

AFR
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Court No. - 34

Case :- JAIL APPEAL No. - 1677 of 2014

Appellant :- Pramod Kumar

Respondent :- State Of U.P.

Counsel for Appellant :- From Jail, Archana Singh (A.C.)

Counsel for Respondent :- Syed Ali Murtaza (A.G.A.)

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajendra Kumar-IV, J.

(Delivered by Hon'ble Rajendra Kumar-IV, J.)

1. Accused-appellant Pramod Kumar has preferred this jail appeal under Section 383 Cr.P.C. from Jail through Senior Superintendent Central Jail, Fatehgarh against judgment and order dated 08.08.2012 passed by Additional Sessions Judge / Special Judge (E.C. Act), Kanpur Nagar in Sessions Trial No. 1434 of 2007, Case Crime No. 504 of 2007, under Section 302 IPC and Sessions Trial No. 1433 of 2007, Case Crime No. 510 of 2007, under Section 4/25 Arms Act, Police Station Govind Nagar, District Kanpur Nagar. By impugned judgement, appellant has been convicted under Section 302 I.P.C. and sentenced to undergo rigorous imprisonment for life with fine of Rs. 20,000/- and in default of payment of fine, three months simple imprisonment and further he has been convicted and sentenced under Section 4/25 Arms Act to undergo one year rigorous imprisonment with fine of Rs. 5,000/- and in default of payment of fine one month simple imprisonment.

2. Factual matrix of case as emerging from First Information Report (hereinafter referred to as "FIR") as well as material placed on record is as follows.

3. P.W.-3 Manoj Kumar submitted a written report Ex.Ka-1 in Police Station Govind Nagar, District Kanpur Nagar stating that there was a quarrel between his brothers Vinod Kumar (now deceased) and Promod Kumar (Accused) regarding eating items like sugar and rice. On 15.9.2007 at about 9:00 PM in the night, a dispute occurred between two brothers for sugar and tea and suddenly, accused-appellant Promod Kumar started beating victim Vinod Kumar. While quarreling, both came out of the house on the road. When Informant PW-3, with the help of neighbours tried to rescue him, accused-appellant Promod Kumar assaulted 3-4 knife blows to his brother Vinod Kumar and ran away. While taking the victim Vinod Kumar to hospital, he succumbed to injuries on the way. Written report Ex.Ka-1 further recites that dead body of Vinod Kumar is lying in front of the house.

4. On the basis of written report Ex.Ka-1, Chick F.I.R. Ex.Ka-2 was prepared by PW-4 Head Constable Yasho Verma at Case Crime No.504 of 2007 and case was registered against accused-appellant under Section 302 I.P.C. An entry of case was made in General Diary (herein after referred to as 'GD'), copy whereof is Ex.Ka-3.

5. Immediately, after registration of case, PW-7 Nirankar Singh, the then Inspector In-charge of Police Station Govind Nagar, commenced investigation and recorded statement of PW-3 Manoj Kumar, proceeded to spot, recorded statement of PW-2, Jhamman Lal; and PW-1 Smt. Jyoti Shakya; collected blood stained and simple earth from spot and prepared site plan Ex.Ka-7. On the same day at about 9:15 PM, he arrested accused-appellant Pramod Kumar sitting near a temple, recorded disclosure statement and recovered blood stained knife, allegedly used in the commission of offence, from

bushes near the eucalyptus tree at the pointing out of accused-appellant before Babloo and Ashok Kumar (not examined), sealed it in a cover of cloth, got prepared recovery memo Ex.Ka-8, prepared site map of recovery Ex.Ka-9.

6. On the basis of recovery memo, chick F.I.R. Ex.Ka-5 was registered being Case Crime No. 510 of 2007 under Section 4/25 Arms Act against accused-appellant Promod Kumar. Investigation of Case Crime no. 510 of 2007 was done by PW-10.

7. PW-8 S.I. Ramveer Singh, on the direction of Inspector In-charge, PW-7, held inquest over the dead body of Vinod Kumar, prepared inquest report Ex.Ka-11 and other papers relating thereto; handed over the dead body to Constable Hoti Lal and Ram Dhani for post mortem and sent it to District Hospital, Kanpur Nagar.

8. PW-7 after recording statement of witnesses, completed all necessary formalities of investigation and submitted charge sheet Ex.Ka-10 against accused-appellant before the Court of C.J.M. concerned.

9. PW-10, Sri Om Prakash Dwivedi under took investigation of Case Crime No. 510 of 2007 and after completing entire formalities of investigation, submitted charge sheet under Section 4/25 Arms Act.

10. Case under Section 302 I.P.C. being exclusively triable by Court of Sessions and case under Section 4/25 Arms Act being connected with Section 302 I.P.C., learned Chief Judicial Magistrate after making compliance of under Section 207 Cr.P.C. committed both cases to Court of District Judge, Kanpur Nagar for trial wherefrom it was transferred to the Court of Special Judge (E.C.

Act), Kanpur Nagar.

11. Trial Court framed charges against accused-appellant on 17.01.2008 under Sections 302 IPC and Section 4/25 Arms Act to which accused denied and claimed trial. Charges read as under :-

आरोप

मैं पी० के० जैन विशेष न्यायाधीश ई०सी०एक्ट कानपुर नगर आप प्रमोद कुमार पर निम्न आरोप लगाता हूँ—

प्रथम यह कि दिनांक 15.9.2007 को समय लगभग रात्रि 9 बजे मकान नं० 8/6 लेबर कालोनी के दरवाजे के सामने अन्तर्गत थाना गोविन्द नगर कानपुर नगर आपने आशयपूर्वक विनोद कुमार को चाकुओं से मारकर हत्या की और इस प्रकार आपने भा०दं०वि० की धारा 302 के अन्तर्गत दण्डनीय अपराध किया जो कि मेरे प्रसंज्ञान में है।

एतद्द्वारा आपको निर्देशित किया जाता है कि उपरोक्त आरोप अन्तर्गत आपका विचारण इस न्यायालय द्वारा किया जाये।

Charge

I, P.K. Jain, Special Judge E.C. Act Kanpur Nagar, charge you i.e. Pramod Kumar with following charge:-

First, that you intentionally committed murder of Vinod Kumar by assaulting him with knives at about night 9 o'clock on 15.9.2007, in front of the door of House No. 8/6 Labour Colony under Police Station Govind Nagar, Kanpur Nagar, and in this manner you have committed an offence under Section 302 of the I.P.C. which is in my cognizance.

You are hereby directed that you are to be tried by this Court for the aforementioned charge.

(English Translation By Court)

आरोप

मैं, पी० के० जैन, विशेष न्यायाधीश ई०सी०एक्ट, कानपुर नगर आप— प्रमोद कुमार शाक्य को निम्न प्रकार से आरोपित करता हूँ—

प्रथम: यह कि दिनांक 16/9/2007 समय लगभग 21:15 बजे दादानगर रेलवे कासिंग के पहले यूकीलिप्टस के पेड़ के पास झाड़ी से अन्तर्गत थाना गोविन्द नगर, कानपुर नगर में आपकी निशादेही पर विनोद कुमार की हत्या में प्रयुक्त चाकू आपके पास से बरामद हुई,

जिसकी लम्बाई प्रतिबन्धित लम्बाई के अन्तर्गत आती है और इस प्रकार आपने आयुध अधिनियम की धारा 25/4 के अधीन दण्डनीय अपराध किया जो कि मेरे प्रसंज्ञान में है।

एतद्द्वारा आपको निर्देशित किया जाता है कि उपरोक्त आरोप के अन्तर्गत आपका विचारण इस न्यायालय द्वारा किया जाये।

Charge

I, P.K. Jain, Special Judge E.C. Act Kanpur Nagar, charge you - Pramod Kumar Shakya with following charge:-

First : That, on 16/9/2007 at about 21.15 Hrs, the knife used in the murder of Vinod Kumar has been recovered from your custody on pointing out by you, from the shrubs near eucalyptus tree before Railway Crossing Dada Nagar under Police Station Govind Nagar, Kanpur Nagar whose length falls under the prohibited length and therefore you committed an offence punishable under Section 25/4 of the Arms Act which is in my cognizance.

You are hereby directed that you are to be tried by this Court for the aforementioned charge.

(English Translation By Court)

12. Accused-appellant denied the charges and pleaded not guilty and claimed to be tried.
13. Both the cases, being connected to each other, came to be heard and decided together.
14. In order to substantiate its case, prosecution examined as many as ten witnesses out of whom PW-1 Smt. Jyoti Shakya, PW-2-Jhamman Lal and PW-3-Manoj Kumar, are witnesses of fact. Rest are formal witnesses. PW-1 Smt. Jyoti Shakya is the wife of deceased Vinod Kumar; PW-2 Jhamman Lal is father of deceased as well as accused; PW-3 is Informant and brother of accused-appellant;

PW-4 Head Constable Yasho Verma registered the case under Section 302 I.P.C. against the accused on the basis of written report Ex.Ka-1; PW-5 Dr. Yogesh Dayal, Medical Officer, who conducted autopsy over the dead body of deceased; PW-6 C.P. Asha Ram registered the case at Crime No. 510 of 2007 under Section 4/25 Arms Act against the accused; PW-7 Nirankar Singh, C.O. Ghaziabad, the then Inspector In-charge of Police Station Kanpur Nagar is the Investigating Officer who submitted charge sheet; PW-8 S.I. Ramveer Singh held inquest over the dead body of deceased Vinod Kumar, under the direction of PW-7 the then Inspector; PW-9 Constable Bhikhari Lal is the witness, who has taken docket to FSL for examination and PW-10 S.I. Om Prakash Dwivedi is the Investigating Officer of Case Crime No.510 of 2007 under Section 4/25 Arms Act and submitted charge sheet against accused-appellant.

15. Subsequent to closure of prosecution evidence, Trial Court recorded statement of accused under Section 313 Cr.P.C. explaining all incriminating and other evidence and circumstances. In the statement under Section 313 Cr.P.C., accused denied prosecution story in toto and claimed false implication on account of enmity. In response of question no. 24, he answered that deceased was addict to drugs and a man of bad habits; he usually used to quarrel other persons in the vicinity due to which, he has been murdered by some one else; accused was not present in the house at the time of incident; he has been falsely implicated in the present case and he is completely innocent. Accused did not choose to adduce any evidence.

16. After hearing counsel for the parties and analyzing entire evidence led by prosecution on record, learned Trial Court has found

appellant guilty and convicted him as stated above. Feeling aggrieved with impugned order of conviction, the present appeal has been filed through Jail.

17. We have heard Smt. Archana Singh, Advocate (Amicus Curiae) for appellant and Sri Syed Ali Murtaza, learned A.G.A for State-respondent at length and have gone through the record available on file carefully.

18. Learned Amicus Curiae appearing for appellant assailing impugned judgement of conviction of accused-appellant, advanced submissions, in the following manner :-

- (i) PWs-1, 2 and 3 are interested witnesses and they are not independent.
- (ii) There is no strong motive to accused to commit murder of his own real brother. Motive as stated by prosecution is not sufficient to commit the present crime.
- (iii) Medical report is not compatible with the ocular version.
- (iv) There are many major contradiction in the statement of PWs rendering the case of prosecution doubtful.
- (v) Knife which is said to be used in the commission of offence is allegedly recovered at the instance of accused before public witness but they have not been produced by prosecution in support of recovery. In absence of public witness recovery cannot be said to be trustworthy and reliable.
- (vi) Prosecution has failed to prove its case beyond of

shadow of reasonable doubt and accused is entitled to get benefit of doubt and liable to be acquitted.

19. Learned AGA vehemently opposed contentions of accused-appellant and submitted that accused is named in F.I.R.; blood stained knife, allegedly used in the commission of offence, has been recovered from his possession at the pointing out of applicant; PW-2 Jhamman Lal, father of deceased as well as accused and PW-3 real brother of deceased as well as accused, have no reason to falsely implicate accused in the present case like murder; PW-1 being wife of deceased is natural witness for the reasons, incident started from house and happened on road; prosecution witnesses are totally natural and reliable witnesses and there is no scope to disbelieve their testimony; and in the statement recorded under Section 313 Cr.P.C., accused has taken a plea of *alibi* but could not prove it and even did not suggest as to why his father and real brother were giving false evidence against him. He sought dismissal of appeal.

20. We have considered rival submissions of both parties and travelled through evidence available on record with the valuable assistance of learned counsel for the parties.

21. Although time, date, place and manner of injuries and death of victim as stated by prosecution could not be disputed from the side of defence but according to Advocate for accused-appellant, he is not responsible for causing murder of Vinod Kumar. Even otherwise from the evidence of PWs-1, 2, 3 and 5, time, date and place of incident, death of Vinod Kumar and manner of injuries as stated by prosecution stand proved.

22. Only question remains for consideration is, "whether accused-

appellant has committed murder of Vinod Kumar by inflicting knife blows on him and Trial Court has rightly convicted accused-appellant for causing death of Vinod Kumar, punishable under Section 302 I.P.C.?"

23. We may now proceed to consider the submissions of learned counsel for the parties and evidence briefly as well as legal points with few important decisions.

24. PW-1 Smt. Jyoti Shakya deposed that accused Pramod Kumar is real brother of her husband (Vinod Kumar) and Jhamman Lal PW-2 is her father-in-law; on 15.9.2007 at about 9:00 PM in the night there was a dispute between her husband Vinod Kumar and accused-appellant Pramod Kumar in respect of tea leaf and sugar; due to dispute being increased, accused Pramod Kumar abused her husband and started beating; she interfered and rescued both but, thereafter, her husband and accused came out of house on the road; she (witness) also came out of her house; while quarreling, accused-appellant took out knife from house and started stabbing in the stomach and chest of her husband due to which her husband got seriously injured; on seeing persons coming there, accused-appellant got escaped with knife; while taking her husband to hospital in injured position, he breathed last in the way; report of incident was got registered by PW-3, Manoj Kumar (her Dewar); usually there had to be quarrel between accused-appellant and her husband for households items.

25. In her cross-examination, she admitted that she studied M.A.; her cousin sister was married to accused-appellant; three days prior to the incident, Deepmala wife of accused had gone to her maternal house; when quarrel started, she (PW-1) was in kitchen and making

food; there was a quarrel regarding sugar and tea leaf and kitchen was just adjacent to room; and her father-in-law was present at the time of incident.

26. PW-2 Jhamman Lal, happens to be father of accused-appellant as well as deceased. He has deposed that on 15.9.2007 at about 9:00 PM, there was a dispute between Vinod Kumar and Pramod Kumar regarding tea leafs and sugar; accused-appellant Pramod Kumar started abusing and assaulting Vinod Kumar victim; his wife Smt. Jyoti, PW-1, rescued them but both of them came out of house; while quarreling, Pramod Kumar took out knife from house; by that time Jyoti also came out of house; Pramod Kumar stabbed knife 3-4 times to victim Vinod Kumar, due to which he got injured; accused-appellant ran away from spot with knife; Manoj Kumar took victim Vinod Kumar to hospital but unfortunately victim succumbed to injuries; dead body of Vinod Kumar was taken to house.

27. PW-2 has admitted in cross-examination that he had four sons, namely, Ashok Kumar, Pramod Kumar, Vinod Kumar and Manoj Kumar; his eldest son was living in Armapur, Kanpur while rest three were living with him; and at the time of occurrence, he, Vinod Kumar, Pramod Kumar, Smt. Jyoti and her son Prashant aged about four and half years were present on spot.

28. PWs-1 and 2 withstood lengthy cross-examination but no adverse material could be brought so as to disbelieve their statement. Their presence on the spot is fully proved and natural. Statements of these two witnesses are wholly reliable and worthy to credence. There is nothing on record to show, why PW-2 Jhamman Lal, father of accused would depose against his own son in the heinous offence like murder. Even accused appellant did not suggest anything in his

statement under Section 313 Cr.P.C. while PW-2 has given statement against him. He simply said that statement of witnesses are wrong. He took a plea of *alibi* but did not prove it.

29. PW-3 Manoj Kumar supporting prosecution case has deposed that on 15.9.2007 at about 9:00 PM he was present in his office and arrived at his house on getting information of incident; Victim Vinod Kumar was lying in injured position; he took him to hospital on Tempo but on the way victim breathed last; he came back to his house with dead body and presented written report Ex.Ka-1 in the Police Station. This witness is not an eye witness, therefore, much more discussion is not required.

30. So far as argument of learned Amicus Curiae for accused-appellant in respect of relation witnesses is concerned, we are not impressed with submission made by learned Amicus Curiae for accused-appellant for reasons that if relation witnesses are found to be reliable, natural and trustworthy, their evidence cannot be discarded on the ground of their relationship with deceased or accused.

31. Now, next thing to be considered is that PWs.-1, 2 and 3 are family members of deceased. PW-1 is wife of deceased, and therefore, their evidence should be treated to be trustworthy or not. This submission is thoroughly misconceived. Mere relationship is not sufficient to discard otherwise trustworthy ocular testimony.

32. In **Dalip Singh v. State of Punjab, AIR,1953, SC 364**. Court held as under :-

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has

cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

33. In **Dharnidhar v. State of UP (2010) 7 SCC 759**, Court has observed as follows :-

*"There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of **Jayabalan v. U.T. of Pondicherry (2010) 1 SCC 199**, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim"*

34. In **Ganga Bhawani v. Rayapati Venkat Reddy and Others, 2013(15) SCC 298**, Court has held as under :-

"11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each

other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

(Vide: Bhagalool Lodh & Anr. v. State of UP, AIR 2011 SC 2292; and Dhari & Ors. v. State of U. P., AIR 2013 SC 308)."

35. It is settled that merely because witnesses are close relatives of victim, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects credibility of witness, more so, a relative would not conceal actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse the evidence to find out that whether it is cogent and credible evidence.

36. So far as motive is concerned, it is well settled that where direct evidence is worthy, it can be believed, then motive does not carry much weight. It is also notable that mind set of accused persons differs from each other. Thus merely because that there was no strong motive to commit the present offence, prosecution case cannot be disbelieved.

37. In **Lokesh Shivakumar v. State of Karnataka, (2012) 3 SCC 196**, Court has held as under :-

"As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. In this case, we find the ocular evidence led in support of the prosecution case wholly reliable and see no reason to discard it."

38. According to Advocate for appellant, medical evidence is not compatible with ocular evidence.

39. PW-5 Dr. Yogesh Dayal, deposed that on 16.9.2007, he conducted autopsy over the dead body of Vinod Kumar and found five ante-mortem injuries which reads as under :-

(i) *Abraded contusion 6cm x 0.5 cm on left side of face, just above the ramus of mandibular.*

(ii) *Abraded contusion 17 cm x 7 cm on upper arm on tricep area.*

(iii) *Stab wound 2 cm x 1 cm x abdominal cavity deep on front of abdomen right side, 1 cm lateral to umbilicus bleeding.*

(iv) *Stab wound 1 cm x 0.5 cm x Abdominal cavity deep on lower abdomen right side, 7 cm lateral to umbilicus, bleeding.*

(v) *Stab wound, 2 cm x 1 cm x muscle and bone deep present on back of lower chest right side, 4 cm lateral to vertebral coloum and 15 cm below the interior angle of right scapula.*

40. Doctor opined that death of deceased might have occurred due to shock and haemorrhage on account of ante-mortem injuries and it was possible 1/2 days prior to post mortem. He further opined that injury nos. 3, 4 and 5 were possible to be caused by some sharp edged weapon.

41. We are not in agreement with the learned counsel for the appellant for the reasons that PW-1, 2 and 3 supporting prosecution case have deposed that accused-appellant stabbed 3-4 knife blows in the stomach of deceased Vinod Kumar due to which deceased Vinod Kumar received serious injuries and Doctor has opined that death of victim would have been caused due to ante-mortem injuries. In this way medical evidence is totally compatible with oral version.

42. In so far as discrepancies, variations and contradictions in prosecution case are concerned, we have analysed entire evidence in

consonance with submissions raised by learned counsel's and find that the same do not go to the root of case and accused-appellant are not entitled to get benefit of the same.

43. In **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**, Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person.

44. In **Sachin Kumar Singhraha v. State of Madhya Pradesh** in Criminal Appeal Nos. 473-474 of 2019 decided on 12.3.2019, Supreme Court has observed that Court will have to evaluate evidence before it keeping in mind the rustic nature of depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole.

45. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent decision in Criminal Appeal No. 56 of 2018, **Smt. Shamim v. State of (NCT of Delhi)**, decided on 19.09.2018.

46. When such incident takes place, one cannot expect a scripted version from witnesses to show as to what actually happened and in

what manner it had happened. Such minor details normally are neither noticed nor remembered by people since they are in a hurry of incident and apprehensive of what may happen in future. A witness is not expected to recreate a scene as if it was shot after with a scripted version but what material thing has happened that is only noticed or remembered by people and that is stated in evidence. Court has to see whether in broad narration given by witnesses, if there is any material contradiction so as to render evidence so self contradictory as to make it untrustworthy is Minor variation or such omissions which do not otherwise affect trustworthiness of evidence, which is broadly consistent in statement of witnesses, is of no legal consequence and cannot defeat prosecution.

47. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observations, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. Court has to form its opinion about the credibility of witness and record a finding, whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle, but can be one of the factors to test credibility of the prosecution version, when entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statement of

a witnesses cannot be dubbed as improvements as the same may be elaborations of the statements made by the witnesses earlier. Only such omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [**Vide: State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh, (2009) 11 SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT 2010 (12) SC 287**].

48. So far as next argument of learned counsel for the appellant is concerned, according to him, public witness in support of recovery of knife has not been produced from the side of prosecution and absence of public witness recovery become doubtful.

49. We would like to consider briefly the evidence of Officer, who made recovery and some important decisions on this subject. PW-7, Nirankar Singh, I.O. in his statement in chief deposed that he arrested accused Pramod Kumar sitting near a temple at about 9:15 PM. In his disclosure statement, he admitted his guilt and on his pointing out one blood stained knife was recovered from bushes near eucalyptus tree. It is true that recovery is said to be made before public witness as but no public witness has been produced from the side of prosecution to prove recovery. Witness PW-7 was lengthy cross-examined by accused counsel but nothing on record to show that witness had any occasion to falsely implicate the accused.

50. As a matter of rule, there can be no legal proposition that evidence of police officers, unless supported by independent

witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of police officer is found acceptable, it would be an erroneous proposition that court must reject prosecution version solely on the ground that no independent witness was examined. In **Pradeep Narayan Madqaonkar & others vs. State of Maharashtra 1995 (4) SCC 255**, it was held:

"Indeed, the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigation of the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony."

51. **Balbir Singh vs. State 1996 (11) SCC 139**, the Court has repelled a similar contention based on non-examination of independent witnesses. The same legal position has been reiterated time and again by Apex Court vide **Paras Ram vs. State of Haryana 1992 (4) SCC 662**, **Sama Alana Abdulla vs. State of Gujarat 1996 (1) SCC 427**, **Anil alias Andya Sadashiv Nandoskar vs. State of Maharashtra 1996 (2) SCC 589**.

52. In **Subhash Singh Thakurshyam vs State (Through CBI) (1997) 8 SCC 732**, a Two Judge Bench of the Apex Court comprising of Hon'ble M. Mukherjee and Hon'ble K. Thomas JJ, in para 90 observed:

"...We should not forget that the time of the raid was during the odd hours when possibly no pedestrian

would have been trekking on the road nor any shopkeeper remaining in his shop nor a hawker moving around on the pavements."

53. In **State of U.P. v. Zakaullah 1998 Cri. L.J. 863** in para-10, it is said:

*"The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicted person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other. Acquaintance with the police by itself would not destroy a man's independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not independent persons. If the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. **The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person** until it is proved that he was a dependent of the police or other officials for any purpose whatsoever."*

54. Referring to some of the the aforesaid decisions, Court in **Girja Prasad Vs. State of M.P. (2007) 7 SCC 625** held:

"It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The

presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence." (para 25)

55. In the present case, it is fully established from the statement of PW-1 and PW-2 that Vinod Kumar succumbed to knife injuries caused by accused-appellant. Evidence shows that dead body of deceased was found in the house at the time of inquest. Medical evidence shows that death of Vinod Kumar might have occurred due to shock and haemorrhage on account of ante-mortem injuries, as alleged by prosecution. Accused-appellant in his statement under Section 313 Cr.P.C. has given reply that witnesses gave false statement but he did not suggest anything as to why PW-1 and PW-2 gave false statements against him, therefore, there cannot be any hesitation to come to conclusion that accused Pramod Kumar caused death of his brother Vinod Kumar by causing several injuries on his body with knife.

56. In view of facts and legal position discussed hereinabove, we find that Trial Court has rightly analyzed evidence led by prosecution and found accused guilty and convicted him for having committed murder of Vinod Kumar, an offence punishable under Section 302 IPC. Conviction and sentenced awarded by Trial Court is liable to be maintained and confirmed. No interference is warranted by this Court. Jail appeal lacks merit and liable to be dismissed.

57. So far as sentencing of accused-appellant is concerned, it is always a difficult task requiring balance of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in individual cases.

58. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation upon court to constantly remind itself that right of victim, and be it said, on certain occasions or person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [Vide: **Sumer Singh vs. Surajbhan Singh and others**, (2014) 7 SCC 323, **Sham Sunder vs. Puran**, (1990) 4 SCC 731, **M.P. v. Saleem**, (2005) 5 SCC 554, **Ravji v. State of Rajasthan**, (1996) 2 SCC 175].

59. Hence, applying the principles laid down in the aforesaid

judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, we find that punishment awarded to accused-appellant by Trial Court in impugned judgment and order is not excessive and it appears fit and proper and no question arises to interfere in the matter on the point of punishment imposed upon him.

60. Resultantly. **Appeal** lacks merit and is hereby **dismissed**.

61. Lower Court record along with a copy of this judgment be sent back immediately to District Court and Jail concerned for compliance and apprising the accused-appellant.

62. Before parting, we provide that Smt. Archana Singh, Advocate, who has assisted as Amicus Curiae, appearing for appellant in present Jail Appeal, shall be paid counsel's fee as Rs. 15,000/- for his valuable assistance. State Government is directed to ensure payment of aforesaid fee through Additional Legal Remembrancer, posted in the office of Advocate General at Allahabad, without any delay and, in any case, within one month from the date of receipt of copy of this judgment.

Order Date :- 05.09.2019

Manoj