

(2022) 10 DEL CK 0137

In the Delhi High Court

Case No : Criminal Appeal No. 402, 412, 424, 425 Of 2020

Mani Shankar

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 392, 394, 397, 411
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 27

Citation : (2022) 10 DEL CK 0137

Hon'ble Judges : Mukta Gupta, J;Anish Dayal, J

Bench : Division Bench

Advocate : Sumeet Verma, Mahinder Pratap Singh, Shubhi Gupta, Harsh Prabhakar, Dhruv Chaudhry, Yash Kotak

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. By these four appeals, all the four appellants challenge the common impugned judgment dated 15th February, 2020 convicting the four appellants for committing murder of Sarita @ Pinki ("deceased") and for attempt to murder of Manish Jaiswal (PW-5) while committing robbery at their house in furtherance of their common intention. Appellants also challenge the impugned order on sentence dated 20th February, 2020 directing all the four convicts to undergo imprisonment for life alongwith a fine of Rs. 10,000/- each and in default simple imprisonment for 6 months for offence punishable under section 302/34 IPC; further directing all four convicts to undergo rigorous imprisonment for 10 years alongwith fine of Rs. 5,000/- each and in default simple imprisonment for 3 months for offence punishable under section 307/34 IPC; and further directing them to undergo rigorous imprisonment for 7 years alongwith fine of Rs. 5,000/- and in default simple imprisonment of 1 month for offence punishable under section 392 r/w section 397/34 IPC.

2. Briefly the case of the prosecution is that on 28th January, 2013 at 4.30 pm, complainant Munni Devi (PW-2) alongwith her daughter in law Shweta (PW-6) left to see a doctor, and when they came back at about 5.30 PM complainant found the door was closed from inside and her son Manish (PW-5) was shouting "mummy... mummy" from inside. The complainant pushed open the door and the appellants came out. Manish also came out bleeding from his face. The appellants pushed aside the complainant and Shweta (PW-6) and ran towards the main door. The complainant ran after the appellants and apprehended one of them (later identified as Mani Shankar). Thereafter, the complainant went back to the room and saw her daughter lying dead on the floor and the articles of the house scattered.

3. Upon receipt of information to Duty officer at PS Madhu Vihar, IO Insp. S.N. Rajora (PW-45) alongwith SI Kiran Pal (PW-41), SI Ramphal (PW-27), Ct. Naveen (PW-24) and Ct. Raghav reached the spot i.e. H.No. F-105, Gali No.4, West Vinod Nagar, where in the inner room, body of one female was found lying on her belly with her neck cut with some sharp weapon and blood spilled in the room. Manish, the injured was taken to the hospital by Satish. One of the accused was identified by the victims as their ex-employee namely Sanjeev, who used to drive their car 6 years ago. Accused Mani Shankar was apprehended by the complainant at the spot and handed over to the PCR officials, whereas the other three accused including Sanjeev managed to flee away. FIR No. 53/2013 dated 28.01.2013 u/s.302/307/394/397/34 IPC at PS Madhu Vihar was registered on the statement of Munni Devi, the mother of Manish and Sarita (deceased). Appellants Sanjeev and Sandeep were apprehended on 3rd February, 2013 after a raid was conducted at H.No.225, Patel Nagar Society, Godhara, Surat and the fourth appellant Ajay was arrested from Madhubani, Bihar on 16th February, 2013.

4. The postmortem of deceased Sarita was conducted on 29th January, 2013 at about 2:15 PM at Lal Bahadur Shastri Hospital by PW-22, Dr. Vinay Kumar Singh, Specialist, Forensic Medicine, Aruna Asaf Ali Hospital, Delhi (Ex.PW-22/A). Following injuries were found on the deceased:

- i. Incised wound all around neck 21 x 3 x 8 cms, margins sharp & regular, bone deep all structure muscle, vessels, incised 126 cms. above heel, oblique.
- ii. Incised wound in front of neck 5 cms. below Rt. ear, 11 x 4 x 5 cms., margin sharp & regular oblique.
- iii. Multiple incised parallel to each other over Rt side at jaw, around area at 11 x 6 cms, margin sharp & regular, oblique.
- iv. Incised wound at Left angle of mouth, 7 x 3.4 x 2.5 cms. margins sharp & regular, oblique.
- v. Incised wound over back at neck, 122 cms, above heel, 14 x 6 x 3 cms., margin sharp & regular, oblique.

vi. Incised wound just above Rt shoulder, 124.5 cms, from heel, 4 x 1.3 x 1.4 cms. margins sharp & regular, oblique.

vii. Incised wound over Rt. side of back of chest, 1.5 cms, from mid line, 106.5 cms., above heel, margin sharp & regular, oblique.

viii. Incised wound on inner aspect at Rt side buttock, 68 cms., above heel 6 x 3 x 9.5 cms., 2 cms., from mid line, margin sharp & regular oblique."

5. It was opined by Dr. Vinay Kumar (PW-22) that the cause of death was due to shock and hemorrhage, consequent to the cut throat injuries caused by sharp edged cutting weapons. It was also opined that injuries no. 1, 2, 5 were individually and collectively sufficient to cause death and that it was a homicidal death. Subsequent opinion was also sought from PW-22, wherein he opined that all the 8 injuries in the PM report were possible with the two knives/weapons examined by him (Ex.PW-22/X).

6. Charges were framed against all the four appellants under Section 392 r/w 397 IPC and Sections 394/307/302/34 IPC. Separate charge under Section 411 IPC was also framed against Ajay Mandal, Sandeep Kumar and Sanjeev Kumar.

7. During the course of trial, 45 prosecution witnesses were examined. As per the case of prosecution, Manish (PW-5), Munni Devi, the complainant (PW-2) and Shweta Jaiswal (PW-6) are the star witnesses. Manish (PW-5) who is the injured and the eye witness was present at his house along with the deceased at the time of incident and he also sustained grievous injuries. Complainant (PW-2) and Smt. Shweta Jaiswal (PW-6) both had seen appellants while running out from their house.

8. Appellant Mani Shankar assails the impugned judgment on the grounds that no recovery was effected from him, either of any robbed item or of any weapon. He has been falsely implicated in the case and that on the day of incident, he was sitting on his cycle rickshaw near the place of incident and was under influence of liquor. The fact of him being under the influence of liquor was also acknowledged by IO (PW-45). It was further contended that there are material inconsistencies in the testimonies of PW5, PW2, PW 21, PW 20 and PW6 with respect his apprehension at the spot. PW-2 deposed that Mani Shankar was apprehended by her with the help of the neighbors Kamal & Shukla Gupta (PW-21). Shukla Gupta deposed that when he reached the spot, one person was overpowered by the public persons and Kamal was also helping them to apprehend that person. Further Shukla Gupta failed to identify Mani Shankar. Shukla Gupta also stated that the offender was apprehended from outside of his house. Rekha Gupta (PW-20) turned hostile and stated that "it was wrong to suggest that accused Mani Shankar was apprehended from the spot and he is the same badmash". Shweta (PW-6) stated that Mani Shankar was arrested from 1-2 minutes walking distance of her house. She also stated that Mani Shankar was not apprehended in her presence. It was further contended on behalf of the appellant that although he was apprehended on 28th January, 2013 but he was

arrested on the next day i.e. 29th January, 2013 as recorded in his arrest memo Ex.PW27/B. The MLC of the appellant (Ex.PW10/E) records the date and time of arrival as 28.01.2013 at 6.30 pm, and that smell of alcohol was coming from the appellant and he was drowsy. It was also contended that the incriminating evidence against the appellant was that the DNA profile generated from the blood gauze of the deceased matched with the hand wash of appellant and blood found on his coat which was seized by the doctor while conducting the MLC. However, neither the said MLC was proved nor the doctor was examined, and therefore, this casts a serious doubt on the version of the prosecution. Further, it was also not established that the said handwash and coat belonged to the appellant. With respect to the chance print report (PW-33/A) wherein out of the two chance prints lifted from the place of incident, one was found identical with the specimen right index finger impression of the appellant, it was contended that since fingerprint of only appellant Mani Shankar was found out of all the four convicts, a legitimate doubt is cast that fingerprint impression might have been planted by the police. Reliance was placed on (2021) 4 SCC 345 Hari Om @ Hero vs. State of U.P.

9. Learned counsel for the appellant Sanjeev Kumar contends that as per the MLC of Manish (Ex.PW10/A), an endorsement was made by Dr. Imran Khan stating the injuries to be grievous in nature. However, neither Dr. Imran Khan was made a witness nor Dr. OS Tomar (PW-10), who is the author of the MLC, proved the said endorsement. Therefore, the factum of injuries being grievous in nature cannot be said to be proved. It was contended that the local police at Gujarat was not informed at the time of conducting raid for arresting the appellant, and therefore no credibility can be attached to the recoveries effected from the appellant. Further it is the case of the appellant that the no recoveries have been mentioned in the application seeking remand dated 3rd February, 2013 moved by the police before Ld. Duty Magistrate at Surat Court, and likewise no recoveries were mentioned in the application of remand dated 4th February, 2013 moved before the court of Ld. MM at Karkardooma Courts, Delhi. Further, neither the malkhana register has been brought on record nor the malkhana incharge has been examined as a witness, and in light of these facts, it can be said that either the recoveries were planted or if the articles were actually recovered, the chain of custody of the alleged recovered articles is not duly proved and therefore, the recoveries becomes doubtful. Further, since the DNA generated from the knife recovered from the appellant matched with the DNA of the victim, therefore the chain of custody of the allegedly recovered knife was all the more important to be proved beyond doubt. It was also contended that as per the testimonies of the witnesses, 2 knives were carried at the spot. One knife each was recovered from appellant Sanjeev and Ajay. However, as per the testimony of PW-13, one knife was also found lying under the mattress of the bed. This fact creates doubt in the story of prosecution. Furthermore, the knife allegedly recovered from the appellant is stated to have been recovered from his tenanted premises at H.No.RC-1, Dharam Market, Khoda Colony, Ghaziabad,

however Ombir Singh (PW-25) who was the owner of said property and landlord of the appellant was not a made witness to recovery. IO (PW-45) in his testimony while justifying this defect stated that although he had met the landlord (PW-25) when they reached the room of appellant at Khoda, but landlord (PW-25) had to go to some doctor as his family member was sick and therefore PW-25 could not join the investigation, and was not made a witness to the recovery.

10. It is contended on behalf of the appellant Ajay Kumar Mandal that his conviction is based solely on his identification by injured eyewitness Manish (PW-5), complainant (PW-2) and Shweta (PW-6) and also recovery of knife and jewellery articles, however there are material contradictions in the testimonies of injured (PW-5) and complainant (PW-2) and therefore, they are unreliable witnesses. As per the statement of Manish (PW-5), he was beaten by the appellants because of which he fell unconscious, but then on hearing the shouts of his mother, managed to get up and went near the door of the house where he saw that all four appellant went out of the house. It was contended that it is beyond comprehension how PW-5 got up immediately when he was unconscious. Further the complainant (PW-2) in her testimony stated that it was Manish who came out shouting from the room, and he was bleeding, and then appellant Sanjeev and other three appellants also came out. Therefore, the testimony of both the witnesses is contradictory and irreconcilable. Further no question was put to the appellant regarding his entry at the house of PW-5 in his statement under Section 313 Cr.P.C. and thus when question pertaining to the entry and presence of appellant has not been specifically and distinctly put to the appellant, the presence of appellant at the place of incident cannot be said to be established as it is settled law that each and every incriminating evidence must be specifically put to the accused under 313 CrPC. Reliance is placed on the decision reported as (2013) 8 SCR 599 Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan for this purpose. Further, the disclosure statement of the appellant was recorded on 16th February, 2013. On transit remand, the appellant was brought from Bihar to Delhi on 18th February, 2013, when the police had initially sought judicial custody remand for 4 days and then the police custody remand was sought for 2 days on 23rd February, 2013, and it was on 24th February, 2013 that the knife, gold chain and ring was allegedly recovered at the instance of appellant (Ex.PW16/A & B). It was contended that as the recovery of robbed articles was already effected from the two other appellants and the disclosure statement of appellant Ajay was already recorded on 16th February, 2013 planting of knife and robbed articles on the appellant during this duration cannot be ruled out. Further, complainant (PW-2) stated that her jewellery articles were mixed with the other similar artificial jewellery out of which she identified her jewellery. She further stated that she saw the artificial jewellery for the first time during the TIP where it was mixed with her jewellery. It was contended that this unambiguously refers to only one conclusion that the artificial jewelleries were not the exact replica of the alleged robbed articles because at the time of TIP of recovered articles, these should be no distinction

between the actual robbed articles and the sample articles mixed with them. Further as per the disclosure statement (Ex.PW-42/C), the appellant disclosed that he would get the knife and jewels recovered from his house at B-5, Sector-9, Noida, however, as per the prosecution recovery was in fact effected from House No. SR-63, Jhuggi JJ Camp, Sector-9, Noida, UP. There is neither any mention of the said house at JJ Camp in the disclosure statement nor any document is placed on record to show that the said house at JJ Camp belongs to the appellant or is in his possession. Further, there is no mention of the gold ring in the said disclosure statement of the appellant, but a gold ring is also shown to have been recovered from the said house at JJ Camp. Therefore, in totality of these circumstances, the recoveries are inadmissible in terms of Section 27 of the Indian Evidence Act. It was further contended that mere identification of appellant in TIP proceedings in absence of any other scientific or corroborating evidence is not enough. As per the FSL report (Ex.PW11/D), blood found on the knife recovered from the appellant did not match with that of the deceased, and no fingerprint or palm print of the appellant were found on the knife recovered. It was further contended that the unscaled site plan (Ex.PW45/A) neither mentioned the place where the dead body was found lying nor mentioned the place where the complainant (PW-2) & Shweta (PW-6) saw the appellants running out of the house. In the scaled site plan (Ex.PW29/A), the markings below the site plan have not been correlated as to which mark relates to which fact. Thus, both the site plans are defective and cannot be relied upon. It was also submitted on behalf of the appellant that he has been roped in this case with the aid of Section 34 only, and that no substantive offence against the appellant has been proved, and therefore the appellant is liable to be acquitted.

11. Challenging the impugned conviction and sentence learned counsel for the appellant Sandeep Kumar Mourya contends that the crime team had lifted two chance prints from the crime scene, but none of them matched with the fingerprint of the appellant (Ex.PW33/A). It was contended that one knife was recovered at the instance of appellant Sanjeev Kumar from his house at Khoda Colony but neither the landlord nor any member of public was made a witness to the recovery. Likewise, one knife was recovered at the instance of appellant Ajay Kumar, however no one was made a witness to these recoveries. Further, as per the testimony of SI Raj Pal Singh (PW-13), one knife was found lying under the mattress of the bed at the crime scene, which casts doubt on the manner of investigation carried out by the police. It was also the case of prosecution that the appellant had purchased the said two knives from the shop of one Brij Mohan Yadav (PW-39) who turned hostile, and denied having sold such knives to the appellants, rather stated that none of the appellants had visited his shop. Brij Mohan also did not identify the appellant as the person to whom he had sold the knives. It was further contended on behalf of the appellant that he was illegally arrested from Godhara, Surat and neither any member of the family was informed by the police, nor any assistance was taken from the local police, therefore, such arrest was in violation of procedure under S.41B of the Code of

Criminal Procedure. Further, the appellant's case is that there are material contradictions in the testimonies of IO (PW-45), complainant (PW-2), injured eye witness (PW-5) and Shweta (PW-6) with respect to identification of the appellant. Complainant (PW-2) and Shweta (PW-6) stated in their examination that they identified the appellant on 9th February, 2013 at the police station. Manish (PW-5) stated in his examination that he alongwith complainant (PW-2) identified the appellant on 16th April, 2013 at the police station, but in his cross examination stated that he identified the appellant before 16th April, 2013 and IO (PW-45) stated that on 8th February, 2013 when appellant led police to the place of incident, complainant (PW-2), Manish (PW-5) and Shweta (PW-6) identified him as one of the assailants, thus, the appellant had rightly refused the TIP as he was already shown to the witnesses. It was further contended that on the disclosure of appellant Mani Shankar, the police party travelled to Surat in search of appellants Sandeep and Sanjeev, but the prosecution case does not unfold how were the two appellants identified by the police at Surat.

12. Countering the abovementioned submissions, learned APP for the State submitted that;

a. With respect to appellant Mani Shankar, out of the two chance prints lifted from the crime scene, one print matched with his right index finger impression (Ex.PW-33/A). The DNA generated from his handwash and from the coat matched with the DNA profile of the deceased. Further, because of his intoxicated state, Mani Shankar was not able to run fast and was apprehended at the spot by the complainant (PW-2) with the help of the neighbours.

b. With respect to appellant Sanjeev it was contended that he had earlier visited the house with his associate to find the opportune moment to commit the crime. Even on the day of incident, at about 4.30 pm when the complainant (PW-2) and Shweta (PW-6) were getting ready to go to the doctor, appellant Sanjeev had gone to the house of the complainant and asked the complainant "Pankaj aur uncle ji kahan hai" on which she had replied that they had gone to work on which appellant left. Appellant Sanjeev admitted that he was arrested from Gujarat with Sandeep on 3rd February, 2013 in his examination u/s.313 CrPC. As testified by complainant and Shweta, he visited the house with Sandeep 6-7 days prior to the day of incident. He admitted that he used to work as the driver of the deceased but was removed from the job. Further, knife was recovered from him (Ex.PW40/C) from a room which was exclusively within his possession. The said room was locked with a key which was within his possession and knowledge. Furthermore, blood was found on the said knife and it matched with the DNA profile of the deceased (Ex.PW-44/A).

c. With respect to appellant Ajay, it was contended that he refused TIP on 21st February, 2012 (Ex.PW31/C), but on 23rd February, 2013 when he was brought to the house where incident took place, he was identified by complainant, injured eyewitness and Shweta. He got recovered a chhurra, one gold chain and one gold ring from a jhuggi at JJ Camp Sector 9, Noida. The knife recovered was

found to have blood stains with matched with the DNA profile of the Manish (Ex.PW-44/A).

d. With respect to appellant Sandeep, it was contended that PW-2 and PW-6 identified Sandeep as the person who accompanied Sanjeev when he had visited their house 6-7 days prior to incident. Sandeep in his statement under section 313 of CrPC admitted his arrest from Surat, Gujarat. Further, he also refused TIP on 6th February, 2013 without any reason as reflected in Ex.PW-30/B and thereafter he was identified by complainant and Shweta on 9th February, 2013 and by Manish on 16th April, 2013 at the police station. It was further contended that a gold chain with locket and one pair of earrings were recovered from Sandeep and the articles were duly identified by complainant (PW-2) in TIP proceedings (Ex.PW-2/A).

13. Learned APP for the State further contended that the appellants had entered into the premises with the intention to commit robbery and murder of occupants. Various robbed articles were recovered from the appellants and duly identified by complainant PW-2 in TIP. The subsequent opinion sought from the doctor mentioned that the injuries stated in the PM report are possible form the weapons/knives shown which were recovered from the appellants. Reliance is placed on the decision in Crl.A.1243/2007 Abdul Sayeed vs. State of Madhya Pradesh decided on 14th September, 2010. It is contended that the prosecution having proved the guilt of the appellants beyond reasonable doubt, the appeals be dismissed.

14. Having heard learned counsel for the parties at length and perusing the record the following evidence led by the prosecution emerges on record.

15. As per the testimony of Manish (PW-5), on 28th January, 2013 he along with his sister Sarita (deceased), mother Munni Devi and sister-in-law Shweta were present at their house. At about 4-4.30 pm, appellant Sanjeev, who earlier used to work as driver with them, came to their house and enquired about his father and elder brother Pankaj from his mother, and Sanjeev was informed by them that both had gone to work. His mother (PW-2) and his sister-in-law (PW-6) then went to the doctor. He alongwith his sister Sarita remained at home. After some time, appellant Mani Shankar alongwith 3 other appellants including Sanjeev came to their house, and one of the other 3 appellants snatched his mobile phone and other two persons dragged him to other room, where his sister Sarita was watching T.V. After asking them about the cash and jewellery, the appellants started stabbing his face, shoulder and head. His sister Sarita, who was sitting on the bed raised alarm upon which appellant Mani Shankar pulled her hair and dragged her on the floor of the room. He further deposed that Ajay and Sandeep caught his sister from her feet while appellant Mani Shankar and Sanjeev throttled her neck, on which he started screaming and all the four appellants started beating him. He started feeling giddiness and fell unconscious. After some time he heard the shouts of his mother from the door of the house and Sanjeev said "Bhago Aunti Aa Gayi Hai". Thereafter, all the appellants went out of

the house. He somehow managed to get up and went near the door of the house. Thereafter, Satish took him to LBS Hospital.

16. Munni Devi (PW-2) deposed that appellant Sanjeev had been visiting her house in the past and also about 6-7 days ago, he visited her house with appellant Sandeep. On 28th January, 2013 at about 5.15 / 5.30 PM, she along with her daughter in law (PW-6) returned back from the doctor and found that the door of the house was closed from inside and further heard the shouts of her son Manish. After forcibly opening the door, they saw Manish coming out, and was bleeding and shouting. She stated that appellants also came out, Sanjeev and Sandeep were having churras. They tried to run away, but with the help of her neighbours she apprehended appellant Mani Shankar while others ran away. She found her daughter Sarita lying dead on the floor with her throat slit. Satish came back from tuition and took Manish to the hospital. Appellants robbed jewellery articles and cash from her house and also took Mangal Sutra, Chain and Ear tops of her daughter (deceased). On 23rd February, 2013 police had brought appellant Ajay Kumar at her house where she, Manish and Shweta identified Ajay as one of the assailants, and on 9th February, 2013 she also identified appellant Sandeep. In her cross examination, she stated that she does not remember whether the gate was locked from inside but when she pushed the same it got open.

17. Shweta Jaiswal (PW-6), deposed on the line of Munni Devi. She stated that on 28th January, 2013 when they returned back from the doctor, they heard cries of her dewar Manish on which her mother in-law/ complainant pushed open the door and four persons came out from the house. She further stated that appellant Sandeep had accompanied appellant Sanjeev to their house one week prior to the incident. In her cross examination, she stated that main gate was not visible while standing inside the room and that she was standing near the gate inside the house when all the four appellants came out of the house following each other. She further stated that appellant Mani Shankar was not apprehended in her presence.

18. Kamal PW-8 stated that on 28th January, 2013 he was standing on the roof of his house when he heard shout of his neighboring aunt. He rushed down and saw that aunt was trying to overpower a boy and the said boy was trying to run away. He chased the boy and with the help of a girl named Shukla, the boy was overpowered. He stated that the aunt was saying that the said boy had slit the neck of her daughter, and thereafter, public gathered at the spot and started beating the said boy. The son of the aunt has also received injuries who was rushed to LBS on bike with some boys and inside the house, the daughter of aunt was lying on the floor with her neck slit.

19. SI Omprakash PW-43 deposed that he received information from appellant Mani Shankar and also secret informer that Sandeep and Sanjeev were at H.No.255, Patel Nagar, near Shiv Mandir, Surat, Gujarat. Thereafter, he formed a raiding team and sought permission for travelling out of station from the ACP

concerned. He reached Surat on 02nd February, 2013 at evening by train and confirmed the location of the said premises. On 03rd February, 2013 at about 4.30 am, they conducted raid at the premises where both Sandeep and Sanjeev were found sleeping and they were apprehended. From personal search of Sanjeev, one gold chain having locket OM, one pair of earrings and one ladies ring was recovered and from search of Sandeep, one gold chain with a locket and pair of earrings were recovered and kept in a matchbox. Transit remand of 3 days was obtained on the same day and they left with the appellants via Rajdhani Express and reached Delhi on 04th February, 2013 at about 10-11 am. In his cross examination, he stated that the door of the room was lying open when they entered the premises and that Kusum Lata wife of Sanjeev Kumar was also present in the room

20. SI Deepak Pandey PW-42 deposed that on 15th February, 2013 he joined the case as the Investigating Officer, and on that day he received a secret information regarding location of the absconding accused Ajay Kumar. Thereafter, on instruction of senior officers, he formed a raiding team and reached PS: Rahika, Madhubani, Bihar. He obtained assistance from local police and conducted raid at village Sorat, where accused Ajay Kumar was overpowered. He recorded the disclosure statement of the accused Ajay (Ex.PW42/C), took transit remand and brought him back to Delhi on night of 18th February, 2013 and thereafter the investigation was handed over to IO PW-45. In his cross examination, he stated to have placed his permission for going out of station on record and that he did not have any photo of Ajay Kumar but the secret informer was accompanying them. However, he was unable to identify the appellant in Court.

21. Insp. S.N. Rajora PW-45, the investigating officer in his examination in chief narrated the steps taken during investigation and stated that on 28th January, 2013 he went to the spot i.e. H.No. F-105, Gail No.4, West Vinod Nagar, Delhi after receiving information from the duty officer, and came to know that four persons have committed robbery and murder of a girl. At the spot, one of the appellant was held by public and was given beatings, and he was sent to the LBS hospital. He saw body of a girl lying in a room at the ground floor, with her neck slit with some sharp-edged weapon. The articles were also lying scattered in the room. He called the FSL team and the Crime team to the spot. He sent the dead body to the mortuary and recorded the statement of Munni Devi. On 29th January, 2013 he reached LBS Hospital and collected the documents from the hospital, handed over the body to the family after identification and in the meantime, Mani Shankar gained consciousness and Ct. Jogender (PW-15) handed over the handwash and blood sample of the appellant Mani Shankar which were taken by the concerned doctor who treated him, and the coat worn by Mani Shankar having blood stains was seized vide Ex.PW-15/A. Father of the deceased handed over a list of robbed articles which he took into police possession. On 4th February, 2013 SI Omprakash came back to Delhi along with appellants Sanjeev and Sandeep, who were arrested by him at Surat, Gujrat.

Thereafter, Sanjeev got recovered the knife/churra used from H.No. RC-1, Dharam Vihar, Khora Colony, Ghaziabad, U.P. The key of this house was with Sanjeev who took the key out from a "jhirri" and opened the lock of the room of the ground floor, where on a slab a carton box of TV was lying and appellant Sanjeev took out one churra/ knife from the said carton box, having dry blood stains. On 13th February, 2013 accused Ajay Kumar Mandal was arrested from the house of his relative in Madhubani, Bihar. On 24th February, 2013 Ajay led the police to Sector-9 near Jhuggies SR-63, Noida and from the said Jhuggi Ajay Kumar Mandal took out one gold chain, one gold ring, one chura/chopper from the taand/slab of the said jhuggi.

22. Indresh Kumar Mishra (PW-11), Sr. Scientific Officer (Biology), FSL deposed that he visited the scene of crime and found that a female dead body was lying on the floor of the bedroom. Blood was found lying on the floor, one curtain, one pillow, one quilt all lying on the floor of the bedroom and on the mattress lying on the bed, door of the cupboard, stairs before the gate and on the cemented slab before the house. He lifted 8 exhibits (Ex.PW11/A) and handed it over to IO PW-45. On 18th February, 2013, 17 parcels were recovered for examination and he prepared two serological reports Ex.PW11/C & D. As per Ex.PW11/C, blood of human origin with 'B' group was found on the recovered knife (Ex.A-12), and as per Ex.PW11/D, human blood was also found on the other recovered knife (Ex.A-17).

23. Manoj Kumar (PW-44) conducted biological and DNA examination of all the exhibits. As per his report Ex.PW-44/A, on the knife Ex.A-12, handwash and coat, DNA of deceased Sarita was found, and on the other knife Ex.A-17, DNA profile of injured Manish Jaiswal was found.

24. In his statement under section 313 of the Code of Criminal Procedure, 1973 ("CrPC"), appellant Mani Shankar stated that he is innocent and was falsely implicated in the case and that he has no concern with the other accused persons. He stated that he was plying rickshaw at the time of incident, and was sitting on his rickshaw under the influence of liquor. He stated that the LG phone allegedly recovered from him as also the blood stains found on his coat were planted on him.

25. Appellant Sanjeev Kumar in his statement under section 313 CrPC stated that he was innocent and was falsely implicated in the case. He stated that he had worked as a driver with Ashok Kumar for some time but he does not remember the time. He further stated that after the job, he never went to the house of Ashok Kumar. He admitted that on 03rd February 2013, at about 4.30 am, he and Sandeep were found sleeping and apprehended by SI Omprakash PW-43 in a raid conducted at first floor of H.No.255, Patel Nagar Society, Godhara, Surat, Gujarat. He also admitted that SI Omprakash PW-43 produced him at Surat Court and obtained 3 days transit remand and came to Delhi by Rajdhani Express on 4th February, 2013 with Sandeep to Delhi where IO deposited the case property in the malkhana. He denied that anything was

recovered from his possession. He further stated that he was a tenant of Omvir Singh (PW-25), but he left the room 2 months before the arrest.

26. Appellant Ajay Kumar Mandal in his statement under section 313 CrPC stated that he is innocent, was falsely implicated in the present case and has no concern with the other accused. He admitted that SI Deepak Pandey PW-42 obtained his transit remand and brought to Delhi on the night of 18th February, 2013. He also admitted that he was produced before the court in a muffled face on 19th February, 2013 and also admitted the TIP proceedings (Ex.PW-31/C).

27. Appellant Sandeep Kumar Maurya in his statement under section 313 stated that he is innocent and has been falsely implicated in the present case. He admitted that he on 02nd February, 2013, SI Omprakash PW-43 reached Surat and confirmed the location of H. No.255, Patel Nagar Society, Godhara, Surat, Gujarat. He also admitted that on 03rd February 2013, at about 4.30 am, he and Sandeep were found sleeping and apprehended by SI Omprakash PW-43 in a raid conducted at first floor of H.No.255, Patel Nagar Society, Godhara, Surat, Gujarat. He denied and stated that no gold chain with locket and earrings were recovered from him when he was apprehended.

28. Contention of learned counsel for the appellant Mani Shankar that since no recovery of either the robbed articles or any weapon was affected from him and he has been falsely implicated deserves to be rejected. Admittedly, Mani Shankar was under the influence of liquor when he was apprehended. According to the witnesses including the neighbor Kamal, Mani Shankar was apprehended while he was running out at near the main gate of house where the alleged incident took place on the road. Since he was apprehended by Munni Devi along with the help of public persons and was beaten at the spot he was taken to the hospital where his hand-wash was taken which had the blood on it, the alleles from which matched with the alleles from the blood sample of the deceased. In this regard even if the MLC which notes handwash and coat were handed over to police has not been exhibited, however testimony of Ct. Joginder (PW-15) who was handed over the handwash and coat who in turn handed it over to PW-45, the investigating officer is cogent and convincing and nothing has been elicited from Ct. Joginder to show that the handwash and coat were not of Mani Shankar. Further there is no delay in the arrest of the said appellant for the reason he was apprehended just outside the house and in view of his condition taken to the hospital where he was admitted as "unknown" at 6:30 pm vide MLC Ex. PW-10/E followed by his MLC Ex. PW-10/A the next day noting his name as Mani Shankar when he returned to normalcy. He was arrested on the next day after he came out of the influence of liquor and was given necessary treatment. Further, the blood on the coat of Mani Shankar which was seized by the Doctor at the hospital also accounted for the alleles which tallied with the alleles of the deceased on DNA analysis. Further, even if no recovery of weapon or robbed article was made the fact that the chance print collected from the spot/ place of incident tallied with that of appellant Mani Shankar and the presence of blood of the deceased

on his handwash and coat are sufficient to prove the presence of appellant while the offence of murder of Sarita and assault on Manish besides robbery took place, which duly corroborate the testimony of the injured eye witness Manish.

29. Contention of learned counsel for the appellant Sanjeev Kumar that endorsement on the injuries to Manish as grievous in the MLC Ex.PW-10/A has not been proved deserves to be rejected for the reason that in the absence of Dr. Imran Khan, Dr. O.S. Tomar who was the author of the MLC proved the MLC as a whole. No cross-examination of Dr. O.S. Tomar has been conducted on this aspect to show that the injury sustained by Manish was not grievous in nature. As regards the arrest of appellant Sanjeev Kumar and Sandeep at Gujarat is concerned, even if no information was given to the local Police, the two appellants were brought to Delhi by seeking transit remand from a competent court at Gujarat. The non mention of recovery from Sanjeev and Sandeep in the application for transit remand would not belie the version of SI Om Prakash (PW-43) who arrested the two accused at Surat, made the recoveries vide the seizure memo Ex. PW-43 (Ex. PW-28/A & Ex. PW-28/B) and no recovery was affected from them at Gujarat. The recovery was affected at the pointing out of Sanjeev from his house when brought to his tenanted premises. The landlord of Sanjeev appeared in the witness box as PW-25 and deposed that the room was on rent with Sanjeev Kumar, however he could not witness the recoveries as he had to go to the doctor. Further, even if no recovery was made from Sandeep Kumar Mourya at Delhi, the witnesses duly identified him as one of the assailants. PW-2 the complainant, her daughter-in-law PW-6/Sweeta and the injured PW-5/Manish also identified him as the person who had accompanied Sanjeev 6 – 7 days prior to the incident to their house.

30. Contention of learned counsel for the appellant Ajay Kumar is that even if the jewellery mixed with the jewellery articles recovered they were not the exact replica. This contention is countered by the deposition of learned Metropolitan Magistrate who deposed that the artificial jewellery mixed was the same. Hence the TIP of the jewellery articles cannot be doubted on this account. Recovery of jewellery articles was effected at the instance of Ajay Kumar from the Jhuggi JJ camp, Sector 9, Noida pursuant to his leading to the said place and thus even if in his disclosure statement he gave incorrect address of B-5, Sector 9, Noida, the same would not vitiate the recovery.

31. Hon'ble Supreme Court in the decision reported as (2010) 10 SCC 259 Abdul Sayeed Vs. State of M.P. noted that testimony of injured victim has to be kept at a high pedestal and it was held 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] , AnnareddySambasiva 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 ShivalingappaKallayanappa 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.”

32. In the decision reported as (1997) 7 SCC 712 Bhag Singh Vs. State of Punjab it was held:

“10. It is a general handicap attached to all eyewitnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all the events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eyewitness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvas of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he is concerned. If he reproduces it in the same sequence as it registered in his mind the testimony cannot be dubbed as artificial on that score alone.”

33. From the evidence led, the prosecution has been able to successfully prove the following facts and circumstances, thereby proving that the offences charged were committed by the four appellants beyond reasonable doubt.

i. Manish is an injured eye-witness who was at the time of alleged incident at home and received grievous hurt. One of the weapon of offence i.e. knife (Ex. A-17) contained the blood which as per the DNA analysis vide the report Ex.PW-44/A tallied with that of the blood of injured Manish.

ii. Appellant Sanjeev used to work as a driver and was named by the complainant in the FIR itself and that he had come on the fateful day at around 4-4.30 PM to check whether father and the brother of the injured and the deceased were at home or not. Sanjeev had also visited the house of the complainant 6 – 7 days prior to the incident along with appellant Sandeep.

iii. When Munni Devi (PW-2) and Shweta Jaiswal (PW-6) reached the home, they heard the noise of Manish (PW-5) from inside and Munni Devi pushed the door and saw the four appellants and both Munni Devi and Shweta saw all the four appellants running out of the house. Out of the four appellants Sanjeev was fully known to the witnesses and Sandeep had also been seen earlier by them.

iv. The third appellant Mani Shankar was apprehended at the spot.

v. One of the chance print recovered from the scene of occurrence tallied with that of the right index finger of Mani Shankar proving his presence at the spot at the time of alleged incident.

vi. The hands and coat of Mani Shankar were stained with blood of the deceased

and the blood in the handwash and the coat on being sent to FSL was found to be same as that of the deceased as per the DNA analysis.

vii. One knife each was recovered at the instance of Sanjeev and Ajay, both of which were found blood-stained and as per the FSL report one of the knives contained blood of the injured Manish and the other of the deceased Sarita.

viii. The list of robbed articles were given to the Police and at the instance of appellant Sandeep, Sanjeev and Ajay robbed jewellery articles were recovered which were duly identified by Munni Devi in the TIP proceedings.

34. Thus, based on the evidence of injured eye-witness, witnesses who saw the four appellants running out of the house in which one was apprehended at the spot and the other circumstances and facts as noted above, this Court finds no merit in the appeals. Appeals are accordingly dismissed.

35. Copy of the judgment be uploaded on the website of this Court and be also sent to the Superintendent Tihar Jail for updation of record and intimation to the appellants.