

(2022) 08 DEL CK 0096

In the Delhi High Court

Case No : Criminal Appeal No. 468, 504, 507, 509, 511 Of 2020

Film Kaur @ Ginni & Ors

APPELLANT

Vs

State (Govt.Of Nct Delhi)

RESPONDENT

Date of Decision : 22-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 374(2), 428
Indian Penal Code, 1860 — Section 34, 300(3), 302, 304I, 304II, 450

Citation : (2022) 08 DEL CK 0096

Hon'ble Judges : Siddharth Mridul, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Ajay Verma, S.B. Dandapani, Jagat Rana, Noopur Singhal, Ajay Verma, Sumeet Verma, Mahinder Pratap Singh, Ashish Dutta

Judgement

Siddharth Mridul, J

1. These Criminal Appeals being Criminal Appeal Nos. 511/2020, 509/2020, 507/2020, 504,2020 and 468/2020 have been instituted under the provision of Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C), assailing the Judgment of Conviction dated 06.03.2020 as well as the Order on Sentence dated 17.07.2020, rendered by Learned Additional Sessions Judge-03, North West District, Rohini, Delhi, in Session Case No. 10/2019, titled as 'State vs. Film Kaur and Ors', emanating from F.I.R. No. 809/2018 registered under sections 302/450/34 of the Indian Penal Code, 1860 (IPC) at Police Station: Sultanpuri.

2. The details of the Appellants and their interrelationship is tabulated herein below, for the ease of comprehension:

Appellants

Name

Relation

A1

FILM KAUR @ GINNI

WIFE OF DECEASED

A2

RAM SINGH

FATHER OF A1

A3

JASWANT SINGH

BROTHER OF A1

A4

BUNTY SINGH

PARAMOUR OF A1

A5

DEEPAK

SON OF A1 BORN OUT OF PREVIOUS MARRIAGE

3. By way of the impugned judgment dated 06.03.2020 and the order on sentence dated 17.07.2020, all Appellants have been convicted for committing the murder of the deceased victim Sonu s/o Shyam Lal, by way of inflicting deadly injury upon the deceased firstly, with dandas; and subsequently by hurling him down the stairs from 3rd floor to 2nd floor, in furtherance of their common intention; which acts of commission eventually resulted in the latter's untimely demise at the young age of 28 years.

4. All the Appellants were convicted and sentenced for the offences mentioned hereunder:

(i) qua the offence punishable under Section 302/34 IPC, to undergo Rigorous Imprisonment for life and to fine of Rs. 20,000/- each; and in default of payment of fine to undergo further R.I. for six months each;

(ii) qua offence punishable under Section 450/34 IPC, to undergo Rigorous Imprisonment for ten years and to fine of Rs. 20,000/- each; and in default of payment of fine to undergo further R.I. for six months each.

All the sentences were directed to run concurrently, according the benefit of Section 428 Cr.P.C to all the convicts/appellants herein.

5. RELEVANT FACTS : IN A NUTSHELL

(i) The fulcrum of the case of the prosecution is that, on the night of 11.10.2018 the Appellants sharing common intention, inflicted injuries on the body of Sonu s/

o Shyam Lal r/o H No. D1/28, Sultanpuri, Delhi (the 'deceased'); who consequently, succumbed to his untimely death at the Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi ('SGM Hospital') on 18.10.2018.

(ii) The fatal injuries were allegedly caused with dandas. It is the case of prosecution that Appellants after assaulting the victim with dandas, threw him down the stairs from 3rd floor to 2nd floor of the subject dwelling and thereafter absconded from the crime spot.

(iii) The entire incident was witnessed by the sole eye-witness PW-2 Smt. Phool Kaur w/o Subhash (mother of deceased), who was present with the deceased at the time of the commission of the crime.

(iv) A PCR call was received by Head Constable Sumit (PW-1) regarding the beating of one person, oozing blood profusely, as reflected in Daily Diary No.15-A [Ex.PW-1/A], lodged at Police Station: Sultanpuri, Delhi ('the Police Station'). Assistant Sub-Inspector Rishipal (PW-8) alongwith Constable Mukesh (PW-7) reached the crime spot, where they found upon inquiry that the victim had already been shifted to the SGM Hospital. Thereafter, the said police officers reached SGM hospital, where they came to know that the injured had been admitted in ICU in an unconscious condition.

(v) ASI Rishipal (PW-8) prepared the rukka (Ex.PW-2/A), based on which the FIR (Ex.PW-1/B) was got registered and investigation thereof was marked and handed over to (PW-15) Sub-Inspector Amit (IO).

(vi) Thereupon, IO also reached the crime spot, and inspected the scene of crime. However, no blood stains were found, and the IO, therefore, did not call the crime team and simply prepared the site plan [Ex.PW-15/A]. On the 18.10.2018 the IO was informed that the victim of the deadly assault, namely Sonu, had passed away.

(vii) Thereupon, the dead body of the deceased was sent for post-mortem at SGM hospital [Ex.PW-4/A]. On 18.10.2018, PW-15 conducted inquest proceedings and the dead body of the deceased was identified vide identification memo by Mr. Sanjay @ Sanjeev and Smt. Phool Kaur [vide Ex.PW-3/A and Ex.PW-15/B respectively] and thereafter the dead body was handed over to his mother PW-2 [vide Ex.PW-3/B].

(viii) On 20.10.2018 Appellant No.4 Bunt Singh and Appellant No.1 Film Kaur @ Ginni reached the police station, where they were identified by the PW-2 (sole eye-witness); and arrested by the IO vide Arrest Memos: [Ex-Pw-12/A] and [Ex-Pw-14/A] respectively; and on 24.10.2018 the other three Appellants namely, Appellant No.2-Ram Singh, Appellant No.3-Jaswant Singh and Appellant No.5-Deepak were arrested vide Arrest Memos: [Ex.PW-11/A], [Ex.PW-11/B] and [Ex.PW-11/C] respectively.

(ix) The Disclosure Statements of all the Appellants admitting their involvement in the offence was recorded vide [Ex.PW-11/I, Ex.PW-15/G, Ex.PW-11/H,

Ex.PW-11/G and Ex.PW-11/F].As per the MLC [Ex.PW-5/A] the victim was admitted in an unconscious state and there was laceration present over the occipital region admeasuring 2 x 1 x 0.5 cm. Blood was found present on the nose and the pupils were mildly dilated and not reacting to light.

(x) Insofar as the Post-Mortem Report is concerned [Ex.PW-4/A, CW-1/A], it has been elaborated therein that the following external injuries were present on the body of the deceased:

"1. Stitched Lacerated wound of size 3 x 0.5 cm x bone deep on mid occipital region.

2. Two partially healed scab separating abrasion of size 4 x 3 cm & 2 x 1.9 cm on right forearm and left leg respectively.

Head

* Scalp: Sub scalp bruising in occipital region.

* Skull: Fracture of left occipital bone

* Brain: Brain matter is congested & edematous. Diffuse thin film of subdural hemorrhage over both cerebral hemispheres.î

(xi) In the opinion of Dr. Munish Wadhwan (CW-1), the cause of death of the victim was craniocerebral damage as aresult of blunt force/object impact; all injuries being ante-mortem in nature.

6. Charges were framed vide order dated 02.03.2019, to which all appellants pleaded not guilty and claimed trial. At the trial, in support of the allegations the Prosecution examined 15 Prosecution Witnesses. One Court witness was also examined in support of the prosecution's case.

SECTION 313 STATEMENT :

7. The Appellants in their defence chose not to lead any evidence. However, it has been stated by them in their statements recorded under the provision of Section 313 Cr.P.C that they have been falsely implicated in the present case by the police in order to save the main culprits.

PROSECUTION WITNESSES :

8. An overview of the relevant witnesses produced by the prosecution may be summarised as under:

Witness No.

Witness name

Relevance

PW-2

Smt. Phool Kaur

Mother of the Deceased Sonu.

PW-4/ CW-1

Dr. Munish Wadhwan

Autopsy surgeon who conducted the postmortem Ex.Pw-4/A at SGM Hospital, Mangolpuri

PW-5

Dr. Sudhir

Doctor who proved MLC No.16131/18 dated 12.10.2018 as Ex.PW-5/A.

PW-6

POOJA

Sister of Deceased

PW-8

ASI RISHIPAL

Initial IO of the case who recorded the statement of Phool Kaur Ex.PW2/A and subsequently prepared the Rukka Ex.PW8/A

PW-15

SI AMIT

Investigating Officer of the case, and proved the entire investigation and the documents exhibited in the testimony of other witnesses.

TRIAL COURT JUDGMENT :

9. The Trial Court, whilst rejecting the defence set-up by the Appellants, convicted them, broadly on the following grounds as extracted herein below:

(i) The testimony of PW-2, the sole - eyewitness being consistent, credible and truthful;

(ii) Common intention shared by the Appellants to exact revenge for the insult felt by them, consequent upon the abuses directed against them to the effect that Appellant No.1 - Film Kaur was in an illicit relationship with Appellant No.4 - Bunt Singh;

(iii) The certitude of the circumstance that the death of the deceased was homicidal in nature as corroborated by medical evidence on record.

10. SUBMISSIONS OF THE APPELLANTS :

(i) Mr. Ajay Verma, learned counsel appearing on behalf of the Appellant No.2

and 5 would submit that although conviction can be based on the testimony of the sole eyewitness but only when the same is found cogent, of sterling quality and inspires confidence.

(ii) It is urged that in the present case the presence of sole eyewitness PW-2Smt. Phool Kaur was highly doubtful at the time of incident and her post incident conduct does not inspire confidence, since as per her first statement which forms the basis for rukka, it is apparent that she did not even try to save her son from the clutches of the Appellants herein; and did not call the police on 100 number, neither did she take her son to hospital, nor called her real daughter and son-in-law (damaad) who were residing in the neighborhood. Infact she locked herself inside the room, hid herself and slept, which does not inspire confidence. It is argued that it is impossible for a mother to be a mute spectator to the incident and sleep when her son was being beaten-up and was bleeding profusely and was under pain; and only when she woke-up in the morning at 5 AM did she inform her daughter PW-6 Pooja, who called ambulance and called police on 100number after delay of about 10 hours of the incident.

(iii) As per her first statement which forms the basis for rukka, whatever allegedly occurred, happened on the roof and since she locked herself up in the room, she has not even seen the incident with her own eyes; she only saw Appellants entering the house alongwith 20-25 persons and going upstairs on the roof of the building, where she was living on rent.

(iv) It is further submitted that it is not the case of the prosecution that the deceased died on the spot but that he died after 7 days of the incident, after getting due treatment at the hospital, which proves that Appellants did not have the intention to kill the deceased.

(v) It is further submitted that no opinion regarding the weapon of offence was taken by IO from the Post Mortem Doctor nor was the alleged weapon of offence viz the Danda recovered from any of the Appellants.

(vi) It is further submitted that neither the crime team was called to at the scene of crime (soc), nor were blood stained earth, blood stained cloths of deceased seized; nor were the bloodstained bamboo stairs nor blood marks at the scene of crime got photographed.

(vii) It is further submitted that the prosecution also failed to prove the motive in the present case. Thus, in the absence of motive or intention to kill the deceased, the case at most is covered under section 304 Part II IPC and not under section 302 IPC.

(viii) It is further submitted that the Ld. Trial Court has not dealt with Section 34 IPC i.e. common intention and has not discussed as to how the Appellant shared common intention in this case, since no covert or overt act is proved by prosecution for proving criminal intention shared by the Appellant, or meeting of minds or pre-arranged plan, to kill the victim.

(ix) Learned counsel appearing on behalf of the other Appellants whilst subscribing to the above submissions, further submitted that there are glaring contradictions and material improvements in the testimony of the purported eye witnesses PW-2.

(x) It is also submitted that the role ascribed to the Appellants of inflicting injury upon the deceased with Danda, is not proven by the prosecution as no danda was recovered from any of the Appellants. It is further submitted that there was no material evidence on record to show that there was a pre-meeting of minds between the appellants prior to committing the alleged offence. It is also submitted that no independent witness had testified to the occurrence of the incident except PW-2, who is an interested witness being the mother of the deceased. Thus it would be unsafe to base the conviction solely on the testimony of PW-2, who is not a credible and reliable witness.

11. SUBMISSIONS OF STATE :

(i) Per Contra Mr. Ashish Dutta, Ld APP appearing for the State, whilst refuting the arguments of the Appellants and concurring with judgment and order of conviction passed by the learned trial court in-toto would submit that all the PWs examined by the prosecution have firmly stood the test of cross examination and have been able to prove the case of prosecution beyond the pale of reasonable doubt.

(ii) It is also submitted that the prosecution has been able to establish its case clearly and coherently, and merely because there are some discrepancies in the testimony of the PWs does not take away from their clear and cogent deposition before the Ld Court and the Court is not required to procure and reproduce a parroted version of PWs.

(iii) It is also argued that PW-2 is a star witness of this case being the eye witness. She has categorically deposed about the incident and have firmly stood the ground during her cross-examination and has corroborated and proved the case of the prosecution. Her testimony also clearly establishes the motive behind the crime committed by the Appellants, in furtherance of their common intention of committing murder of the young man in his early 30's.

(iv) It is further submitted that there is cogent ocular evidence of PW-2 who has identified all the Appellants and has described the role of every Appellant. The ocular evidence is further supported and substantiated by the medical evidence of PW-5, who has opined the cause of death to be cranio-cerebral damage as a result of blunt force/object impact.

(v) Thus, according to the State, the case is proved by the prosecution beyond reasonable doubt on the basis of ocular as well as medical evidence, forming a complete chain of events to prove the guilt of the appellants.

(vi) While on the one hand hinging their case on eyewitness/ocular testimony at the hands of PW-2, the State has also, in the alternate, canvassed that the

appellants had "motive" to murder the deceased, since the deceased is stated to have had an estranged relationship with appellant No. 1 Film Kaur, who was his former wife.

ANALYSIS AND DECISION :

12. We have carefully considered the submissions made by learned counsel for the Appellants and the learned APP; have closely examined the evidence marshalled by the prosecution; and have perused the impugned judgment and sentencing order.

13. On the facts of the present case, it is undeniable that a young man has lost his precious life, and now the court is confronted with the question as to whether there was an intention to kill the deceased by the Appellants, in furtherance of their common intention, so as to attract the rigorous provision of section 302 IPC; or was there merely an intention to cause bodily injury, which would fall within the pale of Section 304 Part II thereof.

14. For sake of completeness, it would be profitable to briefly encapsulate the legal position that has been settled by the Apex Court in the celebrated judgment of Virsa Singh v. State of Punjab reported as AIR 1958 SC 465 which is locus-classicus in criminal jurisprudence, as follows:-

(a) If the subject injury is intended and is not caused by an accident or otherwise is not unintentional and the injury is sufficient in the ordinary course of nature to cause death, then the same would fall under Section 300 clause (3) and be punishable under Section 302 of IPC;

(b) If there is intent to cause a bodily injury likely to cause death, then the same would be a case of Section 304 Part I of IPC; and

(c) If it is only a case of knowledge and not intention to cause a bodily injury likely to cause death, then the same would fall under Section 304 Part II of IPC.

15. Re : Testimony of the Sole Eye-Witness. However, that being said, what is to be considered is the credibility and reliability of the sole eyewitness testimony upon which the decision of the present case rests.

16. The entire case of the prosecution rests and revolves around the testimony of sole eye-witness PW-2 ñ Smt. Phool Kaur. We therefore now proceed to weigh the testimony of the PW-2, as deposed before the Trial court. The testimony of PW-2 reads as follows:

"16.03.2019

PW2: Statement of Smt.Phool Kaur, W/o Sh. Subhash,R/o H.No. D-1/28, Sultan puri Delhi, present address H.No. D-7 block, Sultan Piuri.

ON SA

At the time of incident, I was residing at D-1/28, Sultan Puri, Delhi and I used to

work as a maid at houses. I had four children out of which Sonu died in the present incident. My deceased son Sonu got married with accused Ginni @ Film Kaur about four years back but both took customary divorce after out one year of marriage i.e about 4-5 years after the marriage.

Question: tell me about the present incident?

Ans. It was 11th day of 10th month of the year and incident took place for about 5 months back. On that day at about 11.00 pm my son namely Sonu who had gone outside came to house and said to me "mummy mujhe bacha lo". Thereafter he went upstairs. In the meantime, 20-25 persons entered my house including accused Film Kaur @ Ginni, her husband Bunty, Ram Singh and Jaswant and son of Ginni.

At this stage, witness has pointed out towards all the five accused persons and had deposed that all the five accused persons are involved in the incident. Accused persons gave beatings to my son with dandas and thereafter they threw him from the third floor to the stairs of second floor. At the time of incident, I was residing at the second floor of the house. Thereafter accused persons fled away from the house. Thereafter my son sustained injuries on head and neck. Blood was oozing from nose, mouth and ear of my son. Due to fear, I did not take him to the hospital. At about 5:00 am I went to my daughter's house who was residing in my neighbourhood as blood was still oozing from the body of my son. My daughter called ambulance from Sanjay Gandhi hospital and we took our son at the hospital. My daughter made a call at number 100. Police came at the hospital. I was also become unconscious. Police recorded my statement Ex.PW2/A bearing my thumb impression at point A. On 18.10.2018 my son expired in the hospital.

After the postmortem I identified dead body of my son Sonu.

XXXX by Sh. Ashok Chikara and Sh. Ramesh Chander Ld.Counsels for all accused persons.

My statement Ex.PW2/A was not read over to me by IO and I was asked to put my thumb impression on the same. I had put my thumb impression on my complaint at Sanjay Gandhi Hospital, but I do not remember the time as I was unconscious. Vol "jab mujhe hoash aya tha jab anugtha lagwaya tha". I do not know the contents of Ex.PW2/A as I am illiterate.

Further cross examination is deferred as witness is not feeling well.

xxxx xxxx xxxx

22.03.2019

PW: 2 Smt. Phool Kaur (recalled for further cross-examination after 16.03.2019)

ON SA

XXXX by Shri Ashok Chhikara and Ms.Tajinder Kaur, Ld. Counsels for all the

accused.

We had made call at SGM hospital and one big vehicle had arrived in which my son was shifted to hospital. My son was taken to the hospital in a big vehicle and not in PCR. Confronted with statement EX.PW-2/A where it is mentioned that my daughter made call at number 100 and PCR took to Sanjay Gandhi hospital. We reached SGM hospital at about 9.00-10.00am. My sons-in-law Sanjay Singh and Pradeep accompanied me while taking my injured son to the hospital. I had gone to my younger daughter's house in the morning and I had called Pradeep to my house. I had called my son in law Sanjay to my house. The house of Sanjay Singh is situated after 6-7 houses from my house. I had not called my son in law Sanjay during the night hours. I was not on talking and visiting terms with my son in law Sanjay, as such, my daughter had called him in the morning. My son in law Pardeep had come first at my house. Myself, Sanjay, Pardeep and 2-3 other persons had brought down my son. I do not know those 2-3 persons who had helped in bringing down my son. Vol. "Gali ke nashe karne wale ladke the". Prior to taking my son to SGM hospital, we did not take him to any private doctor. It is correct that one Dr. Khan of nearby clinic had visited my house in the night and he put a bandage on the head of my son deceased Sonu. Vol. 'Patti bandhi thi. khul gai thi'. I did not observe whether the said bandage was there on the head of my son or not when he was being taken to the hospital. It is correct that one fair (mela) was being organized at Jalebi Chowk, Sultanpuri on the date of incident and my younger son had also gone to visit the fair. My younger son Gaurav resides with me and he returned from the said fair at about 1.00-1.30am. It is wrong to suggest that I had also gone to said fair on the date of incident. It is correct my grandson (dauta) namely Hardeep had also sustained injury on that day. It is wrong to suggest that my grandson Hardeep had sustained injuries as my son in law Pardeep had dragged him from his leg from the bamboo ladder. Vol. When the accused persons along with other persons entered inside my house, Hardeep was with me at that time and due to said crowd, he fell down and sustained injury. It is wrong to suggest that my son in law Pardeep did not accompany me to the mortuary at the time of obtaining dead body of my son. It is wrong to suggest that at that time, Pardeep was absconding as he caused the injury to Sonu which resulted into his death. Police did not record the statement of Pardeep in my presence. Vol. Pardeep was not present there. Again said, Pardeep bahar khadatha, saari bheed bahar khadi thi. Sanjay was with me inside the house. My son in law Pardeep is relative of accused Jaswant. I know Rajesh, his wife Manjeet Kaur @ Laali. It is wrong to suggest that Rajesh and Laali are my relatives. It is correct that one court case is pending between Jaswant and Rajesh & his wife Manjeet Kaur. It is wrong to suggest that due to the said reason, I have falsely implicated accused Jaswant and his family members.

The doctor at SGM hospital had talked with Sanjay. I was standing outside and only Sanjay was allowed to enter inside by the doctors. It is wrong to suggest that I had told doctor that Sonu had sustained injury at 12.30am due to fall from

stairs. It is wrong to suggest that I had not seen accused persons giving beatings to my son Sonu. All the accused persons had gone upstairs while the other ladies and other persons remained outside my house. The building in which I am residing is having three stories. When the accused persons followed my son upstairs, I was present on the stairs on first floor where my room was situated and they pushed me and went upstairs. One old lady was residing on the second floor of said building but on the day of incident, she was not present as she had gone to Chandigarh. None was present on the ground floor of said building. The ground floor is in the possession of owner of said building and it usually remained locked. I had gone to call Dr. Khan. It is wrong to suggest that accused persons did not come to my house on the day of incident or that they have not caused any injury to my son. Vol. I had sustained injury in the little finger of my right hand and shoulder as accused persons had pushed me. I had not told this fact to the police. Vol. Mai apne bache me lagi hui thi. Police had called me twice or thrice with respect to the investigation of this case. When accused Ginni was arrested, I was called by the police. The doctor of SGM hospital had told me that my son Sonu had sustained injury in his neck. The house of my daughter Pooja is situated at the distance of 10-15 minutes on foot, from my house. When I visited the house of Pooja, my son in law Pardeep accompanied me and Pooja directly reached at SGM hospital. My daughter Pooja had taken phone of my son in law Sanjay and she made a call at SGM hospital to one police official. I was not in conscious state of mind at the hospital."Mai apna bacha dekh kar gir bhi gai thi." My daughter Pooja and my son in law Sanjay had made a call for the vehicle to be called from the hospital. I had shown the place of incident of IO who prepared site plan of the same. I had told the IO that my son was thrown from the roof of second floor. When IO prepared the site plan, I was not present there as I had gone to my work.

23.04.2019

PW-2: Statement of smt Phool Kaur (recalled for her further cross examination in continuation of her earlier examination recorded on 22.03.2019)

ON SA

XXXX by Sh. Ashok Chikara and Ms. Tejender Kaur, Id.

Counsels for all accused persons.

My son deceased Sonu used to drink alcohol occasionally. I got my son admitted in rehabilitation/ de-addiction center for about 10- 12 times. I do not remember exact date when he was got admitted. It is correct that my son Sonu was once arrested. Vol. He was arrested on my complaint. It is wrong to suggest that my son Sonu misbehaved with my granddaughter and due to this reason he was arrested. I do not remember the exact penal sections in which my son was arrested, however he was arrested in quarrel cases. It is wrong to suggest that my son Sonu was arrested in offence u/s 354 IPC. It is correct that when my son was alive there was quarrel in between his wife for the reason of his addiction. I

do not have any knowledge whether he was in love with his wife. It is wrong to suggest that divorce of my son took place with his wife due to his addiction.

I did not visit at the clinic of Dr. Khan on the date of incident. On the date of incident no one suffered injuries at my house, however I had sustained injuries. On the fateful day I as well as my son Sonu was present in the house. My other son namely Gaurav was not present at the house as I do not know where he had gone on that night.

I saw that blood stained were present on the clothes of my son Sonu as well as on the bed where he was lying. I had thrown the blood stained clothes. I do not remember whether I had given the blood stained clothes to the police officials or not. I also do not remember whether the same were demanded by the police officials or not. It is wrong to suggest that accused persons had not trespassed in my house. It is further wrong to suggest that accused persons did not inflict any injury on the body of my deceased son. It is further wrong to suggest that my son died due to the injuries caused by my Son-in-law Pradeep. It is further wrong to suggest that I am deposing falsely just to falsely implicate the accused persons."

17. On a plain reading of the testimony of PW-2, it is evident that she says that after entering the house, her son, the deceased,"went upstairs" and was allegedly followed by 20-25 persons to the house, including the five accused/appellants who (latter) then went to the third floor; while she remained on the first floor of the house. PW-2 thereafter deposes that the appellants" gave beatings to my son with dandas and thereafter they threw him from the third floor to the stairs of second floor.". PW-2 also says that she saw the appellants beat her son, without explaining as to how she could see the 20-25 persons beat her son when she was on the first floor and the assailants had allegedly followed her son to the third floor; and if so, who from among the appellants beat him.

18. PW-2 proceeds further to say that after allegedly beating her son, the appellants"fled away from the house" and that her son sustained injuries on the head and neck, with blood oozing from his nose, mouth and ear. Curiously, PW-2 however says that"Due to fear I did not take him to the hospital. Ö". This, in our view, is singularly unbelievable. Despite her son allegedly oozing blood from his mouth, nose and ear, PW-2, not being a stranger or passer-by but the mother, would definitely have called for some help and ensured that her son received medical attention.

19. PW-2 then says that"At about 5.00am I went to my daughter's house who was residing in my neighbourhood as blood was still oozing from the body of my son. My daughter called ambulance from Sanjay Gandhi hospital and we took our son at the hospital. Therefore, if PW-2 is to be believed, from the time he was beaten at about 11 p.m. until about 05:00 a.m. the next morning, the injured kept bleeding and his own mother did nothing to get him medical attention and only chose to call her daughter, who she says resides in the neighbourhood, at

about 05:00 a.m. the next morning, which is when they took the injured to the hospital. This statement of PW-2 strains credulity.

20. Upon a combined reading of her examination-in-chief and cross-examination, there is no clarity as to whether PW-2 became unconscious once she brought her son to the hospital, or subsequently; or, as to when the police recorded her statement; or, when she regained consciousness, to be able to affix her thumb impression on the statement so recorded.

21. Further contradicting herself as to her son's medical condition on that fateful night, PW-2 says that "Prior to taking my son to SGM hospital, we did not take him to any private doctor. It is correct that one Dr. Khan of nearby clinic had visited my house in the night and he put a bandage on the head of my son deceased Sonu". There is no explanation as to who called Dr. Khan to PW-2's house at night; and that if a doctor had indeed attended to her son that night, with the state she describes her son was in, why he was not moved to the hospital by calling the police.

22. PW-2 further narrates in her cross-examination that her younger son, Gaurav, resides with her and returned at about 01:00 -1:30 a.m. from a fair (mela) that was going-on near her house. It is again inexplicable as to why, if the younger son returned home at about 01:00 -01:30 a.m., did the younger son not take his injured brother to the hospital at night itself. There is yet another contradiction in the statement of PW-2, when in her cross-examination on 22.03.2019, PW-2 states that her younger son Gaurav had returned from the fair (mela) at about 01:00 -01:30 am; while in her cross-examination on 23.04.2019 she says that she did not know where Gaurav had gone that night.

23. Yet another statement made by PW-2 during her cross-examination is that her grandson (dauta), Hardeep, had also sustained injuries that day. She says that when the appellants and others entered her house, Hardeep was with her but due to the crowd, he fell and sustained injury. Yet again, there is no explanation whatsoever, as to why her grandson who was present at the house at the relevant time, did not attend to the injured son.

24. Contradicting her stand that nothing was done to medically attend to her son that night, in her cross-examination on 22.03.2019, PW-2 states that "I had gone to call Dr. Khan." which, if true, must have been during or after the assault on her son. PW-2 then contradicts herself yet again during cross-examination on 23.04.2019, when she says that 'I did not visit at the clinic of Dr. Khan on the date of incident.'

25. In the opinion of this court, the aforementioned contradictions are not insignificant or immaterial but go to the root of the narrative which PW-2 has sought to draw-up in relation to the incident on that fateful night. It is wholly inconceivable and incredible that a mother would do nothing to get medical attention for her son who, she says, had been brutally assaulted by a horde of people, who barged into her house. This is especially so, when PW-2 says that

her younger son was living with her in the same house; and her grandson was present at the relevant time or soon thereafter. It defies all logic that from about 11:00 p.m. the previous night to about 05:00 a.m. the next morning, the mother and presumably, the younger son and the grandson, did nothing to attend to the medical condition of the injured, when the mother says that blood was oozing from his nose, ear and mouth.

26. It may also be mentioned in the passing that there are also contradictions in the testimony of PW-2 when compared with her statement recorded under section 161 Cr.P.C. as reflected in the FIR, although in view of what we have observed above, it is not necessary for us to delve any further into such contradictions.

27. Accordingly, we do not think that the testimony of the sole-eyewitness PW2 deserves any credence or credibility.

28. To be completely clear, we are not saying that PW-2 ought to have defended or protected her son from the alleged assault by the appellants and the horde of people who are supposed to have accompanied them; or even that she should have raised a cry for help while the alleged assault was happening. It is perhaps believable that an aged woman would have gone and hid herself in a room to protect herself from being assaulted. However, what belies PW2's credibility, is her conduct immediately after the alleged assault, in neither calling for help; nor calling the police; nor taking any steps to attend to her son medically. The passing reference to a Dr. Khan, who was called and supposedly administered first-aid to her son, also does not inspire confidence for the reason that if, as PW-2 says, her son was bleeding profusely, it was natural and expected of the mother to have taken steps to move her son to a nearby hospital or other medical facility; especially since she says that her younger son and her grandson were both with her that night; and also that her daughter stayed in the neighbourhood. The fact that she did not do anything until 05:00 a.m. the next morning, makes her testimony wholly unbelievable.

29. For sake of completeness we may also briefly allude to the reference made by the prosecution that the appellants also had 'motive' to harm the deceased. In this behalf, in the context of the fact that appellant No. 1/Film Kaur was the estranged or divorced wife of the deceased, the sister of the deceased PW-6 has deposed that appellant No. 1 had warned PW-6 that her brother "should not be seen in the street". However, since the prosecution case essentially proceeds on the supposed eye-witness testimony of PW-2, it is not necessary for the court to delve into the question of motive, which would acquire relevance if the prosecution was basing its case on circumstantial evidence.

30. Although the medical evidence inter-alia the MLC and the post-mortem report, coupled with the testimonies of the doctors who conducted the MLC and the post-mortem, it is evident that the injured suffered an unnatural death by reason of craniocerebral damage as a result of blunt force/object impact, which

could possibly have been caused by an assault with dandas or being thrown-off the stairs, that alone is not sufficient to impute guilt to the appellants or any of them. Absent any credible testimony connecting the appellants to the offence, we find ourselves unable to agree with the findings returned by the learned trial court, based on which the appellants have been convicted.

31. Upon an overall consideration of the evidence on record therefore, we are persuaded to afford to all the appellants, the benefit of doubt.

32. In the above view of the matter, judgment dated 06.03.2020 convicting the appellants is set-aside and the sentence awarded vide sentencing order dated 17.07.2020 is quashed.

33. The appellants are directed to be released forthwith if not wanted in any other case.

34. There shall be no order as to cost.

35. The Trial Court Record be sent back forthwith.

36. A copy of this judgment be provided to learned counsel appearing on behalf of the parties electronically and be also uploaded on the website of this Court forthwith.