

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 22nd September, 2022

Pronounced on: 31st October, 2022

CRL. A. 1427/2019

VED YADAV

..... Appellant

Represented by: Mr. Siddharth Yadav and Mr.
Akshay Pundir, Advocates.

versus

STATE

....Respondent

Represented by: Mr. Prithu Garg, APP for the
State with SI Madhav, PS Badli.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the impugned judgment dated 11th October, 2019 passed by the learned Trial Court convicting the appellant for offences punishable under Sections 302 and 324 IPC, and order on sentence dated 11th October, 2019 awarding sentence of imprisonment for life for offence punishable under Section 302 IPC and a fine of Rs.100/- (simple imprisonment for seven days in default of payment of fine) and a fine of Rs.1,000/- for offence punishable under Section 324 IPC (simple imprisonment for one month in default of payment of fine).

The Incident

2. As per the case of the prosecution on 14th November, 2012 at about 07:00 p.m., Rajender Yadav, Kishan, Dinesh Kumar and Ajit were present in village Siraspur where Dinesh wanted to purchase a *charpai*. All of them were proceeding on a *rickshaw-thela* plied by PW-3 Rajender Yadav towards Samaypur. At about 07:30 p.m., when they were passing through Samaypur market and reached in front of a shop of Garg J.K. Cement on Bawana road, four boys came on a motorcycle and hit the rickshaw. Due to this accident, the paddle of the rickshaw and the mudguard of the motorcycle broke. Upon which the boys who were on the motorcycle started quarrelling with them demanding compensation for the loss and damage to the motorcycle. A crowd collected and pointed out that the motorcycle riders were at fault whereupon all four persons escaped on the motorcycle. As the appellant proceeded with the rickshaw towards the shop where the *charpai* had to be bought, all four boys again came and started beating them, three of the assailants overpowered Kishan and fourth boy attacked Kishan with a knife, who fell down. PW-3 Rajender Yadav, PW-5 Dinesh and PW-6 Ajit were also attacked with knives and they received injuries. Two of the assailants escaped on the motorcycle towards Transport Nagar and two assailants ran into the *gali*. Kishan was taken to Raj Nursing Home and thereafter, he was taken to Dr. Baba Saheb Ambedkar Hospital, Rohini and he died in the hospital. Upon investigation by PW-18 SI Prakash Chand and PW-26 Inspector Rajesh Kumar, the appellant was identified as the accused by showing dossiers of criminals to PW-3. Upon secret information regarding the whereabouts of the appellant, PW-6 formed a raiding party and apprehended the appellant at about 11:00 p.m. on 15.11.2012. Upon carrying out a personal search, a

photocopy of the RC of the motorcycle bearing Registration No. DL-3SAY-1759 was found and he disclosed that he had handed over the weapon of offence i.e., knife to Sandeep. Later, the appellant led them to the house of Sandeep in Rajeev Nagar and to the house of the co-accused Sattu and Batul but they were not found at their houses. Batul and Sattu could not be arrested during the investigation despite efforts and were declared proclaimed offenders subsequently. Sandeep surrendered before the concerned Court and an investigation was carried out by SI Satish Kumar. He refused TIP and the knife which was used in the commission of the offence could not be recovered at the instance of Sandeep despite efforts. Charges under Section 307 and 34 IPC for causing simple injuries to Dinesh with a knife and Sections 302 and 34 IPC for committing the murder of Kishan were framed against the accused, who pleaded not guilty and claimed trial. The prosecution examined 26 witnesses, statements of the accused were recorded under Section 313 Cr.P.C. and no evidence was led in defence.

Submissions of the Appellant

3. The appellant through its appeal and arguments on his behalf by his counsel in support of its appeal, submitted *inter alia* as under:

3.1 The appellant contended that there were severe contradictions in the testimonies of the prosecution witnesses. The testimony of PW-3 regarding the arrest of the appellant would show that PW-3 was not present at the time of the arrest while the IO PW-26 stated that he had arrested the appellant with his motorcycle in the presence of PW-3. It was further submitted that the learned Trial Court, despite the confusion on the colour of the motorcycle, had held the motorcycle to be a blue colour and accorded credibility to the prosecution witnesses. As regards

the ownership of the motorcycle, the appellant had said that he had purchased it from PW-13, Zahid Khan in October, 2012 while Zahid stated that he had in turn purchased it from Nand Kishore in June, 2012 whereas PW-12, Nand Kishore stated that he had purchased the vehicle from Chote Lal also in June, 2012. PW-11, Chote Lal deposed that he had purchased the vehicle in the month of March, 2012 from one Karan Singh @Pappu for Rs.18,500/- and then sold it to Nand Kishore. The appellant, therefore, was not the owner or in possession of the said vehicle and clearly the vehicle had been planted upon him to falsely implicate the appellant. None of the chain of sellers could produce any document of sale and purchase of the vehicle or the RC. According to the prosecution, there were three eye witnesses PW-3, PW-5 and PW-6 but PW-3 stated that he could not identify the accused persons as he had not been able to see them properly due to the time of the day, while on the next day when the police brought one person after arresting him whom he had seen at the police station, he identified the said person as one of the accused of the four assailants. The counsel for the appellant further asserted that there were serious contradictions as regards the identification of the appellant. It was further contended that no public persons were joined by the police for the investigation and there was no recovery of the alleged weapon of offence at the instance of the appellant. Other discrepancies were pointed out regarding the time when the motorcycle was brought to the police station. The counsel for the appellant further contended that no clothes with the blood of the witnesses were seized and that the MLC could not have said “*unknown*” if friends had taken the deceased to the hospital. Also, the *rickshaw-thela* was not seized on the spot but on 15th November, 2012. There were no specifics of who had delivered the knife blows out of the four

alleged assailants, of which one was juvenile, two not apprehended and the only person left was the appellant, who was being implicated for the murder. The appellant relies upon the decision of the Hon'ble Supreme Court in *State of M.P. v. Chamru*, (2007) 12 SCC 423 regarding the showing of an accused's photograph before the TIP.

Submissions by the Prosecution

4. The learned Additional Public Prosecutor (APP) countering the submissions made by the appellant, stated that PW-5 was an injured eye witness and the testimony was duly supported by the MLC and corroborated by PW-6. PW-3 had identified the assailants and even if the identification was not proper, as contended by the appellant, it did not take away from their testimonies which were consistent and cogent. All of these eye witnesses had said that the blows were inflicted by only one accused and the *post mortem* report stated that the injuries were on vital parts. The MLC did say that the person brought in was unknown but it was evident since PW-3 had stated that the friend who had the car got the deceased admitted. As regards the transfer of possession and ownership of the motorcycle, it was contended that the sales were of low value and therefore had not been recorded by either transacting party. The learned APP relied upon the judgment of the Hon'ble Supreme Court in *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 to canvass that trivial contradictions and omissions in the testimony of an injured witness are immaterial since having been present at the crime scene, the testimony of somebody who has been injured is generally considered very reliable. The learned APP further cited in decisions of the Hon'ble Supreme Court in *Balraje v. State of Maharashtra*, (2010) 6 SCC 673

and *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719 on the testimony of an injured witness.

The Evidence

5. The evidence, relevant and necessary for the assessment of this case, is *inter alia* as under:

5.1 PW-3 Rajender Yadav testified that he was working as a labourer in a factory but also used to pull the rickshaw part-time. On the day of the incident at about 07:00 p.m. he alongwith the deceased, who was a friend and Dinesh and Ajit were in village Siraspur and his friend Dinesh stated that he wanted to purchase something and therefore they proceeded towards Samaypur in his *thela-rickshaw* which he was pulling. Dinesh, Ajit and Kishan were sitting on the *thela-rickshaw* when at about 07:30 p.m. near Samaypur market they reached Bawana road where four boys came on the motorcycle and hit his *thela-rickshaw* while they were standing in front of J.K. Cement shop. Upon this, the right-side paddle of his *thela-rickshaw* got broken as well as the mudguard in front portion of the motorcycle due to the collision. The four persons on the motorcycle started quarrelling and started beating them and demanding money. Upon seeing the quarrel, public people gathered there and mentioned that the boys on the motorcycle were at fault and that the four boys left. After about half an hour, the said four boys came again on the same motorcycle and started beating them. Out of them, one boy inflicted knife injury first to Dinesh at his back and thereafter to Kishan. PW-3 stated that the three boys had also caught hold of his friend Kishan and were beating him. In the process, his friend Ajit and PW-3 himself also received injuries. Out of the four boys, two boys ran away towards Transport Nagar on the motorcycle

while the other two boys ran towards the street. They took the injured Kishan to Raj Nursing Home on the *thela-rickshaw* and were told to take him to Ambedkar Hospital. Kishan was then taken in the car by a good *samaritan* to Ambedkar Hospital and the person who was driving the car got him admitted in the hospital. Later on, they came to know that Kishan had expired in the hospital. The police recorded his statement as Ex. PW-3/A which he identified. He stated that he could not identify the accused persons properly because it was that time of the day (PW-3 mentions it was “*dawn*” but it seems to be a transcription/typographical error and ought to be “*dusk*”). PW-3 further stated that during the investigation he had seen the dossiers of many persons in the police station as shown to him by the police and out of those he identified one person who was brought on the next day after arresting him and he identified the said person confirming that he was one of the accused. PW-3 did not identify the accused in the Trial Court and stated the appellant was not arrested in his presence. Since PW-3 was resiling from his earlier statement, the learned APP cross-examined him, when he stated that he had gone on 15th November, 2012 alongwith police officials in search of the accused through a secret informer. They reached *Khera Mor* and in the middle of the night police apprehended the appellant alongwith the motorcycle whom he could identify. He further stated that he had also identified the juvenile offender who was in police custody. He stated that he had not mentioned these facts on the earlier day of his examination due to some confusion and was not feeling too well. Even in response to a Court question as to how he managed to identify the appellant when he could not identify him on the last date of hearing, PW-3 stated that “*on the last date of hearing, I was confused and I was down with fever and dizziness. Today, I have identified*

accused Ved Yadav in the Court". In his cross-examination by the counsel for the appellant, he stated that he was not acquainted with the appellant before the incident and had not noted down the registration number of the motorcycle and had never seen the appellant in the police station before producing him in Court. He confirmed that the police had shown the photographs of the appellant through which he had originally identified the appellant. As regards his testimony on 02nd January, 2014 when he had not identified the appellant, he again stated that the IO had asked him to testify on that day even though he was not feeling well but on the insistence of the IO had come to the Trial Court. Further, he stated in his cross-examination that the incident had occurred at about 06:30 p.m. on Vishwakarma Day and that after the collision with the motorcycle they had gone some distance to get the rickshaw repaired with his friends which had taken about 5 minutes for repair. When they had hardly gone 10 paces from the mechanic's workshop, the assailants had assaulted them and stabbed the deceased and injured Dinesh and himself. He also stated that had remained in the police station for two days till the accused persons were arrested.

5.2 PW-5 Dinesh stated that he was working in a factory and he alongwith PW-3, PW-6 and the deceased were going on a *thela-rickshaw* on 14th November, 2012, being driven by PW-3. At about 07:00 p.m. they were going to purchase a *charpai* for him from Samaypur when a motorcycle collided with them and the paddle of the rickshaw broke as also the cover of the mudguard of the motorcycle. The four boys who were riding the motorcycle started quarrelling and demanding compensation when the public persons who had collected pointed that the fault was of the motorcyclists. A bit later, when they

reached the front of Ann Jal Hotel, these boys came from the backside and overtook the rickshaw and started beating them. PW-5 identified the appellant in the Court and stated that he had pulled out a knife and given a blow to him on his back. Three other boys alongwith the appellant had caught hold of Kishan when the appellant gave a knife blow to Kishan. The four assailants escaped, two on a motorcycle and two ran along the lane. A public person helped them to reach the hospital in a car and the doctor declared him dead. PW-5 stated that he was medically examined in the hospital and was given treatment. On 16th November, 2012, he came to the police station and identified the appellant in the police station. He also identified the blue colour motorcycle but could not tell the number because he was illiterate but said that the motorcycle was the same since its mudguard was broken and the headlight was dislocated due to the collision. PW-5 later identified the juvenile offender as well as the other co-accused Satte who was later declared a proclaimed offender. In his cross-examination, he stated that the rickshaw could not get repaired on that day and that the incident of assault was within 20-30 minutes after the first incident and the approximate time was between 7-7:30 p.m.

5.3 PW-6 Ajit stated that he was working as a mason (*raj mistri*) and corroborated the testimony of PW-3 and PW-5 regarding the events of the collision and the assault. He also confirmed that the injured Kishan had been moved to a hospital by a person in a car and later expired upon reaching the hospital. PW-6 identified the appellant in the Trial Court and stated that he was the person who gave the knife blow to Kishan and Dinesh. Later, he identified the motorcycle as well as the juvenile who was involved in the incident, as well as the co-accused Satte. In his

cross-examination, he stated that he was illiterate and that after coming from the hospital, the police had come to the spot and were investigating. PW-6 alongwith his friends remained in the police station till the accused were apprehended on the next day i.e., 15th December, 2012 and they identified the accused persons in the police station on 15th November, 2012.

5.4 PW-14, Dr. Manchanda of Raj Nursing Home deposed that on 14th November, 2012 at about 08:15 p.m., one unknown person was brought by two persons and upon who was found having been stabbed in his chest and bleeding and in critical condition. He made a call to the police and informed them and gave first aid to the patient. On seeing the critical condition of the patient and the urgency, the patient was referred for surgical intervention to a higher medical centre.

5.5 PW-25, Dr. Kumar, CMO of BSA Hospital, Rohini deposed that at about 08:30 p.m. on 14th November, 2012 one patient with unknown name and parentage, aged about 25 years was brought into casualty in an unconscious stage. He examined the patient and MLC was recorded which he identified and was exhibited as Ex. PW-25/B and PW-25/A. The patient was however declared brought dead and the body was handed to the mortuary for *post mortem*. The next day on 15th November, 2012 at about 05:20 a.m. he had also examined two persons namely Ajit and Dinesh, who were examined by doctors of the hospital and their MLCs were exhibited as Ex. PW-25/B and Ex. PW-25/C. He confirmed that as per the MLC of Dinesh, the incised wound was over the centre of the back in midline which could be caused by sharp object.

5.6 PW-24, Dr. Jha of BJRM Hospital, Jahangirpuri deposed that Dr. Bhim Singh had conducted the *post mortem* but had left the services of the hospital but he could identify his signatures on the *post mortem* report exhibited as Ex. PW-24/A. As per the post mortem report, death was due to shock consequent upon stab injuries which were *ante mortem* in nature and caused by a single edged pointed weapon like knife. He further stated that injury no.1 was sufficient to cause death in the ordinary course of nature.

5.7 PW-26, Inspector Rajesh Kumar, the Investigating Officer deposed that upon registration of the FIR under Section 302 at PS S.P. Badli, he reached the spot in front of the shop of J.K. Cement, Samaypur alongwith crime mobile team and other police staff. He prepared the rough site plan and recorded the statements of the crime mobile team as also collected the blood sample from the road, blood-stained earth sample and earth control and duly sealed them with his seal RK. Meanwhile, injured Dinesh and Ajit came to the spot with Constable Rajkumar who handed over the MLCs of the injured to him and the statements were recorded under Section 161 Cr.P.C. He started searching for the accused persons but in vain and came back to the police station and deposited the case property in the *maalkhana*. Then he collected the dossier of similar type of accused persons from the record room and kept them in his file. On 15th November, 2012 at about 02:30 p.m. he left the police station with Constable Satender and Constable Satish in search of the accused person where he met PW-3 the complainant Rajender alongwith his *thela-rickshaw*. He inspected the *thela-rickshaw* and found blood stains on the wooden body of the *thela-rickshaw* and extracted them and sealed them including the *thela-*

rickshaw which was taken in police possession. He showed the dossier of similar type of accused persons to the complainant PW-3 who identified the appellant as the person who had committed the murder. He took the complainant along and reached the house of the appellant situated at Ambe Garden, S.P. Badli where the mother and sister of the appellant met him but they told him that he had left his house on 14th November, 2012 on his motorcycle and had not come back to the house since. They conducted several raids at probable hideouts of the appellant but he could not be found. At about 10-10:30 p.m. when one secret informer met him and informed him that the appellant would come from Nangli Puna *jhuggi* area on his motorcycle and go to his house via *Khera Mor*, PW-26 formed the raiding party and reached *Khera Mor* and set a trap. At about 11:00 p.m. the appellant was spotted on the motorcycle coming towards *Khera Mor*, whereupon he was overpowered and apprehended by the raiding party. Later, his personal search was conducted, disclosure statement was recorded and pointing out memo of place of incidence. The appellant then led them to the house of co-accused Sandeep, who was not found at his house as also to other co-accused Satte and Batul who were also not found at their houses. In his cross-examination, he stated that he had started searching for the accused as the physical description told by the complainant to him matched with the dossier and then later identified by the complainant upon seeing the photographs. He further stated that the mudguard and headlight of the motorcycle when it was seized were found to be dismantled from their actual position.

Analysis

6. Having examined the evidence on record and on appreciation of the submissions of all parties, this Court is of the considered view that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt, for *inter alia* the following reasons:

6.1 The death of the deceased Kishan was clearly homicidal in nature caused due to the knife injury as is evident from the *post mortem* report Ex. PW-24/A, which opines that death was due to shock consequent upon stab injuries which were ante mortem in nature, fresh and caused by single edged pointed weapon like knife. Injury no.1 which was an incised stab wound 3 cm x 1 cm in the chest cavity deep over left side of the chest, was sufficient to cause death in the ordinary course of nature. It further recorded that the deceased was brought dead on 14th November, 2012 at 08:30 p.m.

6.2 There are testimonies of three eyewitnesses PW-3, the complainant, PW-5 and PW-6, which are consistent and cogent, except for minor differences which are not material. Further, PW-3 who deposed about the entire incident but failed to identify the appellant, in his cross examination by learned APP identified the appellant and also explained why he could not identify on the last date. Both PW-6 and PW-5 were injured during the assault by the appellant and his companions which is evident from the MLCs of PW-5 (Ex. PW-25/C) and of PW-6 (Ex. PW-25/B). The MLC of PW-5 notes that the patient arrived in the hospital at 05:20 a.m. on 15th November, 2012 brought by Constable Rajkumar with a history of physical assault at about 08:00 p.m. on 14th November, 2012 as reported by him. The MLC noted that

there was an incised wound 0.5 cm x 05.5 cm over the centre of the back in midline. The MLC of PW-6 noted that he was brought in at 05:20 a.m. on 15th November, 2012 by Constable Rajkumar with a history of physical assault at about 08:00 p.m. on 14th November, 2012 as told by him but had no visible external injuries seen during the examination. The fact that PW-5 was injured with a knife assault is corroborated duly by PW-6 and PW-3 in their testimonies. The fact that they had identified the appellant in the police station earlier upon being shown the photograph from the dossier is credible on an assessment of the testimony of the Investigating Officer PW-26 and Ex. PW-22/A which is the dossier record of the appellant as testified to by PW-22, Constable Satish.

6.3 As regards the identification of the motorbike, all three eyewitnesses duly identified it in the Court but could not read the number because they were illiterate.

6.4 As regards the contention of the appellant that the MLC of the deceased recorded the person brought in as '*unknown*', this Court notes that all three eyewitnesses had stated that they were on *thela-rickshaw* and when Kishan, had been taken post receiving injuries to Raj Nursing Home he had been recommended to be taken to Ambedkar Hospital. At that stage, a person who had a car helped them and took him to the hospital. It is, therefore, quite evident that the deceased had been brought in not by the three friends who were eyewitnesses but by Capt. Hudda (public person) whose address is noted as 55, Shivpuri, Samaypur Badli and his mobile number as well in Ex. PW-25/A.

6.5 As regards the contention of the appellant that the motorcycle ownership was in question and could not be connected with the appellant, this Court notes that the recovery of the motorcycle was from the appellant at the time of his arrest and which had a broken front mudguard, thereby making it evident that it was involved in a collision just the day before. Also, the testimonies of PW-11, PW-12 and PW-13 deposing as to the transfer of ownership of that motorcycle for various sums between Rs. 15,000 – 20,000, it is evident that no document of sale and purchase was exchanged considering there were low value transactions. PW-13 is the one who had sold the motorcycle to the appellant and states that he had simply handed over documents of the motorcycle to the appellant whereas PW-12 from whom PW-13 had bought the motorcycle stated that he also handed over the documents of the motorcycle to PW-13. PW-11 from whom PW-12 had bought the motorcycle also stated that the person whom he had bought the motorcycle from i.e., Karan Singh @Pappu handed over the documents to PW-12. PW-11, PW-12 and PW-13 therefore, simply transferred the documents of the original sale of the vehicle without any *inter se* transactional documents being executed. The fact that the appellant was apprehended alongwith the motorcycle by the police and that it was damaged in the place which the three eye witnesses had mentioned while deposing as to the details of the collision, is dispositive of the fact that it was indeed the motorcycle which was used by the assailants at the scene of the crime.

6.6 The vacillation by PW-3 in the identification of the appellant before the Court is later explained by him. PW-3 responds to the Court question and states that his vacillation was due to the fact that he was

unwell and had fever and dizziness on the day before and later goes on to identify the appellant. The identification, in any case, is further corroborated and done independently by PW-5 and PW-6 the other two eye witnesses.

6.7 As regards the other discrepancies regarding the repair of the rickshaw and the place where the first and second incident had taken place, this Court notes that the site plan Ex. PW-1/A shows that the distance between the point where the collision happened and where the stabbing took place is about 110 meters and is in the front of a shop by the name of Garg Traders J.K. Cement and Ann Jal Restaurant. It is also clear from the site plan that just next to the place where the stabbing took place are two electric poles with sodium lights and therefore the testimonies of the eye witnesses on the identification of the appellant cannot be discredited on account that there was not enough light.

6.8 The judgments on which the learned APP had relied, all substantiate the point that the testimony of injured witnesses is to be given great credibility and is significant since they are at the presence of the crime scene and unlikely to spare the actual assailant in order to implicate someone falsely. In this regard, reference may be made to Para 28-31 of ***Abdul Saeed v. State of M.P.*** (2010) 10 SCC 259 where the Hon'ble Supreme Court has stated as under:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

“Convincing evidence is required to discredit an injured witness.” [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] .]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719: (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

“28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629: 2004 SCC (Cri) 2013] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the

occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

31. Ashfaq (PW 2) had given a graphic description of the entire incident. His presence on the spot cannot be doubted as he was injured in the incident. His deposition must be given due weightage. His deposition also stood fully corroborated by the evidence of Anees (PW 1) and Usman Ali (PW 4). The depositions so made cannot be brushed aside merely because there have been some trivial contradictions or omissions.”

(emphasis supplied)

Reference may also be made to Para 30 of **Balraje v. State of Maharashtra** (2010) 6 SCC 673 where the Hon’ble Supreme Court states as under:

“30. In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no

reason to discard the same. Conviction can be made on the basis of such evidence.”

6.9 Having assessed the testimonies of the three eyewitnesses, at least one of them having received a knife injury and the other two being beaten up, this Court finds no reason to reject the evidence on the account of minor contradictions and discrepancies and therefore confirms the case of the prosecution.

Conclusion

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellant for the murder of the deceased has been proved beyond reasonable doubt and duly supported by circumstantial evidence by the prosecution. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeal is accordingly dismissed.

9. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellant and updation of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 31, 2022/mk