the road. All the three Articles were sealed separately with the seal of D.S.P. and the seal after use was handed over to me. The three sealed parcels were taken into possession vide memo Ex.PW-6/D which bears my signatures at point 'A'. Police had also picked up a knife, which was lying at the spot. The same was measured and its sketch Ex. PW-6/B was also prepared which bears my signatures at point 'A'. The total length of the knife was 21.05 c.m. Thereafter I.O. prepared a pulanda of knife, sealed the same with the same seal of D.S.P. and then the sealed pulanda was taken into possession vide memo Ex.PW-6/E which bears my signatures at point 'A'. Seal after use was again handed over to me by the I.O."

Cross-Examination by learned defence counsel:

"Injured Raj Kumar is distantly related to me as my Uncle (Tau). Volunteered we are not on visiting terms.

I do not know if there has been any dispute between the injured Raj Kumar and the accused persons regarding the vacation of the shop forcibly.

There is no cross streets in between the shops of the accused persons and the house of Raj Kumar. Again said there is one street crossing there between the house of Raj Kumar and the shop of the accused. At about 11:00 or 11:30 a.m. as per my knowledge the quarrel took. Again said the incident took place in my presence. I do not know the cause of the quarrel. It is incorrect to suggest that I am deposing falsely because I am in relation of Raj Kumar. I did not go with injured Raj Kumar to the hospital.

My statement was recorded by the police on the same day at the spot at about 2.00 /2.30 p.m. Police has prepared site plan in my presence. The site plan was prepared by the I.O. of his own and not at my instance. However, the same was prepared in my presence.

It is incorrect to suggest that I have deposed falsely. It is further incorrect to suggest that no such incident ever took

place in my presence because the accused persons had gone for purchasing of stock for their shop on that day.

I do not know if Raj Kumar by implicating falsely the accused persons wants his shop to be vacated. It is incorrect to suggest that this case is falsely and the same was fabricated by Raj Kumar to implicate the accused persons."

16.PW-14, Dr. N.S. Reddy of AIIMS Hospital deposed as under:

"Examination-in-Chief

I have seen MLC Ex. PW14/A prepared and signed by Dr. Elango. I identify his handwriting and signature as I have seen him writing and signing in the official course of duties. Dr. Elango has left the services of hospital and his present address is not available. As per MLC Ex.PW14/A on 11.7.1995 Dr. Elango had medically examined Raj Kumar when he was brought to the hospital by Suresh Sharma his brother with an alleged history of assault by a knife. On examination Dr. found patient growsy. Pulse was not recordable. Blood pressure was also not recordable. There was an injury of 3 cms long on the lower part of sternum. Patient was given rescusistation. 6 units of blood was arranged for the patient. Patient was also advised chest x-ray. The injury was dangerous to life caused by a sharp object. The injury was on the chest."

Cross-Examination by learned defence counsel:

"I do not have any personal knowledge of this case nor the patient was examined in my presence. Nor I can comment upon the injuries as to bow the same could be affected. It is correct that my entire statement was based on the MLC prepared by Dr. Elango.

I was not his junior. I have never worked with Dr. Elango. Since I do not worked with the said doctor, therefore he never prepared, wrote or signed any medical treatment or paper in my presence. I have only read out what was written in the MLC and since Dr. Elango had signed it

therefore, I made the statement about it. I cannot tell as to who wrote the body of the MLC, who signed it."

17.PW-15, S.I. Ombir Singh deposed as under:

"Examination-in-Chief

On 11.7.95 I was posted at P.S. Mehrauli. On that day after receiving DD No.10-A, copy of which is Ex.PW-10/A. I along with Const. Nawal Singh reached at AIIMS Hospital where one Raj Kumar was admitted in the hospital. I moved an application Ex.PW-15/A for recording his statement to the doctor upon which the doctor opined him unfit for statement vide endorsement at point A. Since no eye witness was available in the hospital so I made my endorsement Ex.PW15/B on the DD and sent the same through Const. Nawal Singh to the police station for registration of the case. Upon which the case vide FIR Ex.PW6/A was recorded. While I was present in the hospital witness Suresh Sharma met me there and I accompanied him to the place where injured Raj Kumar had fallen down after the incident.

One photographer and a constable Vinod Kumar had already there. H. Constable Amar Singh took the photographs of the place of incident which are Ex.PW10/1-7 and the negative prints are Ex.PW-10/8-14. Thereafter we reached at the place where the actual occurrence had taken place but I do not find any incriminating substance there so the photographs of that side were not taken. Photographs of the site where the injured had fallen down due to injuries were already taken. We again came back to the said spot. I recorded the statement of the photographer. Thereafter at the pointing out of the Suresh Sharma I prepared the site plan Ex.PW15/C. In the meantime Constable Nawal Singh came back to the spot alongwith the copy of the FIR. Thereafter I Naveen Sharma

who was eye witness of the occurrence. I had picked up blood sample, earth control sample and blood stained portion of the road which were sealed with the seal of DSP before taken into possession vide memo Ex.PW6/D. Seal after use was handed over to Naveen Sharma. I had picked up a knife which was lying at a distance of 5 steps away from the blood stains on the road. I measured the knife. The total length of the knife was 21.5 cms., and the length of the blade was 10.5 cms. I prepared the sketch of the knife Ex.PW6/B and sealed the same in a pullandha with the same seal after taking the same from Naveen Sharma. The sealed pullandha was taken into possession vide memo Ex.PW6/D. In the meantime Munarphi Lal also reached at the spot and I recorded his statement. I searched for the accused persons. I recorded the statement of NaveenSharma. Thereafter I alongwith Constable Nawal Kishore reached at AIIMS Hospital from where the duty constable of the hospital produced clothes of the injured which were Ex.P/1 and P/2 alongwith the sample seal of the hospital and the same taken into possession vide memo Ex.PW6/C.

On 12.7.95 and 13.7.95 the injured remained unfit to make the statement and opined by the doctor on my application at point B and C. On these two days I searched for the accused persons. On 14.7.95 the injured was opined by the doctor fit to make the statement vide his endorsement at point D on my application Ex.PW15/A. Thereafter I recorded the statement of injured Raj Kumar. On 19.7.95 accused Bansi Dhar present in the court today was arrested and his personal search was taken vide memo E.PW3/A. During the course of interrogation accused Bansi Dhar pointed out the place of incident vide memo Ex.PW7/A and made a disclosure statement. He was produced in the Court and one day police custody remand was taken. I recorded the statement of the witnesses. The cloths of the accused Bansi Dhar worned by him at the time of incident could not be recovered. On 22.7.1995 accused Kulbhushan and Laxmi Narayan present

in the Court were arrested from their houses and their personal search was taken vide memo Ex.PW3/B and Ex.PW3/C respectively. During interrogation both the accused made the disclosure statement Ex.PW7/D and Ex.PW7/E respectively and also pointed out the place of incident vide memo Ex.PW7/B and Ex.PW7/C. I recorded the statement of witnesses and produced the accused in the Court from where they were sent to Judicial lock-up."

Cross-examination by learned defence counsel:

"It is incorrect to suggest that no incriminating articles were recovered from the accused persons. It is correct that I came to know that the complainant/injured was the landlord of the shop occupied by the accused persons. It is correct that most of the shops in Mehrauli remain closed on every Tuesday, it being weekly holiday. I did not enquire into the aspect that the accused persons on the day of the incident had gone to make purchase since it was Tuesday.

I do not know if that case is pending before the court of Sh. M.R. Sethi, M.M., Patiala House Courts, against the accused party. It is incorrect that during investigation I came to know that a civil suit is pending between the parties. It is incorrect to suggest that the material witnesses in this case are relatives of the injured. It is correct that the accused persons are not named in the FIR. It is incorrect to suggest that I have not investigated the case properly and I am deposing falsely."

18. Witnesses were produced by the defence to show that the respondents were not present at the spot of the incident. DW-1, Pawan Kumar Arora, in his examination-in-chief, had deposed that on 11.7.1995, Bansi Dhar and he had gone to Sadar Bazar to make purchases for their respective shops from the wholesale market. At about 10 a.m. they had gone by a bus and returned at 8 p.m. on the same day.

19. DW-2, Anil Goyal, had deposed in his examination-in-chief that he had been running the wholesale business of saries at his shop No.5752 Jogiwara, Delhi. It was on 11.7.95 at about 10.45 am to 11 a.m. when he opened the shop, he found the said Luxmi Narain waiting for the opening of the shop. The said Luxmi Narain made purchases of embroidery saries on that day from Mehrauli for his shop namely, Neha Sari Emporium.

20. I have heard learned counsel for the parties and carefully gone through the evidence of the case. The submissions of learned counsel for the appellant/State and complainant in a nut shell are that a categorical finding has been arrived at by the learned trial court that the three respondents were guilty under Section 307 read with Section 34 of the IPC. However, despite the gravity of the offence, learned trial court has sentenced the three respondents to the period already undergone by them in judicial custody (during the course of trial) which in the case of each respondent is around 30 (thirty) days. Learned counsel for the State has vehemently contended before this Court that the Order on Sentence passed by the trial court is against the settled position of law and proportionate sentence has not been awarded to the three respondents as compared to the dreadful nature of their crime, which has been proved beyond any shadow of doubt.

21. Per contra, learned counsel for the respondents has submitted that the trial court has come to an erroneous finding convicting the respondents and failed to appreciate that there was no evidence on record pointing towards the guilt of the respondents under Section 307/34, IPC. Alternatively, counsel for the respondents has submitted that adequate punishment has been awarded to the respondents and there is no reason for this court to interfere in the reasoned order on sentence passed by the learned trial court.

22. The case of the prosecution primarily rests upon the statements of the injured (PW-1) and three other witnesses PW-2, PW-9 and PW-12. I find that PW-1, Raj Kumar Sharma-injured has deposed in his examination-in-chief that on 11.7.1995, at about 11:30/12:00 noon, he was going towards a park from his house along with his friend Mahinder Pal. When he reached in front of the shop, all the three respondents met him there. Respondent, Bansi Dhar angrily asked PW-1 whether he would get the shop repaired to avoid leakage of water or not. Bansi Dhar was a tenant in the shop which was owned by PW-1. PW-1 showed his helplessness and stated that as he had already obtained a stay order from the court and nothing further could be done. Upon this respondent, Bansi Dhar stated that he would teach PW-1 a lesson and thereafter he caught hold of the collar of PW-1 and started beating him. The other two respondents also joined respondent, Bansi Dhar. When the respondents were beating PW-1, Kulbhushan gave a threat to kill him. Thereafter, respondent, Bansi Dhari took out a churi from beneath his socks and gave PW-1 a blow on his chest right upto the stomach. As per PW-1, he raised an alarm for help upon which the three respondents fled away towards the bungalow. As he was bleeding, he immediately went towards the police station, however, on his way he collapsed near a school and became unconscious. When he regained consciousness, he found himself in the hospital, where he remained for eight to nine days. PW-1 further identified a torn shirt having blood stains (Ex.P-1) as well as a torn baniyan having blood stains (Ex.P-2). PW-1 was cross-examined at length by learned counsel for the defence, however, there is nothing on record to even allude that PW-1 deposed falsely against the respondents. PW-1 had also correctly identified the three respondents in the Court. PW-1 deposed in his cross-examination that it was incorrect to suggest that in order to get the shop

vacated he had made a hole in the roof of the shop and thrown water through the said hole so that out of sheer anguish and harassment, the respondent vacates the shop. PW-1 further deposed that when he regained consciousness in the hospital, his brother Suresh and friend Mahinder were not present, however, his wife was present at that time. PW-1 negated the suggestion that the entire bazaar was closed on Tuesday in Mehrauli. He further volunteered to say that although Government had declared a holiday for the Bazaar, on Tuesday, but eighty percent of the shops still remained open. PW-1 negated the suggestion that he had planted this case upon the three respondents or that the respondents did not beat and stab him.

23. The testimony of PW-1 has been duly corroborated by PW-2, Mahinder Pal (friend of PW-1). Learned counsel for the respondents has however submitted that the testimony of PW-2, as also the evidence given by PW-9 and PW-12 cannot be relied upon as they are interested/partisan witnesses. The law with regard to placing reliance on evidence of close relations and partisan witness has been a subject matter of various decisions of the Apex Court. It would be worthwhile to reproduce herein the observations of this Court in Crl.A.No.470/2003, ***Harish Vs. The State***, reported at 2008 (147) DLT 608; 2008 (2) AD (Delhi) 405 particularly paragraphs 41 and 42, where the law laid down by the Apex Court has been relied upon:

> *"**41**. It has been consistently held by the Apex Court that Courts must be cautious and careful while weighing such evidence given by witnesses who are partisan or interested, but such evidence should not be mechanically discarded. It will be useful to refer to the judgment of **Masalte Vs. State of Uttar Pradesh**, reported at AIR 1965 Supreme Court 202, relevant portion of which is reproduced below:-*

"14. Mr.Sawhney has then argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses; Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to, failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

42.** Similar view has also been expressed in the case of **State of Punjab Vs. Karnail Singh**, reported **at AIR 2003 Supreme Court 3613:-

8. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh and others v. The State of Punjab (AIR 1953 SC 364) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:-

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – Rajasthan', (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

9. Again in Masalti and others v. The State of U.P. (AIR 1965 SC 202) this Court observed : (pp. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

10. To the same effect is the decision in State of Punjab v. Jagbir Singh, (AIR 1973 SC 2407) and Lehna v. State of Haryana, (2002 (3) SCC 76). As observed by this Court in State of Rajasthan V. Smt. Kalki and another, (AIR 1981

SC 1390), normal discrepancies in evidence are those who are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those who are not normal, and not expected of a normal person. Courts have to lable the category to which a discrepancy may be categorized. While normal discrepancies do so. These aspects were highlighted in Krishna Mochi and others v. State of Bihar etc. (JT 2002 (4) SC 186)."

24. Thus it is settled position of law that merely because a witness has been described as a close relation, it does not automatically imply that his version is to be mechanically discarded. It has repeatedly been held that reliance can be placed on the evidence of an interested witness provided his / her evidence is truthful. Also before placing reliance on the evidence of an interested witness a duty is cast upon the Court to scrutinize such evidence carefully and minutely and with extra caution. Applying the settled position of law to the facts of the present case, I find that PW-2, Mahinder Pal has deposed before the Court that on the fateful day of 11.7.1995 at about 11.20 a.m., PW-2 had called Raj Kumar Sharma (PW-1) from his house and thereafter both of them had proceeded towards the bungalow. As per PW-2, when they were passing by the shop of respondent, Bansi Dhar, stopped Raj Kumar Sharma and asked him whether he would get the leakage of the roof repaired or not. Upon this Raj Kumar stated that as a stay order had been obtained from the court, no repair work could be carried out at that point of time. On this respondent Bansi Dhar and his two brothers, namely, Laxmi Narain and Kulbhushan

grappled with Raj Kumar and started giving him fists and blows. While beating PW-1, Kulbhushan asked Bansi Dhar that Raj Kumar should be finished (*KAAM TAMAM KAR DEY*). Thereafter Bansi Dhar took out a churi from the side of his right leg and gave a blow on the chest of Raj Kumar, who cried loudly by saying *bachao-bacho* and blood started oozing out of his wounds. PW-2 further categorically deposed that since he was a diabetic patient and he had also got frightened, he sat on a nearby *chabutra*. The three respondents fled away towards the bungalow side and Raj Kumar proceeded towards the bazaar. Later on in the evening, police recorded his statement. PW-2 correctly identified the three respondents as the assailants. In the cross-examination, to the question that *bazaar* was closed as it was a Tuesday, PW-2 supported the version of PW-1 that officially the *bazaar* at Mehrauli was closed on Tuesday, however, shops still used to open. PW-2 also denied the suggestion that the shop of the respondents was closed on the day of incident, being a Tuesday. PW-2 did not deter from his stand that the three respondents had beaten and stabbed Raj Kumar (PW-1) and affirmed all what he had stated in his examination-in-chief. PW-2 further deposed that it was incorrect that he had supported a false charge against the three respondents.

25. The deposition of PW-1 has also been duly supported by PW-9, Suresh Sharma, who has deposed that on 11.7.1995 at about 11.45 a.m., while he was sitting on the projection of their shop, he saw his brother Raj Kumar Sharma (PW-1) and his friend Mahinder (PW-2) going towards the bungalow. PW-9 deposed that as soon as the two of them reached in front of the shop on the projection of which he was sitting, the three respondents stopped his brother and asked whether he would make arrangements so as to stop leakage in the roof of the shop or not and upon which his brother (PW-1) informed them that nothing could be done as

there was a stay order in place. Bansi Dhar then stated that he would teach PW-1 a lesson and thereafter the three respondents started beating Raj Kumar Sharma (PW-1). Kulbhushan thereafter asked the accused persons (respondents herein), "*BHAI ISKA KAAM TAMAM KARDO*". On this Bansi Dhar took out a knife from the socks of his right foot and assaulted Raj Kumar with a knife. When PW-1 tried to save himself, Kulbhushan and Laxmi Narain caught hold of PW-1 from both the sides and thereafter Bansi Dhar gave PW-1 a knife blow on his chest. When he raised an alarm all the three respondents ran away towards the bungalow side and his brother started running towards the police station. As per PW-9, he immediately followed his brother, who had fallen down and collapsed in front of the gate of the school. Thereafter as per PW-9, he took Raj Kumar Sharma (PW-1, injured) in a TSR to the hospital and got him admitted there. PW-9 was extensively cross-examined but nothing emerges from the record which would compel the court to arrive at a finding that PW-9 was a planted or a false witness or he deposed falsely. PW-9 also affirmed in his cross-examination that the Doctors had written his name in the hospital record as the person who had brought the injured to the hospital. The MLC, Ex. PW-14/A shows that in the column *"name of relative or friend"*- "Suresh Sharma, brother of Raj Kumar Sharma (injured)" has been recorded.

26. PW-12, Naveen Sharma who is another eye-witness to the incident has also stated that Raj Kumar Sharma (injured-PW-1) was first beaten by the three respondents and thereafter stabbed by Bansi Dhar while the other two respondents, namely, Kulbhushan and Laxmi Narain, caught hold of him. A careful reading of the evidence of PW-12 would also reveal that he has lent credence to the deposition of PW-9 that it was PW-9 (Suresh Sharma) who took the injured-Raj Kumar Sharma in a TSR to the hospital

while he (PW-12) went to the school to inform the wife of Raj Kumar Sharma, who was a teacher. Bearing in mind the principles enunciated by the Apex Court with regard to interested witnesses, I find the evidence of PW-2, PW-9 and PW-12 to be cogent, reliable and trustworthy and I find no merit in the contention of counsel for the respondents that evidence of PW-2, PW-9 and PW-12 is unreliable.

27. Learned counsel for the respondents has next submitted that the FIR in this case was belatedly lodged and that too not at the instance of the injured person nor the eye witness, and the same points towards a grave anomaly in the case of the prosecution. PW-5, Constable Vinesh Kumar has stated before the Court that on 11.7.1995, he was posted as Duty Constable at All India Institute of Medical Sciences (AIIMS) hospital when Raj Kumar was brought to the hospital in an injured condition and information regarding the same was telephonically sent by him to the local police. Copy of DD No. 10A, Ex., PW-10/A also mentions the fact that at 12:25 pm, duty constable from AIIMS had informed that one person named Raj Kumar s/o Deen Dayal Sharma had been admitted to the hospital by his brother Suresh Sharma. Accordingly, PW-6/constable Nawal Singh and PW-15/S.I. Ombir Singh reached the hospital. I find that PW-6/Constable Nawal Singh has also affirmed that on 11.07.1995, he was posted at police station Mehrauli, when he accompanied PW-15/S.I. Ombir Singh to AIIMS hospital where one Raj Kumar had been admitted. At the hospital, doctor opined the victim to be not fit to make a statement. Thereafter, I.O. (PW-15) collected the MLC of the injured, made his endorsement mark A and sent the same through him (PW-6) to the police station for registration of an FIR, Ex.PW-6/A. The deposition of PW-6 further stands corroborated by the deposition of PW-15, S.I. Ombir Singh. PW-15 has deposed that on 11.7.1995, while he was posted at police

station Mehrauli, one DD no.10-A (Ex.PW-10/A) was received and he along with constable Nawal Singh went to AIIMS hospital and found Raj Kumar in an injured condition. As per PW-15, he had moved an application, Ex.PW-15/A for recording of statement of the injured, however, the doctor opined the injured as "unfit for statement", vide endorsement at point 'A'. PW-15 has further categorically deposed that since no eye witness was available in the hospital, he made an endorsement Ex.PW-15/B on the DD Entry and sent the same through constable Nawal Singh (PW-6) to the police station for registration of the case, upon which FIR, Ex.PW-6/A was recorded. In view of the above deposition of PW-5, PW-6 and PW-15 which are duly supported by DD no.10-A (Ex.PW-10/A) and FIR (Ex.PW-6/A), I find no merit in the contention of counsel for the respondents that the FIR was belatedly lodged or deliberately not lodged at the instance of the eye-witnesses. The chain of events leading upto the registration of the FIR are self-explanatory and there is nothing on record to even suggest that the FIR was lodged late.

28. As per the evidence one knife was recovered from the place of incident. PW-9 (Suresh Sharma) has deposed before the Court that he had accompanied the police to the place of incident and from where police had lifted blood stains as well as earth control. Thereafter the police put them in small bottles and sealed them in a cloth *pulanda* with the seal of DSP. PW-9 further deposed that a knife was also recovered in his presence at a distance of about five paces from the place where blood was lying. The knife had a hole in its handle as also a rubber band and blade of the knife had blood stains. Police measured the knife to be of 21.5 cms such that blade of the knife was 10.5 cm. The knife was also sealed by the police at the spot. However, PW-9 stated to not have signed the site plan, seizure

memo or any of the documents on the day of the incident. PW-12 (Naveen Sharma) has deposed that when he returned from the school after informing the wife of Raj Kumar Sharma (injured), he found that police had already reached the spot. As per PW-12, police lifted blood stains, blood stained *bajri* as well as earth control from the spot. All the three articles were then sealed separately with the seal of DSP and the sealed parcels were taken into possession vide memo, Ex.PW-6/D and which bear his signatures at point A. PW-12 further deposed that police also recovered a knife lying at the spot, which was measured and its sketch prepared as Ex. PW-6/B, bears his signatures at point A. The total length of the knife was 21.5 cm. Further as per PW-12, I.O. prepared a *pulanda* of the knife, sealed it with the seal of DSP and took it into possession vide memo, Ex.PW-6/E, which bears his signatures at point A. I also find that formal police witnesses have affirmed about the recovery of a knife from the spot, inasmuch as, PW-6 (constable Nawal Singh) has deposed that after registration of the case, he returned to the spot and found one knife lying there, which was sketched as Ex.PW-6/B by the I.O. and the same bears his signatures. The knife was measured and sealed in a packet and taken into possession vide memo Ex.PW-6/E and which bears his signatures. *Bajri* with blood stains as well as earth control sample were also lifted from the spot, sealed with the seal of DSP and taken into possession vide memo, Ex.PW-6/D and which bears his signatures. As Per PW-6, the I.O. had also taken into possession clothes of the injured from the hospital, vide memo, Ex.PW-6/C. I find that, PW-15 (SI Ombir Singh/I.O.) has also affirmed that blood sample, earth control sample and blood stained portion of the road were lifted from the spot and taken into possession vide memo, Ex. PW-6/D. A knife lying at a distance of five steps away from the blood stained road was also found which was

measured to be 21.5 cm in length and the length of the blade was 10.5 cm. Sketch of the knife, Ex.PW-6/B was prepared and duly sealed in a *pulanda*, vide memo Ex.PW-6/D. Thereafter as per PW-15, he and constable Nawal Singh (PW-6) went to AIIMS hospital, where duty constable produced the clothes of the injured and the same were taken into possession vide memo, Ex.PW-6/C. The sketch of the knife, Ex. PW-6/B placed on record also records the total length of the recovered knife to be 21.5 cm and the blade of the knife to be 10.5 cm. In view of the categoric deposition by the prosecution witnesses, there is no element of doubt that a knife was recovered from the spot. Counsel for the respondents has however submitted that the doctor never opined that the injury had been caused by a knife. A reading of the MLC, Ex.PW-14/A would, however, reveal that as per the same, one Raj Kumar had been brought to AIIMS hospital by his brother Suresh Sharma with an "alleged history of assault by knife". PW-14, Dr. NS Reddy, AIIMS hospital deposed before the Court that he had seen MLC, Ex.PW-14/A that was prepared and signed by Dr. Elango. PW-14 deposed that as he had seen Dr. Elango sign and write in the official course of duties, as such he could identify the handwriting and signature of Dr. Elango. PW-14 deposed that as per MLC, Ex.PW-14/A, on 11.7.1995, Dr. Elango had medically examined one Raj Kumar who had been brought to the hospital by Suresh Sharma, brother of Raj Kumar with an alleged history of assault by knife. On examination, Dr. Elango found the patient to be drowsy. His pulse and blood pressure was not recordable. There was an injury-3 cms long on the lower part of the patient's sternum. Patient was also given rescucitation. 6 (six) units of blood was arranged and the patient was advised chest x-ray. After examining the injured, the concerned doctor opined the "nature of the injury as dangerous" and further stated that as per his opinion injuries

had been caused by a "sharp" weapon. Further PW 13, Rajinder Kumar has deposed that on 28.9.1995, five sealed packets were received in the office from P.S. Mehrauli in this case for analysis with seals intact. Parcel No. 1 was containing a small card board box which contained a "knife" with metallic blade and handle of plastic. Parcel No.2 contained a cut torn shirt with brown stains. Knife also showed brown stains. Parcel no.2 also contained a cut torn "baniyan" with brown stains. Parcel no. 3 was a cotton having blood stains. Parcel no. 4 contained a "plastic bottle" with concrete material mixed with blood-stains. Parcel no. 5 contained "earth control". On analysis blood was found on exhibits 1, 2(a), 2(b), 3 and 4. The same were analysed serologically and on parcel no. 2(a) and 2(b) human blood was found of AB group. Parcel No. 1, 3 and 4 were also found having human blood. The said CFSL reports are Ex. PW13/A and Ex. PW 13/B and bear the signatures of PW-13 at point A and B respectively. Unimpeachable evidence on record shows that Raj Kumar had been stabbed with a knife, recovery of a knife from the place of incident, opinion of the doctor that the injuries had been caused by a sharp weapon and the CFSL reports point towards the fact that the respondents had committed the heinous crime of beating and stabbing Raj Kumar with the knife recovered. I find that deposition of the witnesses (PW-2, PW-9 and PW-12) is consistent as to the identity of the respondents as well as the day and time of the incident. The witnesses have clearly described the manner in which the respondents had caused knife blows to the victim (PW-1).

29. Counsel for the respondent had also submitted that the MLC does not stand duly proved. This submission was made based on the cross-examination of PW-14, Dr. N.S. Reddy of AIIMS Hospital. I have carefully examined the evidence of Dr.N.S. Reddy. In the examination

in-chief, PW-14 has categorically deposed that he had seen the MLC prepared and signed by Dr.Elango and he identified his writing and signatures, as he had seen him writing and signing in the official course of duties. In the cross-examination he has stated that he was not the junior of Dr.Elango, therefore, he never worked with him, nor he prepared, wrote or signed any medical treatment or paper in his presence. This cross-examination cannot be read in isolation, but is to be read along with the examination-in-chief. The answer given in the cross-examination is having regard to the fact that he never worked as a junior to Dr. Elango. In my considered opinion the submission of learned counsel for the respondent is without any force, as the MLC stands duly proved.

30. The respondents herein were convicted by the trial Court for the offence under section 307, IPC. It would be relevant to reproduce Section 307 herein:

> "**Attempt to murder .—**Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

31. Section 307 was elaborately discussed in the case of ***State of M.P. Vs. Imrat & Anr.,*** reported at ***(2008) 11 SCC 523***, wherein it was observed as under:

> "11. 11…….
> 12. To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of

injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt

This position was highlighted in State of Maharashtra v. Balram Patil, reported at (1983) 2 SCC 28; Girija Shankar V. State of U.P., reported at (2004) 3 SCC 793; R. Prakash V. State of Karnataka, reported at (2004) 9 SCC 27; and State of M.P. V. Saleem, reported at (2005) 5 SCC 554.

12. “15. In Sarju Prasad v. State of Bihar, [1] it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

17. Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly, if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for in Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine.””

[1] AIR 1965 SC 843

32. Thus it is settled position of law that under section 307, IPC what the Court has to consider is the intent behind the act irrespective of its result. Under section 307, IPC intention precedes the act attributed to the accused and is to be gathered from all the circumstances and not merely from the consequences that ensue. Applying the settled position of law to the facts of this case, I find that herein the assailants premeditatedly armed with a knife deliberately stopped Raj Kumar while he and his friend-Mahinder came near the shop of assailant, Bansi Dhar. Thereafter Bansi Dhar and his two brothers- Laxmi Narain and Kulbhushan grappled with Raj Kumar and started giving him fists and blows. While beating Raj Kumar, Kulbhushan asked Bansi Dhar that Raj Kumar should be finished. Thereafter Laxmi Narain and Kulbhushan caught hold of Raj Kumar and in the mean time, Bansi Dhar took out a *churi* from the side of his right leg and gave a blow on the chest of Raj Kumar. Thus I find no merit in the contention of counsel for the respondents that Kulbhushan and Laxmi Narain had no role to play in the unfortunate incident that took place on 11.7.1995. I find that it is not a case of any sudden fight or quarrel which took place at the spur of the moment and in the heat of passion. To say that the victim had given a knife blow on himself so as to falsely implicate the respondents is without any force. It is hard to believe that the victim would give a knife blow, that too on the chest area and endanger his own life, simply to falsely implicate the respondents. The court can also not lose track of the fact that after the blow he was unfit to make a statement and was in hospital for 8-9 days, which would give the extent of injury caused to the victim. Thus *mens rea* was followed by *actus reus* inasmuch as, respondents gave effect to their criminal intent.

33. Learned counsel for the respondent has lastly contended that the trial court has erroneously failed to consider that the deposition of defence

witnesses are to be treated at par with the witnesses of the prosecution. In my considered opinion, there is no doubt with regard to this settled position of law. In the facts of this case, I find that the evidence of defence witnesses 3-7 (DWs 3-7) only points out that litigations were pending between the parties, and such evidence does not absolve the respondents of the heinous crime for which there is ample evidence on record. Mere pendency of litigations between the parties does not imply that Raj Kumar Sharma (PW-1) was never stabbed by the respondents. Further I find that while DW-1, Pawan Kumar has deposed that on the date of occurrence, he (DW-1) and respondent, Bansi Dhar had gone to Sadar Bazaar; and DW-2, Anil has deposed that on the date of occurrence respondent, Laxmi Narain was at his shop in Nai Sarak to make certain purchases, the said deposition of DW-1 and DW-2 are not trustworthy and reliable, in view of the consistent stand of the injured that the three respondents had caused fatal injuries on his person. The deposition of the injured has not only been supported by the three eye witnesses- PW-2, PW-9 and PW-12 but has also been corroborated by the formal police witnesses- PW-6 and PW-15. The evidence of the doctor also shows that the victim had suffered an injury by a sharp object. I find the eye-witnesses to be reliable and trustworthy and find that there is no merit in the submission of counsel for the respondents that they are planted witnesses. There is not a single factor which may allude towards the innocence of the respondents let alone completely absolve them of the crime. A perusal of the FIR, MLC and other evidence on record clearly point out merit in the version of the prosecution and falsehood in the case of the respondents. In view of the said findings, I find no infirmity in the judgment dated 20.03.2004, passed by the learned trial court convicting the respondents under section 307 read with section 34 of the IPC.

34. In so far as the question of sentence that has been awarded to the three respondents, is concerned, I find that it would be useful to refer to the observations of the Apex Court in the case of ***State of M.P. v. Saleem*** reported at ***(2005) 5 SCC 554,*** wherein it was held as under:

> "**2.** This is another sad example where a learned Single Judge, Madhya Pradesh High Court, totally oblivious of the consequences has passed an order directing reduction of the custodial sentence to the period already undergone. We have come across a large number of such cases which have been disposed of in a very casual and mechanical manner with no trace of application of mind regarding the question of sentence.
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> **3.** The respondents (hereinafter referred to as "the accused") faced trial for commission of offences punishable under Sections 294, 307, 333 and 506 Part II of the Indian Penal Code, 1860 (in short "IPC"). Allegation was that on 2-4-2002 around 9 p.m. at a public place near the bookstall on Platforms Nos. 2 and 3 of Harda Railway Station, they misbehaved and abused complainant Constable Umesh Singh in vulgar words. They committed criminal intimidation by threatening to kill him. Accused Deepak alias Deepu was charged for commission of offence punishable under Sections 307 and 333 IPC for assaulting the complainant on the right side of his neck with sharp-edged weapon with the intention to kill him and also for deterring a public servant from performing his public duty by voluntarily causing grievous hurt with a sharp-edged weapon. Accused Saleem @ Chamaru was charged under Sections 333 and 307 with the aid of Section 34 IPC. Learned IIIrd Additional Sessions Judge, Hoshangabad found accused Saleem @ Chamaru guilty of having committed offence punishable under Section 307 read with Section 34 IPC and Section 333 read with Section 34 IPC. He was sentenced to undergo rigorous imprisonment for five years and four years respectively. Fine of Rs. 1000 was also imposed for the first-named offence with default stipulation and Rs. 250 for the second-named offence with default stipulation. Accused Deepak was found guilty of offences punishable under Sections 307 and 330

IPC and was directed to undergo custodial sentence of five and four years respectively with a fine of Rs 1000 and Rs.500 respectively with default stipulation. The accused persons preferred Criminal Appeal No. 267 of 2003. At the time of hearing of the appeal learned counsel appearing for the accused persons submitted that the fine amounts had been deposited and since they had suffered custodial sentence of nearly six months 23 days, leniency should be shown. It is to be noted that the conviction was not challenged. The High Court found that the accused persons are illiterate persons belonging to lower-income group and on consideration of the fact that at the time of commission of offence they were of 23 years of age, the sentence of imprisonment deserved to be reduced to the period already undergone. Appeal was accordingly disposed of.

4. Learned counsel for the appellant State submitted that the offences were quite serious in nature and, therefore, the undeserved sympathy shown by the High Court and that too on clearly untenable grounds cannot be maintained.

5. In response, learned counsel for the respondents submitted that the High Court has taken note of the ground realities and the reasons indicated justified reduction of sentence. It was further submitted that apart from the reasons indicated other grounds were also pressed into service by the accused persons to substantiate their prayer for reduction in sentence. These have not been noted by the High Court.

6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal* v. *State of T.N.*[2]

7. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate

[2] (1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463

sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle McGautha* v. *State of California*[3] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

8. The object should be to protect society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

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[3] 2 402 US 183 : 28 L Ed 2d 711 (1971)

10. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

11. It is to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

> "307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

12. To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the

penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra* v. *Balram Bama Patil*[4], *Girija Shankar* v. *State of U.P.*[5] and *R. Prakash* v. *State of Karnataka*[6].

15. In *Sarju Prasad* v. *State of Bihar*[7] it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury. The basic difference between Sections 333 and 325 IPC is that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

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[4] (1983) 2 SCC 28 : 1983 SCC (Cri) 320

[5] (2004) 3 SCC 793 : 2004 SCC (Cri) 863

[6] (2004) 9 SCC 27 : 2004 SCC (Cri) 1408 : JT (2004) 2 SC 348

[7] AIR 1965 SC 843 : (1965) 1 Cri LJ 766

> **17.** Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine. The maximum sentence in each case goes to show the gravity which is attached to respective offences. Unfortunately, the High Court has not kept these features in view."

35. It would also be relevant to reproduce the dictum passed by the Apex Court in the case of ***Shailesh Jasvantbhai v. State of Gujarat*** reported at ***(2006) 2 SCC 359:***

> **"2.** Of these two appeals, one is by the State of Gujarat and the other by the victim of the crime. They assail correctness of the judgment rendered by a Division Bench of the Gujarat High Court. By the impugned judgment while upholding the conviction recorded by the trial court the High Court reduced the sentence to the period already undergone but awarded compensation to the victims.
>
> **3.** Background facts in a nutshell are as under:
>
> On 30-3-2002, first information report was lodged alleging that the respondents Pratapji and Jayantubha (hereinafter referred to as the accused followed by their respective names) assaulted the informant Sameer Kumar and the appellant Shailesh Jasvantbhai causing serious injuries. On the basis of the information lodged, investigation was undertaken and the accused persons were tried for alleged commission of offence punishable under Sections 307, 324, 504 read with Section 114 of the Penal Code, 1860 (in short "IPC") and Section 135 of the Bombay Police Act.

The trial court held the accused persons to be guilty and sentenced each to undergo rigorous imprisonment for 10 years with fine of Rs 3000 with default stipulation for the offences punishable under Sections 307 and 114 IPC. No separate sentence was imposed for the offences punishable under Sections 324 and 114 IPC. The accused persons were, however, acquitted of the charges relating to Section 504 IPC and Section 135 of the Bombay Police Act. The incident as described in the first information report and as unfolded during trial was that the incident in question happened on 30-3-2002 when complainant Sameer Kumar and his friend appellant Shailesh were standing near a pan shop situated on Bhabhar Highway. After having their pans, both the accused came there and asked the complainant to pay the charges for their pans. A quarrel started as the complainant refused to accept the demand of the accused. Thereafter at about 9.30 p.m. on the next day, when the complainant and his friends, Balmukund and Shailesh were standing at the pan shop situated opposite a PCO, both the accused came there, each was armed with a knife and started abusing the complainant. Accused 2 Jayantubha caught hold of the complainant and Accused 1 Pratap gave knife-blow on the right hand of the complainant. He also gave another blow on the left hand of the complainant. When the complainant shouted for help, appellant Shailesh intervened. Both the accused diverted their attention to Shailesh by inflicting blows with knife on him. Shailesh sustained injury on the left side of the neck and fell down on the ground. Thereafter Balmukund and Bharat also intervened. The accused thereafter fled. Both the injured were taken to Dr. Dhirajbhai (PW 1) for treatment who also informed the police. The police thereafter recorded the complaint and started investigation, submitted the charge-sheet against the accused. Trial was held as the accused persons pleaded innocence. As noted above, the trial court found them guilty and convicted and sentenced them. The trial court's judgment was assailed before the High Court.

4. During the hearing of the appeal before the High Court conviction was not questioned, but it was submitted that as the accused Pratapji had appeared in Standard X examination before a week of the incident, the sentence was harsh and had the likelihood of spoiling the career of the accused persons. It

was, therefore, submitted that a lenient view should be taken in the matter by providing adequate compensation to the injured persons. The plea was resisted by the State. But the High Court was of the view that even though the conviction was not seriously questioned, the same was rightly so done because the conviction was in order. However, it was held that as both the accused persons were in prison and one of them had appeared in Standard X examination, and had no criminal antecedent the sentence was restricted to the period already undergone i.e. for about two years with a fine of Rs 60,000 (Rupees sixty thousand) which was to be paid as compensation to the injured.

5. In support of the appeal learned counsel for the appellants submitted that no sympathy or leniency should have been shown to the accused persons. The order was passed even without any notice to the injured persons who would have shown as to how no leniency was warranted. The factor which weighed with the High Court i.e. the accused persons being students with no criminal antecedent had merely no relevance. It was also factually not correct that the accused persons had no criminal antecedent. In reality they were involved in a large number of similar cases.

6. Learned counsel for the respondents supported the impugned judgment.

7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: "State of criminal law continues to be—as it should be—a decisive reflection of

social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal* v. *State of T.N.*[8]

9. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

[8] (1991) 3 SCC 471 : 1991 SCC (Cri) 724

10. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

11. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle McGautha* v. *State of California*[9] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

12. In *Dhananjoy Chatterjee* v. *State of W.B.*[10] this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal

[9] 402 US 183 : 28 L Ed 2d 711 (1971)

[10] (1994) 2 SCC 220 : 1994 SCC (Cri) 358

and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

13. Similar view has also been expressed in *Ravji* v. *State of Rajasthan*[11]. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. In *State of M.P.* v. *Ghanshyam Singh*[12], *Surjit Singh* v. *Nahara Ram*[13] and *State of M.P.* v. *Munna Choubey*[14] the position was again highlighted."

36. Applying the settled position of law in terms of ***Saleem*** *(supra)* and ***Shailesh Jasvantbhai*** *(supra)* to the facts of present case, I find that trial court has committed gross error in sentencing the respondents for "the

[11] (1996) 2 SCC 175 : 1996 SCC (Cri) 225

[12] (2003) 8 SCC 13 : 2003 SCC (Cri) 1935

[13] (2004) 6 SCC 513 : 2004 SCC (Cri) 1801

[14] (2005) 2 SCC 710 : 2005 SCC (Cri) 559

period already undergone by them in judicial custody during the course of trial", which the trial court has itself noted to be thirty days (approx). Although the trial court further ordered the respondents to pay a fine of Rs. 1 lakh each, for committing the heinous offence under section 307 read with section 34, IPC, however, in my considered opinion, the sentence awarded to the three respondents by the trial court is grossly disproportionate to the crime for which they have been found guilty. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The accused persons (respondents herein), in broad daylight stabbed Raj Kumar and caused serious injuries on his person. As per the opinion of the doctor there was an injury-3 cms long on the lower part of the patient's sternum. Patient had to be given rescucitation and 6 (six) units of blood was also arranged. Daring acts of this magnitude challenging the society as also the law and order should not go unpunished as they not only affect the injured but also tend to create fear in the society. Accordingly, in view of the unimpeachable evidence on record that points against the three respondents on all fronts, I uphold the judgment of conviction dated 20.03.2004 passed by the trial court in Sessions case no. 302/2002, convicting the three respondents under section 307 read with section 34, IPC. The order on sentence dated 22.03.2004 is modified to the extent that respondent no.1 is sentenced to undergo simple imprisonment for five years and respondents no.2 and 3 are sentenced to undergo simple imprisonment for three years. Sentence

with respect to payment of fine shall remain unchanged. The respondent shall surrender before the trial court on 17.09.2013.

37. Appeal is allowed.

G.S. SISTANI, J.

July 31, 2013
msr