

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr.Appeal No.22/2010
Cr.M.A Nos.36/2010, 156/2013
c/w
Confirm. No.10/2010

Date of Decision: 16.05.2014

Tara Chand	Vs.	State of J&K
Coram:		

Hon’ble Mr. Justice Virender Singh, Judge
Hon’ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing Counsel:

For the appellant(s)	:	Mr. B.S.Salathia, Sr. Advocate with Mr. Bhanu singh Salathia & Ms. Meenakshi Salathia, Advocate.
For the respondent(s)	:	Mrs. Seema Sheikhar, AAG.
i)	Whether approved for reporting in Press /Media	: Yes.
ii)	Whether to be reported in Digest/journal	: Yes.

Per Yaqoob-J

1. Registration of the case as FIR No.208/1997 Police Station Kathua for commission of offence punishable under Section 302 RPC, on completion of investigation culminated into filing of charge-sheet (challan) before the Court of Judicial Magistrate 1st Class (District Mobile Magistrate), Kathua on 16.08.1997. On the same date case has been committed to the Court of Sessions Judge, Kathua. Vide order dated 03.10.1997, Charge against the accused has been framed for commission of the said offence to which accused pleaded not guilty as such trial commenced.

2. The prosecution in support of its case out of listed 19 witnesses has produced as many as 14 witnesses. The prosecution evidence has been closed vide order dated 06.03.2000.

The accused has been examined in terms of Section 342 Cr.P.C. wherein he has denied complicity in the crime and added that PW-1 Ranbir Singh is and Pardeep Singh (deceased) was a criminal; case against him is concocted. He has not made any confession, nor anything was recovered at his instance.

After hearing the learned PP and the counsel for the defence as required in terms of Section 273 Cr.P.C., the accused was called upon to enter on his defence in terms of Section 274 Cr.P.C. The counsel for the defence had submitted that the accused is not inclined to adduce any defence. In view of that submission case was posted for final arguments as is clear from the order recorded on 30.03.2000 but case was finally decided on 04.09.2010 whereunder accused has been convicted and sentenced to life imprisonment and fine. The accused earlier had been released on bail by the trial Court on 16.11.1997, which order was successfully challenged by the medium of revision petition as vide order dated 24.07.1998 the bail was cancelled with direction to the trial Court to expedite the trial of the case.

Again on change of circumstances learned trial Court has admitted the accused to interim bail vide order dated 10.02.2000 which has been made absolute vide order dated 23.11.2000.

On conviction the accused has been sentenced so was taken into custody as such is lodged in the Central Jail.

It is a matter of concern that the case has remained pending for final arguments from 21.04.2000 till 04.09.2010 which we deprecate.

3. Case set up by the prosecution is that the deceased Pardeep Singh alias Guddo was running a tea stall near CTM (Chenab Textile Mill), Kathua. One Dwarka Nath was his friend. Dwarka Nath allegedly had enmity with accused Tara Chand. He was beaten which was objected to by the deceased. Based on which the accused is said to have developed enmity with the deceased. The deceased is stated to have informed his wife PW-6 Sukhdeep Kour and it is Sukhdeep Kour, who was ailing while going to Reasi for having treatment had informed her mother-in-law about the enmity and threat to life of the deceased, who in turn had informed her husband, S. Kehar Singh (father of the deceased) accordingly and it is Kehar Singh-PW-3, who asked PW-1 Ranbir Singh on 04.06.1997 to go to the shop of the deceased and tell him to close the shop and come home. When PW-1 Ranbir Singh went to the shop of

the deceased, at that time 3/4 customers were sitting there. The deceased told him that after attending the customers he would go home. In the meantime, Dwarka Nath an employee of CTM and PW -2 Jaswant Singh reached there. On closing the shop the deceased along with Ranbir Singh, Dwarka Nath and Jaswant Singh left for home. While proceeding they reached near the house of the accused, who came out of his house and attacked the deceased with a knife. He gave three knife blows one on head, second on neck and third on belly of the deceased and then ran away. PW-1 Ranbir Singh asked Dwarka Nath and Jaswant Singh to remain on spot and left to inform the police post Hatli Morh, thereafter rushed to the house of his father and informed him. Kehar Singh PW-3 (father of the deceased) in turn informed the police station Kathua telephonically about the incident, who was asked to reach on spot. While reaching to the place of occurrence, police came and the dead body was taken to the hospital. After postmortem the dead body was handed over to the legal heirs for performing last rites.

4. The main grounds of attack as against the judgment impugned as projected by the learned counsel for the appellant are:-

- (i) The case has been cooked up, as such appellant has been implicated, which position is supported by the statements of prosecution witnesses.
- (ii) The case is full of doubts which position is supported by the depositions of the star witnesses PW-1 Ranbir Singh, PW-2 Jaswant Singh, PW-14 the Investigating Officer and copy of the FIR wherein neither name of the accused nor name of the informer is mentioned instead it is recorded that from reliable source information has been received.
- (iii) The disclosure statement and the recovery is nothing but a manipulation.

The trial Court has not appreciated the evidence in right perspective but appear to have made it a point to record conviction.

The material contradictions in the statements of the witnesses have been termed as minor. Defective investigation has been termed to be of trivial nature ignoring that same caused prejudice to the accused.

The accused deserved acquittal but has been convicted.

5. In opposition, learned AAG appearing for the respondent-State highlighted that the crime has been committed in presence of the witnesses.

- (a) The witnesses to the occurrence have given true account i.e., two star witnesses PW-1 Ranbir Singh and PW-2 Jaswant Singh have given sequence of the happening. Their credibility has not been impeached so cannot be disbelieved on the basis of the minor discrepancies.
- (b) The contradictions are not of magnitude so as to shake the prosecution case.
- (c) Trial Court has appreciated the evidence correctly.
- (d) The contention that the deceased had a criminal background is irrelevant, after all he has been murdered, so the Murderer has been punished according to law.

6. While considering the rival submissions, on sifting and scanning the entire evidence as has been led by the prosecution and the record it has emerged that there are inconsistencies, discrepancies and doubtful situations which have not been taken care of by the learned Trial Court while appreciating the evidence.

- (I) According to PW-1, Ranbir Singh (brother of the deceased) after occurrence he went to Police Post, Hatli Morh and informed them about the occurrence. In his statement before the Court he has qualified that he

narrated all the details including the name of the assailant (accused) to the police.

- (II) PW-3 Kehar Singh (father of the deceased) has also deposed that he informed the Police Station, Kathua about the occurrence.
- (III) Whereas in the First Information Report neither name of the assailant nor of the informer has been made mention of. Why information about the occurrence is recorded in FIR to have been received from reliable source has not been explained.
- (IV) PW-14 Mahadeep, I.O. has deposed that the assailant was not known. It is on the second day of the occurrence while recording statement of PW-3, Kehar Singh it surfaced that accused Tara Chand is involved in the case.
- (V) Serious doubt about the involvement of the assailant is apparent because if the assailant was known, if his name was disclosed by PW-1 Ranbir Singh to Mr. Khajuria, Incharge Police Post, Hatli Morh, then PW-3 Kehar Singh, father of the deceased had informed the Police Station Kathua telephonically, the name of the informer i.e. either Ranbir Singh PW-1 or Kehar Singh PW-3 and then name of the assailant should have been made mention of in the FIR, which in turn would mean that either the PW-1 Ranbir Singh and PW-3, Kehar Singh did not know as to

who the assailant was, therefore, while informing the police they have not mentioned such name or police has not recorded their information. Investigating Officer, who was accompanied by the Incharge Police Post, Hatli Morh all along has categorically stated that he came to know about the involvement of the accused only after he recorded statement of PW-3, Kehar Singh, father of the deceased on the second day of the occurrence. Otherwise, if Ranbir Singh would have informed the police post about the name of the assailant then Incharge police post would have informed the Investigating Officer about the name of the assailant. Who is to be believed?

- (VI) According to PW-1 Ranbir Singh and PW-2 Jaswant Singh, at the time of occurrence they along with Dwarka Nath and Sham Lal were present but the Sham Lal has neither been cited as witness nor any explanation for that is forthcoming.
- (VII) According to PW-14, Mhadeep, I.O., when he reached the place of occurrence except Kehar Singh and his brother Harbhajan Singh no one came on spot. He met Dwarka Nath for the first time on 06.06.1997 in the afternoon. According to PW-1 Ranbir Singh, he, PW-2 Jaswant Singh and Dwarka Nath were present at the time of occurrence and remained present for the whole night.

Further PW-14 has qualified that Jaswant Singh met him on 06.06.1997 and on the same day his statement was recorded. He has also qualified that Jaswant Singh met him after Dwarka Nath. According to PW-2 Jaswant Singh, he Sham Lal and Dwarka Nath remained on spot along side the dead body of the deceased. He has further qualified that on 06.06.1997 his statement was not recorded. Statement under Section 161 Cr.P.C. has been recorded on 06.06.1997. Again a question who is to be believed?

(VIII) PW-1 Ranbir Singh has deposed that his statement under Section 161 Cr.P.C was recorded by the Investigating Officer in the morning of 5th June, 1997 and not on 06.06.1997. The PW-14, Mahadeep I.O. is categorical in deposing before the Court that PW-1 Ranbir Singh was asked to come at 6 a.m. on 06.06.1997, he did not come. However, his statement was thereafter recorded on the same day. PW-14 has further deposed that PW-1 Ranbir Singh was asked as to why he had not come for recording his statement who replied that on instructions of his father he had gone to inform his relatives about the matter. PW-1, Ranbir Singh has stated that he was available. He had not gone anywhere. Credibility is exposed.

(IX) PW-1 Ranbir Singh has deposed that on spot it was dark but street lights were on. At the time of occurrence he was at a distance of two feet. PW-2 Jaswant Singh has stated that in view of the darkness police deferred the proceedings till morning. He along with others remained there on spot for the whole night. In the morning police started the proceedings and recorded his statement. According to PW-14, Mahadeep I.O., statement of PW-2 Jaswant Singh under Section 161 Cr.P.C. was recorded on 06.06.1997 as he met him on the same day. Whereas PW-2 Jaswant Singh stated that his statement was recorded during night of the occurrence. On 06.06.1997 none of his statement was recorded. Statement of Ranbir Singh was also recorded during the night.

7. According to PW-6 Sukhdeep Kour, widow of the deceased, both hands of the deceased in the year 1992 were damaged so was not able to do any work with his hands, even could not take meals she used to help him in taking the meal. He was not able to wear his turban. Her husband was just sitting on the shop to pass the time and was not earning anything. Here a question arises, if his both hands were damaged, was not able to take meal himself how could he run a tea stall. PW-1, Ranbir Singh has stated that when he reached

to his shop there were certain persons to whom he was serving tea. How was that possible?

- (a) It becomes more suspicious because according to the, PW-14 Mahadeep, I.O., the deceased had opened a small tea stall at Sawan Chak canal which is at a distance of half a kilometer from CTM (Chenab Textile Mill, Kathua). He has qualified that according to his investigation it did not surface as to whether the deceased had a shop in front of CTM. PW-1 Ranbir Singh has in unequivocal terms stated that the tea shop of the deceased was located adjacent to Chenab Textile Mill (CTM). Again a doubt whether the shop of the deceased is adjacent to CTM or was at Sawan Chak Canal. It has also not come in the evidence as to whether he was owner of the structure of the shop or was holding it on lease basis. On this count the deposition of Ranbir Singh, remains in the region of suspicion.
- (b) PW-4 S.Harbhajan Singh, uncle of the deceased, has stated that the deceased Pardeep Singh was not working at any specific place. He used to leave his house in the morning but was not doing any work permanently. He used to help some shopkeepers and was coming home in the evening.

This would suggest that the deceased had no tea stall at all.

- (c) According to PW-1 Ranbir Singh, his father PW-3 Kehar Singh advised him to go and ask the deceased Pardeep Singh to close his shop as he has a life threat as was conveyed to Kehar Singh by his daughter-in-law through his wife. Here again a suspicion arise. PW-6 Sukhdeep Kour has deposed before the Court that she had gone for getting medicine and had informed her mother-in-law not to allow her husband to go to his shop. In cross-examination she has qualified that in routine she told her mother-in-law not to allow her husband to go out. She has never seen Tara Chand neither knows him nor he had intimidated her husband in her presence. Her husband had not fought for Dwarka Nath except that he had enquired from the accused as to what is his point of difference with Dwarka Nath. The question arises, if PW-6 Sukhdeep Kour had informed her mother-in-law, why mother-in-law has not been cited as a witness so as to support the said version. Withholding of such witness is unexplained.

- (d) PW-6 Sukhdeep Kour in her deposition has stated that her husband had told her that Dwarka Nath and the accused Tara Chand had some quarrel and Tara Chand had beaten Dwarka Nath. Her husband had advised Tara Chand not to taunt Dwarka Nath. Based on which her husband was intimidated. She had advised her husband not to quarrel.
- (e) It is not qualified in her statement as to when Dwarka Nath and accused had fought, when her husband had asked Tara Chand not to taunt Dwarka Nath. Neither any date nor any time or month is stated and abruptly how on 04.06.1997 she informed her mother-in-law and then on the same evening occurrence occurred has remained to be explained.
- (f) PW-3 Kehar Singh has stated that his wife was informed by Sukhdeep Kour that Dwarka Nath was beaten by Tara Chand number of times. Her husband had intervened, based on which Tara Chand was inimical to the deceased but Sukhdeep Kour in her statement has not said so. This position could be clarified by the wife of Kehar Singh, who has not been produced as a witness.

8. Another star witness PW-2 Jaswant Singh has stated that after closing the shop, deceased, he, Sham Lal and Dwarka Nath proceeded from a shortcut. On the way while reaching to the house of the accused then said while reaching to the shop line at Hatli Morh, accused carrying knife came in front, attacked Pardeep Singh (deceased) and gave three knife blows, one on head another on throat and third on eye. PW-1 Ranbir Singh has stated that he, Dwarka Nath, Jaswant Singh and deceased on way to the house while reaching to the house of Tara Chand (accused) the accused came out of his house and asked the deceased as to why he is interfering in the matters of Dwarka Nath, then got a knife and gave three blows on the deceased's head, throat and belly, then ran away. The said conversation is not supported. PW-2 Jaswant Singh has not stated anything about utterance of such words.

9. An important question which has remained to be answered is, Dwarka Nath and the accused had differences and enmity, deceased a handicapped person was stated to have helped Dwarka Nath; when at the time of occurrence, according to witnesses, along with them Dwarka Nath and deceased were on the way, when accused attacked, why he has chosen to attack the deceased instead the Dwarka Nath with whom he had allegedly actual enmity. It gives rise to a serious doubt.

10. Coming to the disclosure statement EXPW-KS/4 wherein it is recorded that in the police custody accused disclosed, "that he has kept a knife in the store room behind the iron box in his house situated at Ramnagar Colony, which is known to him, can identify and recover". Witnesses to the said disclosure statement are PW-1 Ranbir Singh (brother of the deceased), PW-3 Kehar Singh (father of the deceased) and Vikram Singh. Same is reduced into writing on 21.06.1997. On the same day said knife had been recovered which was witnessed by the same witnesses.

11. Now it has to be analyzed as to what is value of the disclosure statement. Firstly in the disclosure statement accused has not said that the knife was the weapon of offence. In this connection PW-1, Ranbir Singh has stated that the accused was arrested on 21.06.1997 and was lodged in police post Hatli Morh. In his and others presence accused admitted to have killed Pardeep Singh and the weapon with which he killed him is kept at a place which he can identify and said accompany him to his house for recovery of the weapon. Then they accompanied the accused to his house where from a room recovered the knife from behind the iron box. At that time Vikram Singh, Satvinder Singh and Kehar Singh were present.

(a) The recovery memo EXPW-KS/6 does not bear the signatures of Satvinder Singh. PW-8 Satvinder

Singh has not said anything about his presence at the place of recovery of weapon of offence.

- (b) According to another witness to the disclosure statement PW-3 Kehar Singh, accused made disclosure that he has killed Pardeep Singh and has kept concealed the weapon of offence in his house which he can identify. Thereafter accused was taken to his house wherefrom he produced the knife and said that it is the knife with which he killed Pardeep Singh. When the accused made disclosure no civilian was present there except his son and brother Vikram Singh. This witness has ruled out the presence of Satvinder Singh as was stated by PW-1 Ranbir Singh.
- (c) PW-Vikram Singh, in view of his death has not been produced as witness.
- (d) According to PW-14, Mahadeep, Investigating Officer, the accused was arrested at Pathankote on 21.06.1997 from a shop. He made a disclosure and divulged that he has kept the weapon of offence concealed at a place. In the meantime Kehar Singh, Vikram Singh, Daler Singh and Ranbir Singh had on their own come to the police post. When the accused made the disclosure at that time father and

brother of the deceased were present so he ruled out the presence of Vikram Singh. After disclosure the weapon of offence was recovered from the room which was open. Accused identified the place and then they means I.O. took the knife. The knife did not contain any finger prints. The weapon of offence was kept beneath a box. So there was no possibility of presence of finger prints.

- (e) Inconsistency in the statements regarding actual recovery of the weapon of offence and then the fact as to whether the same knife was used as weapon of offence has remained in the region of suspicion. There is nothing on record to suggest that the recovered knife was used as a weapon of offence.

12. Occurrence is of 04.06.1997, accused has been arrested from a shop at Pathankote on 21.06.1997. Why he was not arrested from 04.06.1997 till 21.06.1997 has not been explained. Whether he was having a shop at Pathankote or he was doing business at Pathankote and how his presence was known at Pathankote has not been explained by the Investigating Officer.

13. The disclosure statement is not free from suspicion. Firstly why only father, brother and uncle of the deceased have

been cited as witnesses and then same persons have been cited as witnesses to the recovery. Why the Investigating Officer has not included any other witness at the time of recovery. He has not tendered any explanation for non-inclusion of any other independent witness, which makes the position of recovery doubtful. In addition thereto how the knife recovered can be said to have been used as weapon of offence.

14. In terms of Section 27 of the Evidence Act, which is an exception to Sections 25 and 26, any confessional statement made is not admissible but recovery of fact is admissible in the evidence. The fact of recovery of knife can be said to be admissible in the evidence but the question what is its effect when the recovery is doubtful by not including any independent witness and by not sending it for any expert opinion. Then manner of arrest of the accused after a gap of 17 days also adds to the doubts.

15. Recovery of knife, a fact admissible in evidence but it does not help the prosecution in establishing guilt against the accused.

16. PW-5, Paramjit Singh has stated that on 04.06.1997, he was on his way from Delhi to Kathua. He alighted from the bus at Lakhampur at about 5 p.m. and was waiting for the Matador

(vehicle) enroute leading to Kathua. In the meantime he saw the accused coming from Pathankote. He along with accused riding on a scooter left for Kathua. Enroute on conversation accused told him that they want peace in Kathua, deceased is quarrelling, he does not want to have any quarrel. He further told him that the deceased in a drunk condition keeps calling nick names during the night. The witness informed the accused that deceased will be advised properly. While reaching to Kathua he told the accused that quarrelling is not good but in turn assured that he won't like to quarrel. He has to go back to Pathankote in connection with some work. On second day he came to know that Pardeep has been killed. In the cross-examination he has stated that the deceased was running a shop. He does not know as to who is owner of the shop at Chenab Textile Mill.

17. This witness has not said anything about the differences between Dwarka Nath and the accused nor the accused is stated to have told him that the deceased is interfering in connection with the activities of Dwarka nath. Now who is to be believed?

18. In the statement of PW-1 Ranbir Singh recorded under Section 161 Cr.P.C. it is mentioned that he has stated that on 04.06.1997 Tara Chand came to him and told that as to why his

brother (deceased Pardeep Singh) is going to Dwarka Nath and why he is helping him and then asked him to advise his brother. This portion of the statement as recorded under Section 161 Cr.P.C. has been put to the witness Ranbir Singh, who has stated that he has not made any such statement. It is totally incorrect.

In his statement under Section 161 Cr.P.C. again it has been recorded that he has stated as under:-

“few days earlier to 04.06.1997 Tara Chand met him and complained that his brother and Dwarka Nath are drinking liquor, then create scene. Therefore, he should restrain his brother”.

This part of the statement has been put to the witness, who stated that same is incorrect. He has never made such statement.

In the statement under Section 161 Cr.P.C. the statement was to the following effect:-

“Tara Chand while seeing him (Ranbir Singh) and the deceased became very furious and told his deceased brother as to why he is doing ‘*Dadagiri*’ in the Mohalla. He shall have to account for the same”.

Ranbir Singh stated that it is incorrectly recorded, so is wrong.

PW-2 S Jaswant Singh has stated that when the accused attacked the deceased then the witnesses ran here and there. He has not said anything about conversation.

19. The depositions of two star witnesses PW-1 Ranbir Singh and PW-2 Jaswant Singh are not free from doubts. Concealing certain facts makes their depositions more doubtful. According to PW-1 Ranbir Singh, deceased had no criminal background, he was never involved in any case but PW-3 Kehar Singh, father of the deceased, has deposed that the deceased was involved in certain cases. Then the wife of the deceased has qualified that the deceased was involved in a murder case and the same case was pending.

20. PW-10 Dr. Yashpal, who had conducted the post mortem on the deceased has found following injuries:-

- “1. Incised wound on left temporal region 4 cm x 1 cm bone deep, transversely placed unlying bone not fractured clotted blood on the periphery of the wound and left side of the face.
2. Penetrating wound on the left side of neck lateral to the origin of left sterno cleido mastoid muscle 2 CM x 1 cm x 10 cm deep, transversely placed, direction of wound antero- posteriorly and superior inferiorly.
3. Penetrating wound obliquely placed on the left hypochondrium below the costal margin 4 cm x 1 cm x 10 cms deep, omentum protruding out from the wound direction of wound, antero-posteriorly.
4. Incised wound on left lower eye lid, size 2 cm X1 cm transversely placed.”

21. PW-1 Ranbir Singh in his deposition has stated that the assailant gave knife blows, one on head another on throat and

third on belly whereas PW-2 Jaswant Singh has stated that the deceased gave three knife blows, one on eye, another on throat and third on head. The statements of Doctor and the two witnesses are inconsistent.

22. The contentions of the learned counsel for the appellant as made mention of herein above are fully supported by the depositions of the witnesses as noticed above. Scene of occurrence, presence of PW-1 Ranbir Singh and PW-2 Jaswant Singh at the time of occurrence then non-production of Sham Lal, who was also stated to be present on spot, all would show that their presence on spot has been doubtful. It is further compounded by the statement of I.O., who has stated that name of the assailant i.e. accused surfaced only in the afternoon of the next date of occurrence when Kehar Singh PW-3 made his statement. In case cited witnesses to the occurrence i.e. Ranbir Singh PW-1 and Jaswant Singh PW-2, would have known the assailant, they should have informed the police on the same night about the name of the assailant. Otherwise also in the FIR name of the assailant would have been mentioned; at the information of PW-1 Ranbir Singh or of PW-3 Kehar Singh (father of the deceased).

23. The contention of the learned counsel for the respondent that the evidence of PW-1 Ranbir Singh is supported by PW-2

Jaswant Singh an independent witness is not acceptable as the two witnesses have given two different versions. Patently their statements when taken together with the statement of the I.O and of the Kehar Singh do not inspire confidence to hold with certainty that it was the accused, who had attacked the deceased. Same position is further compounded by the fact that the accused was arrested on 21.06.1997 i.e. after a gap of 17 days from the date of occurrence. No explanation has been tendered for not arresting him for such a long period and for the manner of arrest.

24. Learned counsel for the respondent further submitted that relative witnesses were the best witnesses available. Their statements cannot be discarded simply on being relatives. It is true that relative witnesses cannot be ignored but rule of caution is that their depositions are to be appreciated with great deal of circumspection.

25. According to the learned counsel for the respondent, it is the accused who made disclosure statement. On the basis of his disclosure weapon of offence was recovered. But his submission pales into insignificance, firstly no witness has said that the knife recovered was the weapon of offence, secondly no attempt has been made to ascertain whether there was any blood stain on the knife and as to whether there were any fingerprints on the knife. Thirdly only three witnesses have been

cited to the recovery i.e. Vikram Singh, Ranbir Singh and Kehar Singh (uncle, brother and father of the deceased). Why no other civil witness has been called on spot at the time of recovery has remained to be answered.

26. Furthermore the I.O. has said that during interrogation the accused made disclosure, whereas other two witnesses Ranbir Singh and Kehar Singh have gone to the extent of saying that the accused in police custody while making disclosure also divulged that he has killed the deceased. Their versions to that extent are unacceptable because that confession of the accused, if at all made in the police custody is inadmissible in the evidence in terms of Section 25 and 26 of the Evidence Act. By way of exception in terms of Section 27 of the Evidence Act, disclosure to the effect that he has kept a knife in his house which he can show is admissible. What is its effect; he has simply said that he has a knife at his residence which can be recovered. Thereafter it has been recovered at his instance but it has nowhere come in evidence that the same knife has been used as weapon of offence. Therefore the recovery, even otherwise, pales into insignificance.

27. Learned counsel would contend that defective investigation shall not be to the advantage of the accused. That is correct but inconsistent statements of the cited witnesses to

the occurrence PW-1 Ranbir Singh and PW-2 Jaswant Singh and then other witness Kehar Singh, father of the deceased, coupled with the fact of non-mention of the name of the accused in the FIR then the fact of deposition of the I.O. that he came to know about the name of the assailant on the next day of the occurrence only when he recorded the statement of Kehar Singh, when as per the prosecution case the I.O. and Incharge Police Post Hatli Morh and then PW-Ranbir Singh, Kehar Singh and Jaswant Singh were present at the place of occurrence for the whole night till morning. Why they have not divulged the name of the assailant, which casts serious doubt about position of the accused having been the assailant.

28. The defective investigation, major contradictions in the statements of the witnesses, position of the witnesses being relative witnesses have to be analyzed and appreciated in the background of the particular facts of the particular case. It is trite that on the basis of trivial contradictions and inconsistencies and on account of the witnesses being relative witnesses accused cannot earn acquittal but the test is that their deposition must be such so as to inspire confidence for recording conviction. While appreciating the entire evidence of the case and analyzing all the aforesaid particulars it is quite evident that the depositions in material particulars of the

witnesses coupled with the statement of I.O. do not inspire confidence for the reasons as noticed in detail herein above.

29. Learned Trial Court while referring to various judgments has lost sight of applying the law laid down in right perspective. The law has to be applied on the basis of available material and the facts. Learned Trial Court in a very slipshod manner has erroneously hoodwinked the case with improper appreciation of the evidence; Without noticing the material, damaging contradictions and infirmities has placed reliance on judgments as quoted but the principles as have been laid down in the judgments as quoted have not been applied by the Trial Court properly.

30. In the totality of the circumstances as have emerged from the deposition of the witnesses as clearly indicated herein above, it shall be unsafe to hold the accused guilty. Celebrated principle of criminal jurisprudence is that guilt against the accused must be proved beyond any shadow of doubt which has not been.

31. While summing up for the stated reasons and discussions, in our firm view it can be safely concluded that the prosecution has not succeeded in proving the case beyond doubt. Grave inconsistencies, embellishment, concoction and contradictions as noticed herein above in detail, persuade us to

hold that the accused is entitled to the benefit of doubt. Accordingly, appeal is allowed, judgment and order of sentence impugned are set aside, the reference for confirmation of life imprisonment as made under Section 374 Cr.P.C. as such is answered. Therefore, accused is acquitted, be released forthwith if not required in connection with any other case.

35. Copy of the judgment along with trial Court record be sent to Trial Court. Appeal file be consigned to records, after due completion.

(Mohammad Yaqoob Mir)
Judge

(Virender Singh)
Judge

Announced.

16.05.2014.

Vinod.